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H.B. 406
1st Sub. (Buff)

Representative Stephen L. Whyte proposes the following substitute bill:

LAND USE, DEVELOPMENT, AND MANAGEMENT ACT MODIFICATIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen L. Whyte

Senate Sponsor: Lincoln Fillmore

LONG TITLE

General Description:

This bill amends provisions related to municipal land use, development, and management of real property.

Highlighted Provisions:

This bill:

- modifies the definition of rural real property;
- modifies provisions relating to a municipality's annexation of unincorporated private property;
- modifies the process by which a boundary commission considers competing petitions for annexation of unincorporated private property;
- clarifies the circumstances under which a municipality may adopt temporary land use restrictions; and
- modifies the way private parties and municipalities may use development agreements.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-2-401, as last amended by Laws of Utah 2021, Chapter 112

10-2-402, as last amended by Laws of Utah 2021, Chapter 112

10-2-403, as last amended by Laws of Utah 2021, Chapter 112

10-2-407, as last amended by Laws of Utah 2022, Chapter 355

10-2-408, as last amended by Laws of Utah 2021, Chapter 112

10-2-416, as last amended by Laws of Utah 2015, Chapter 352

10-9a-103, as last amended by Laws of Utah 2022, Chapters 355, 406

10-9a-504, as renumbered and amended by Laws of Utah 2005, Chapter 254

10-9a-507, as last amended by Laws of Utah 2021, Chapter 385

10-9a-508, as last amended by Laws of Utah 2016, Chapter 350

10-9a-509, as last amended by Laws of Utah 2022, Chapters 325, 355 and 406

10-9a-532, as enacted by Laws of Utah 2021, Chapter 385

10-9a-534, as enacted by Laws of Utah 2021, First Special Session, Chapter 3

10-9a-604.5, as last amended by Laws of Utah 2019, Chapter 384

17-27a-103, as last amended by Laws of Utah 2022, Chapter 406

17-27a-504, as renumbered and amended by Laws of Utah 2005, Chapter 254

17-27a-506, as last amended by Laws of Utah 2021, Chapter 385

17-27a-507, as last amended by Laws of Utah 2013, Chapter 309

17-27a-508, as last amended by Laws of Utah 2022, Chapters 325, 355 and 406

17-27a-528, as enacted by Laws of Utah 2021, Chapter 385

17-27a-530, as enacted by Laws of Utah 2021, First Special Session, Chapter 3

17-27a-604.5, as last amended by Laws of Utah 2020, Chapter 354

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

Section 1. Section **10-2-401** is amended to read:

10-2-401. Definitions -- Property owner provisions.

(1) As used in this part:

(a) "Affected entity" means:

(i) a county of the first or second class in whose unincorporated area the area proposed for annexation is located;

(ii) a county of the third, fourth, fifth, or sixth class in whose unincorporated area the area proposed for annexation is located, if the area includes residents or commercial or industrial development;

(iii) a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, or special service district under Title 17D, Chapter 1, Special Service District Act, whose boundary includes any part of an area proposed for annexation;

(iv) a school district whose boundary includes any part of an area proposed for annexation, if the boundary is proposed to be adjusted as a result of the annexation; and

(v) a municipality whose boundaries are within 1/2 mile of an area proposed for annexation.

(b) "Annexation petition" means a petition under Section 10-2-403 proposing the annexation to a municipality of a contiguous, unincorporated area that is contiguous to the municipality.

(c) "Commission" means a boundary commission established under Section 10-2-409 for the county in which the property that is proposed for annexation is located.

(d) "Expansion area" means the unincorporated area that is identified in an annexation policy plan under Section 10-2-401.5 as the area that the municipality anticipates annexing in the future.

(e) "Feasibility consultant" means a person or firm with expertise in the processes and economics of local government.

(f) "Mining protection area" means the same as that term is defined in Section 17-41-101.

(g) "Municipal selection committee" means a committee in each county composed of the mayor of each municipality within that county.

(h) "Planning advisory area" means the same as that term is defined in Section 17-27a-306.

(i) "Private," with respect to real property, means not owned by the United States or any agency of the federal government, the state, a county, a municipality, a school district, a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, a

special service district under Title 17D, Chapter 1, Special Service District Act, or any other political subdivision or governmental entity of the state.

(j) (i) "Rural real property" means [~~the same as that term is defined in Section 17B-2a-1107.~~] a group of contiguous tax parcels, or a single tax parcel, that:

(A) are under common ownership;

(B) consist of no less than 1,000 total acres;

(C) are zoned for manufacturing or agricultural purposes; and

(D) do not have a residential unit density greater than one unit per acre.

(ii) "Rural real property" includes any portion of private real property, if the private real property:

(A) qualifies as rural real property under Subsection (1)(j)(i); and

(B) consists of more than 1,500 total acres.

(k) "Specified county" means a county of the second, third, fourth, fifth, or sixth class.

(l) "Unincorporated peninsula" means an unincorporated area:

(i) that is part of a larger unincorporated area;

(ii) that extends from the rest of the unincorporated area of which it is a part;

(iii) that is surrounded by land that is within a municipality, except where the area connects to and extends from the rest of the unincorporated area of which it is a part; and

(iv) whose width, at any point where a straight line may be drawn from a place where it borders a municipality to another place where it borders a municipality, is no more than 25% of the boundary of the area where it borders a municipality.

(m) "Urban development" means:

(i) a housing development with more than 15 residential units and an average density greater than one residential unit per acre; or

(ii) a commercial or industrial development for which cost projections exceed $750,000 for all phases.

(2) For purposes of this part:

(a) the owner of real property shall be:

(i) except as provided in Subsection (2)(a)(ii), the record title owner according to the records of the county recorder on the date of the filing of the petition or protest; or

(ii) the lessee of military land, as defined in Section 63H-1-102, if the area proposed

for annexation includes military land that is within a project area described in a project area plan adopted by the military installation development authority under Title 63H, Chapter 1, Military Installation Development Authority Act; and

(b) the value of private real property shall be determined according to the last assessment roll for county taxes before the filing of the petition or protest.

(3) For purposes of each provision of this part that requires the owners of private real property covering a percentage or majority of the total private land area within an area to sign a petition or protest:

(a) a parcel of real property may not be included in the calculation of the required percentage or majority unless the petition or protest is signed by:

(i) except as provided in Subsection (3)(a)(ii), owners representing a majority ownership interest in that parcel; or

(ii) if the parcel is owned by joint tenants or tenants by the entirety, 50% of the number of owners of that parcel;

(b) the signature of a person signing a petition or protest in a representative capacity on behalf of an owner is invalid unless:

(i) the person's representative capacity and the name of the owner the person represents are indicated on the petition or protest with the person's signature; and

(ii) the person provides documentation accompanying the petition or protest that substantiates the person's representative capacity; and

(c) subject to Subsection (3)(b), a duly appointed personal representative may sign a petition or protest on behalf of a deceased owner.

Section 2. Section **10-2-402** is amended to read:

10-2-402. Annexation -- Limitations.

(1) (a) A contiguous, unincorporated area that is contiguous to a municipality may be annexed to the municipality as provided in this part.

(b) Except as provided in Subsection (1)(c), an unincorporated area may not be annexed to a municipality unless:

(i) the unincorporated area is a contiguous area;

(ii) the unincorporated area is contiguous to the municipality;

(iii) annexation will not leave or create an unincorporated island or unincorporated

peninsula:

(A) except as provided in Subsection 10-2-418(3);

(B) except where an unincorporated island or peninsula existed before the annexation, if the annexation will reduce the size of the unincorporated island or peninsula; or

[~~(B)~~] (C) unless the county and municipality have otherwise agreed; and

(iv) for an area located in a specified county, the area is within the proposed annexing municipality's expansion area.

(c) A municipality may annex an unincorporated area within a specified county that does not meet the requirements of Subsection (1)(b), leaving or creating an unincorporated island or unincorporated peninsula, if:

(i) the area is within the annexing municipality's expansion area;

(ii) the specified county in which the area is located and the annexing municipality agree to the annexation;

(iii) the area is not within the area of another municipality's annexation policy plan, unless the other municipality agrees to the annexation; and

(iv) the annexation is for the purpose of providing municipal services to the area.

(2) Except as provided in Section 10-2-418, a municipality may not annex an unincorporated area unless a petition under Section 10-2-403 is filed requesting annexation.

(3) (a) An annexation under this part may not include part of a parcel of real property and exclude part of that same parcel unless the owner of that parcel has signed the annexation petition under Section 10-2-403.

(b) A piece of real property that has more than one parcel number is considered to be a single parcel for purposes of Subsection (3)(a) if owned by the same owner.

(4) A municipality may not annex an unincorporated area in a specified county for the sole purpose of acquiring municipal revenue or to retard the capacity of another municipality to annex the same or a related area unless the municipality has the ability and intent to benefit the annexed area by providing municipal services to the annexed area.

(5) (a) As used in this subsection, "expansion area urban development" means:

(i) for a specified county, urban development within a city or town's expansion area; or

(ii) for a county of the first class, urban development within a city or town's expansion area that:

(A) consists of 50 or more acres;

(B) requires the county to change the zoning designation of the land on which the urban development is located; and

(C) does not include commercial or industrial development that is located within a mining protection area as defined in Section 17-41-101, regardless of whether the commercial or industrial development is for a mining use as defined in Section 17-41-101.

(b) A county legislative body may not approve expansion area urban development unless:

(i) the county notifies the city or town of the proposed development; and

(ii) (A) the city or town consents in writing to the development;

(B) within 90 days after the county's notification of the proposed development, the city or town submits to the county a written objection to the county's approval of the proposed development and the county responds in writing to the city or town's objection; or

(C) the city or town fails to respond to the county's notification of the proposed development within 90 days after the day on which the county provides the notice.

(6) (a) As used in this Subsection (6), "airport" means an area that the Federal Aviation Administration has, by a record of decision, approved for the construction or operation of a Class I, II, or III commercial service airport, as designated by the Federal Aviation Administration in 14 C.F.R. Part 139.

(b) A municipality may not annex an unincorporated area within 5,000 feet of the center line of any runway of an airport operated or to be constructed and operated by another municipality unless the legislative body of the other municipality adopts a resolution consenting to the annexation.

(c) A municipality that operates or intends to construct and operate an airport and does not adopt a resolution consenting to the annexation of an area described in Subsection (6)(b) may not deny an annexation petition proposing the annexation of that same area to that municipality.

(7) (a) As used in this Subsection (7), "project area" means a project area as defined in Section 63H-1-102 that is in a project area plan as defined in Section 63H-1-102 adopted by the Military Installation Development Authority under Title 63H, Chapter 1, Military Installation Development Authority Act.

(b) A municipality may not annex an unincorporated area located within a project area without the authority's approval.

(c) (i) Except as provided in Subsection (7)(c)(ii), the Military Installation Development Authority may petition for annexation of the following areas to a municipality as if the Military Installation Development Authority was the sole private property owner within the area:

(A) an area within a project area;

(B) an area that is contiguous to a project area and within the boundaries of a military installation;

(C) an area owned by the Military Installation Development Authority; and

(D) an area that is contiguous to an area owned by the Military Installation Development Authority that the Military Installation Development Authority plans to add to an existing project area.

(ii) If any portion of an area annexed under a petition for annexation filed by the Military Installation Development Authority is located in a specified county:

(A) the annexation process shall follow the requirements for a specified county; and

(B) the provisions of Section 10-2-402.5 do not apply.

(8) A municipality may not annex an unincorporated area if:

(a) the area is proposed for incorporation in:

(i) a feasibility study conducted under Section 10-2a-205; or

(ii) a supplemental feasibility study conducted under Section 10-2a-206;

(b) the lieutenant governor completes the first public hearing on the proposed incorporation under Subsection 10-2a-207(4); and

(c) the time period for a specified landowner, as defined in Section 10-2a-203, to request that the lieutenant governor exclude the specified landowner's property from the proposed incorporation under Subsection 10-2a-207(5)(a) has expired.

Section 3. Section **10-2-403** is amended to read:

10-2-403. Annexation petition -- Requirements -- Notice required before filing.

(1) Except as provided in Section 10-2-418, the process to annex an unincorporated area to a municipality is initiated by a petition as provided in this section.

(2) (a) (i) Before filing a petition under Subsection (1), the person or persons intending

to file a petition shall:

(A) file with the city recorder or town clerk of the proposed annexing municipality a notice of intent to file a petition; and

(B) send a copy of the notice of intent to each affected entity.

(ii) Each notice of intent under Subsection (2)(a)(i) shall include an accurate map of the area that is proposed to be annexed.

(b) (i) Subject to Subsection (2)(b)(ii), the county in which the area proposed to be annexed is located shall:

(A) mail the notice described in Subsection (2)(b)(iii) to:

(I) each owner of real property located within the area proposed to be annexed; and

(II) each owner of real property located within 300 feet of the area proposed to be annexed; and

(B) send to the proposed annexing municipality a copy of the notice and a certificate indicating that the notice has been mailed as required under Subsection (2)(b)(i)(A).

(ii) The county shall mail the notice required under Subsection (2)(b)(i)(A) within 20 days after receiving from the person or persons who filed the notice of intent:

(A) a written request to mail the required notice; and

(B) payment of an amount equal to the county's expected actual cost of mailing the notice.

(iii) Each notice required under Subsection (2)(b)(i)(A) shall:

(A) be in writing;

(B) state, in bold and conspicuous terms, substantially the following:

"Attention: Your property may be affected by a proposed annexation.

Records show that you own property within an area that is intended to be included in a proposed annexation to (state the name of the proposed annexing municipality) or that is within 300 feet of that area. If your property is within the area proposed for annexation, you may be asked to sign a petition supporting the annexation. You may choose whether to sign the petition. By signing the petition, you indicate your support of the proposed annexation. If you sign the petition but later change your mind about supporting the annexation, you may withdraw your signature by submitting a signed, written withdrawal with the recorder or clerk of (state the name of the proposed annexing municipality) within 30 days after (state the name

of the proposed annexing municipality) receives notice that the petition has been certified.

There will be no public election on the proposed annexation because Utah law does not provide for an annexation to be approved by voters at a public election. Signing or not signing the annexation petition is the method under Utah law for the owners of property within the area proposed for annexation to demonstrate their support of or opposition to the proposed annexation.

You may obtain more information on the proposed annexation by contacting (state the name, mailing address, telephone number, and email address of the official or employee of the proposed annexing municipality designated to respond to questions about the proposed annexation), (state the name, mailing address, telephone number, and email address of the county official or employee designated to respond to questions about the proposed annexation), or (state the name, mailing address, telephone number, and email address of the person who filed the notice of intent under Subsection (2)(a)(i)(A), or, if more than one person filed the notice of intent, one of those persons). Once filed, the annexation petition will be available for inspection and copying at the office of (state the name of the proposed annexing municipality) located at (state the address of the municipal offices of the proposed annexing municipality).";

and

(C) be accompanied by an accurate map identifying the area proposed for annexation.

(iv) A county may not mail with the notice required under Subsection (2)(b)(i)(A) any other information or materials related or unrelated to the proposed annexation.

(c) (i) After receiving the certificate from the county as provided in Subsection (2)(b)(i)(B), the proposed annexing municipality shall, upon request from the person or persons who filed the notice of intent under Subsection (2)(a)(i)(A), provide an annexation petition for the annexation proposed in the notice of intent.

(ii) An annexation petition provided by the proposed annexing municipality may be duplicated for circulation for signatures.

(3) Each petition under Subsection (1) shall:

(a) be filed with the applicable city recorder or town clerk of the proposed annexing municipality;

(b) contain the signatures of, if all the real property within the area proposed for annexation is owned by a public entity other than the federal government, the owners of all the

publicly owned real property, or the owners of private real property that:

(i) is located within the area proposed for annexation;

(ii) (A) subject to Subsection (3)(b)(ii)(C), covers a majority of the private land area within the area proposed for annexation;

(B) covers 100% of all of the rural real property within the area proposed for annexation; and

(C) covers 100% of all of the private land area within the area proposed for annexation, if the area is within an agriculture protection area created under Title 17, Chapter 41, Agriculture, Industrial, or Critical Infrastructure Materials Protection Areas, or a migratory bird production area created under Title 23, Chapter 28, Migratory Bird Production Area; and

(iii) is equal in value to at least 1/3 of the value of all private real property within the area proposed for annexation;

(c) be accompanied by:

(i) an accurate and recordable map, prepared by a licensed surveyor in accordance with Section 17-23-20, of the area proposed for annexation; and

(ii) a copy of the notice sent to affected entities as required under Subsection (2)(a)(i)(B) and a list of the affected entities to which notice was sent;

(d) contain on each signature page a notice in bold and conspicuous terms that states substantially the following:

"Notice:

• There will be no public election on the annexation proposed by this petition because Utah law does not provide for an annexation to be approved by voters at a public election.

• If you sign this petition and later decide that you do not support the petition, you may withdraw your signature by submitting a signed, written withdrawal with the recorder or clerk of (state the name of the proposed annexing municipality). If you choose to withdraw your signature, you shall do so no later than 30 days after (state the name of the proposed annexing municipality) receives notice that the petition has been certified.";

(e) if the petition proposes a cross-county annexation, as defined in Section 10-2-402.5, be accompanied by a copy of the resolution described in Subsection 10-2-402.5(4)(a)(iii)(A); and

(f) designate up to five of the signers of the petition as sponsors, one of whom shall be

designated as the contact sponsor, and indicate the mailing address of each sponsor.

(4) A petition under Subsection (1) may not propose the annexation of all or part of an area proposed for annexation to a municipality in a previously filed petition that has not been denied, rejected, or granted.

(5) If practicable and feasible, the boundaries of an area proposed for annexation shall be drawn:

(a) along the boundaries of existing local districts and special service districts for sewer, water, and other services, along the boundaries of school districts whose boundaries follow city boundaries or school districts adjacent to school districts whose boundaries follow city boundaries, and along the boundaries of other taxing entities;

(b) to eliminate islands and peninsulas of territory that is not receiving municipal-type services;

(c) to facilitate the consolidation of overlapping functions of local government;

(d) to promote the efficient delivery of services; and

(e) to encourage the equitable distribution of community resources and obligations.

(6) On the date of filing, the petition sponsors shall deliver or mail a copy of the petition to the clerk of the county in which the area proposed for annexation is located.

(7) A property owner who signs an annexation petition may withdraw the owner's signature by filing a written withdrawal, signed by the property owner, with the city recorder or town clerk no later than 30 days after the municipal legislative body's receipt of the notice of certification under Subsection 10-2-405(2)(c)(i).

Section 4. Section **10-2-407** is amended to read:

10-2-407. Protest to annexation petition -- Planning advisory area planning commission recommendation -- Petition requirements -- Disposition of petition if no protest filed.

(1) A protest to an annexation petition under Section 10-2-403 may only be filed by:

(a) the legislative body or governing board of an affected entity;

(b) an owner of rural real property located within the area proposed for annexation;

(c) for a proposed annexation of an area within a county of the first class, an owner of private real property that:

(i) is located in the unincorporated area within 1/2 mile of the area proposed for

annexation;

(ii) covers at least 25% of the private land area located in the unincorporated area within 1/2 mile of the area proposed for annexation; and

(iii) is equal in value to at least 15% of all real property located in the unincorporated area within 1/2 mile of the area proposed for annexation; or

(d) an owner of private real property located in a mining protection area.

(2) Each protest under Subsection (1) shall:

(a) be filed:

(i) no later than 30 days after the municipal legislative body's receipt of the notice of certification under Subsection 10-2-405(2)(c)(i); and

(ii) (A) in a county that has already created a commission under Section 10-2-409, with the commission; or

(B) in a county that has not yet created a commission under Section 10-2-409, with the clerk of the county in which the area proposed for annexation is located;

(b) state each reason for the protest of the annexation petition and, if the area proposed to be annexed is located in a specified county, justification for the protest under the standards established in this chapter;

(c) if the area proposed to be annexed is located in a specified county, contain other information that the commission by rule requires or that the party filing the protest considers pertinent; and

(d) contain the name and address of a contact person who is to receive notices sent by the commission with respect to the protest proceedings.

(3) The party filing a protest under this section shall on the same date deliver or mail a copy of the protest to the city recorder or town clerk of the proposed annexing municipality.

(4) Each clerk who receives a protest under Subsection (2)(a)(ii)(B) shall:

(a) immediately notify the county legislative body of the protest; and

(b) deliver the protest to the boundary commission within five days after:

(i) receipt of the protest, if the boundary commission has previously been created; or

(ii) creation of the boundary commission under Subsection 10-2-409(1)(b), if the boundary commission has not previously been created.

(5) (a) If a protest is filed under this section:

(i) the municipal legislative body may, at its next regular meeting after expiration of the deadline under Subsection (2)(a)(i), deny the annexation petition; or

(ii) if the municipal legislative body does not deny the annexation petition under Subsection (5)(a)(i), the municipal legislative body may take no further action on the annexation petition until after receipt of the commission's notice of its decision on the protest under Section 10-2-416.

(b) If a municipal legislative body denies an annexation petition under Subsection (5)(a)(i), the municipal legislative body shall, within five days after the denial, send notice of the denial in writing to:

(i) the contact sponsor of the annexation petition;

(ii) the commission; and

(iii) each entity that filed a protest.

(6) If no timely protest is filed under this section, the municipal legislative body may, subject to Subsection (7), approve the petition.

(7) Before approving an annexation petition under Subsection (6), the municipal legislative body shall hold a public hearing and provide notice of the public hearing:

(a) (i) at least seven days before the day of the public hearing, by posting one notice, and at least one additional notice per 2,000 population within the municipality and the area proposed for annexation, in places within that combined area that are most likely to give notice to the residents within, and the owners of real property located within, the combined area, subject to a maximum of 10 notices; or

(ii) at least 10 days before the day of the public hearing, by mailing the notice to each residence within, and to each owner of real property located within, the combined area described in Subsection (7)(a)(i);

(b) by posting notice on the Utah Public Notice Website, created in Section 63A-16-601, for seven days before the day of the public hearing; and

(c) if the municipality has a website, by posting notice on the municipality's website for seven days before the day of the public hearing.

(8) (a) Subject to Subsection (8)(b), only a person or entity that is described in Subsection (1) has standing to challenge an annexation in district court.

(b) A person or entity described in Subsection (1) may only bring an action in district

court to challenge an annexation if the person or entity has timely filed a protest as described in Subsection (2) and exhausted the administrative remedies described in this section.

Section 5. Section **10-2-408** is amended to read:

10-2-408. Denying or approving the annexation petition -- Notice of approval.

(1) After receipt of the commission's decision on a protest under Subsection 10-2-416(2), a municipal legislative body may:

(a) deny the annexation petition; or

(b) subject to Subsection (2), if the commission approves the annexation, approve the annexation petition consistent with the commission's decision.

(2) A municipal legislative body shall exclude from the annexed area:

(a) rural real property, unless the owner of the rural real property has signed the petition for annexation or gives written consent to include the rural real property; and

(b) private real property located in a mining protection area, unless the owner of the private real property gives written consent to include the private real property.

Section 6. Section **10-2-416** is amended to read:

10-2-416. Commission decision -- Time limit -- Limitation on approval of annexation.

(1) (a) Subject to [~~Subsection (3)~~] Subsections (1)(b) and (3), after the public hearing under Subsection 10-2-415(1) the boundary commission may:

[~~(a)~~] (i) approve the proposed annexation, either with or without conditions;

[~~(b)~~] (ii) make minor modifications to the proposed annexation and approve it, either with or without conditions; or

[~~(c)~~] (iii) disapprove the proposed annexation.

(b) The boundary commission shall, in making a decision under Subsection (1)(a), give consideration to the preferences of the owner of the property that is the subject of the proposed annexation.

(2) The commission shall issue a written decision on the proposed annexation within 30 days after the conclusion of the hearing under Section 10-2-415 and shall send a copy of the decision to:

(a) the legislative body of the county in which the area proposed for annexation is located;

(b) the legislative body of the proposed annexing municipality;

(c) the contact person on the annexation petition;

(d) the contact person of each entity that filed a protest; and

(e) if a protest was filed under Subsection 10-2-407(1)(c) with respect to a proposed annexation of an area located in a county of the first class, the contact person designated in the protest.

(3) Except for an annexation for which a feasibility study may not be required under Subsection 10-2-413(1)(b), the commission may not approve a proposed annexation of an area located within a county of the first class unless the results of the feasibility study under Section 10-2-413 show that the average annual amount under Subsection 10-2-413(3)(a)(ix) does not exceed the average annual amount under Subsection 10-2-413(3)(a)(viii) by more than 5%.

Section 7. Section **10-9a-103** is amended to read:

10-9a-103. Definitions.

As used in this chapter:

(1) "Accessory dwelling unit" means a habitable living unit added to, created within, or detached from a primary single-family dwelling and contained on one lot.

(2) "Adversely affected party" means a person other than a land use applicant who:

(a) owns real property adjoining the property that is the subject of a land use application or land use decision; or

(b) will suffer a damage different in kind than, or an injury distinct from, that of the general community as a result of the land use decision.

(3) "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.

(4) "Affected owner" means the owner of real property that is:

(a) a single project;

(b) the subject of a land use approval that sponsors of a referendum timely challenged in accordance with Subsection 20A-7-601(6); and

(c) determined to be legally referable under Section 20A-7-602.8.

(5) "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.

(6) "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.

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

(i) an operating charter school;

(ii) a charter school applicant that a charter school authorizer approves in accordance with Title 53G, Chapter 5, Part 3, Charter School Authorization; 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.

(8) "Conditional use" means a land use that, because of the unique characteristics or potential impact of the land use 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.

(9) "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.

(10) "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.

(11) "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.

(12) (a) "Development agreement" means a written agreement or amendment to a written agreement between a municipality and one or more parties that regulates or controls the use or development of a specific area of land.

(b) "Development agreement" does not include an improvement completion assurance.

(13) (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.

(14) "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 (14)(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 (14)(a)(i);

and

(B) used in support of the purposes of a building described in Subsection (14)(a)(i); or

(ii) a therapeutic school.

(15) "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.

(16) "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.

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

(18) "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.

(19) "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

district or area.

(20) "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.

(21) "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.

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

(23) "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.

(24) "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.

(25) "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.

(26) "Infrastructure improvement" means permanent infrastructure that is essential for the public health and safety or that:

(a) is required for human occupation; and

(b) an applicant must install:

(i) in accordance with published installation and inspection specifications for public improvements; and

(ii) whether the improvement is public or private, as a condition of:

(A) recording a subdivision plat;

(B) obtaining a building permit; or

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

(27) "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.

(28) "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.

(29) "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.

(30) "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.

(31) "Land use decision" means an administrative decision of a land use authority or appeal authority regarding:

(a) a land use permit; or

(b) a land use application.

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

(33) "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;

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

(c) does not include:

(i) 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

(ii) 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.

(34) "Legislative body" means the municipal council.

(35) "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.

(36) "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.

(37) "Lot" means a tract of land, regardless of any label, that is created by and shown on a subdivision plat that has been recorded in the office of the county recorder.

(38) (a) "Lot line adjustment" means a relocation of a lot line boundary between adjoining lots or between a lot and adjoining parcels in accordance with Section 10-9a-608:

(i) whether or not the lots are located in the same subdivision; and

(ii) with the consent of the owners of record.

(b) "Lot line adjustment" does not mean a new boundary line that:

(i) creates an additional lot; or

(ii) constitutes a subdivision.

(c) "Lot line adjustment" does not include a boundary line adjustment made by the Department of Transportation.

(39) "Major transit investment corridor" means public transit service that uses or occupies:

(a) public transit rail right-of-way;

(b) dedicated road right-of-way for the use of public transit, such as bus rapid transit; or

(c) fixed-route bus corridors subject to an interlocal agreement or contract between a municipality or county and:

(i) a public transit district as defined in Section 17B-2a-802; or

(ii) an eligible political subdivision as defined in Section 59-12-2219.

(40) "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.

(41) "Municipal utility easement" means an easement that:

(a) is created or depicted on a plat recorded in a county recorder's office and is described as a municipal utility easement granted for public use;

(b) is not a protected utility easement or a public utility easement as defined in Section

54-3-27;

(c) the municipality or the municipality's affiliated governmental entity uses and occupies to provide a utility service, including sanitary sewer, culinary water, electrical, storm water, or communications or data lines;

(d) is used or occupied with the consent of the municipality in accordance with an authorized franchise or other agreement;

(e) (i) is used or occupied by a specified public utility in accordance with an authorized franchise or other agreement; and

(ii) is located in a utility easement granted for public use; or

(f) is described in Section 10-9a-529 and is used by a specified public utility.

(42) "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.

(43) "Noncomplying structure" means a structure that:

(a) legally existed before the structure's 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.

(44) "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.

(45) "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.

(46) "Parcel" means any real property that is not a lot.

(47) (a) "Parcel boundary adjustment" means a recorded agreement between owners of adjoining parcels adjusting the mutual boundary, either by deed or by a boundary line agreement in accordance with Section 10-9a-524, if no additional parcel is created and:

(i) none of the property identified in the agreement is a lot; or

(ii) the adjustment is to the boundaries of a single person's parcels.

(b) "Parcel boundary adjustment" does not mean an adjustment of a parcel boundary line that:

(i) creates an additional parcel; or

(ii) constitutes a subdivision.

(c) "Parcel boundary adjustment" does not include a boundary line adjustment made by the Department of Transportation.

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

(49) "Plan for moderate income housing" means a written document adopted by a municipality's legislative body that includes:

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

(b) an estimate of the need for moderate income housing in the municipality for the next five years;

(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 municipality's program to encourage an adequate supply of moderate income housing.

(50) "Plat" means an instrument subdividing property into lots as depicted on a map or other graphical representation of lands that a licensed professional land surveyor makes and prepares in accordance with Section 10-9a-603 or 57-8-13.

(51) "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.

(52) "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.

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

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

(55) "Public street" means a public right-of-way, including a public highway, public avenue, public boulevard, public parkway, public road, public lane, public alley, public viaduct, public subway, public tunnel, public bridge, public byway, other public transportation easement, or other public way.

(56) "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.

(57) "Record of survey map" means a map of a survey of land prepared in accordance with Section 10-9a-603, 17-23-17, 17-27a-603, or 57-8-13.

(58) "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.

(59) "Residential roadway" means a public local residential road that:

(a) will serve primarily to provide access to adjacent primarily residential areas and property;

(b) is designed to accommodate minimal traffic volumes or vehicular traffic;

(c) is not identified as a supplementary to a collector or other higher system classified street in an approved municipal street or transportation master plan;

(d) has a posted speed limit of 25 miles per hour or less;

(e) does not have higher traffic volumes resulting from connecting previously separated areas of the municipal road network;

(f) cannot have a primary access, but can have a secondary access, and does not abut lots intended for high volume traffic or community centers, including schools, recreation centers, sports complexes, or libraries; and

(g) is primarily serves traffic within a neighborhood or limited residential area and is not necessarily continuous through several residential areas.

[~~(59)~~] (60) "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.

[~~(60)~~] (61) "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.

[~~(61)~~] (62) "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.

[~~(62)~~] (63) "Specified public agency" means:

(a) the state;

(b) a school district; or

(c) a charter school.

[~~(63)~~] (64) "Specified public utility" means an electrical corporation, gas corporation,

or telephone corporation, as those terms are defined in Section 54-2-1.

[~~(64)~~] (65) "State" includes any department, division, or agency of the state.

[~~(65)~~] (66) (a) "Subdivision" means any land that is divided, resubdivided, or proposed to be divided into two or more lots 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, regardless of whether the division includes all or a portion of a parcel or lot; and

(ii) except as provided in Subsection (65)(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 boundary line agreement recorded with the county recorder's office between owners of adjoining parcels adjusting the mutual boundary in accordance with Section 10-9a-524 if no new parcel is created;

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

(A) revising the legal descriptions of multiple parcels into one legal description encompassing all such parcels; or

(B) joining a lot to a parcel;

(iv) a boundary line agreement between owners of adjoining subdivided properties adjusting the mutual lot line boundary in accordance with Sections 10-9a-524 and 10-9a-608 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 of land by deed or other instrument if the deed or other instrument states in writing that the division:

(A) is in anticipation of future land use approvals on the parcel or parcels;

(B) does not confer any land use approvals; and

(C) has not been approved by the land use authority;

(vi) a parcel boundary adjustment;

(vii) a lot line adjustment;

(viii) a road, street, or highway dedication plat;

(ix) a deed or easement for a road, street, or highway purpose; or

(x) any other division of land authorized by law.

[~~(66)~~] (67) (a) "Subdivision amendment" means an amendment to a recorded subdivision in accordance with Section 10-9a-608 that:

[~~(a)~~] (i) vacates all or a portion of the subdivision;

[~~(b)~~] (ii) alters the outside boundary of the subdivision;

[~~(c)~~] (iii) changes the number of lots within the subdivision;

[~~(d)~~] (iv) alters a public right-of-way, a public easement, or public infrastructure within the subdivision; or

[~~(e)~~] (v) alters a common area or other common amenity within the subdivision.

(b) "Subdivision amendment" does not include a lot line adjustment, between a single lot and an adjoining lot or parcel, that alters the outside boundary of the subdivision.

[~~(67)~~] (68) "Substantial evidence" means evidence that:

(a) is beyond a scintilla; and

(b) a reasonable mind would accept as adequate to support a conclusion.

(69) "Subterranean improvements" means an improvement or area for connecting structures that is:

(a) located entirely below grade; and

(b) constructed or will be constructed consistent with Title 15A, Chapter 2, State Constructions and Fire Codes Act.

[~~(68)~~] (70) "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) gypsiferous silt and clay, gypsum, or bedrock units containing abundant gypsum

commonly associated with dissolution and collapse features.

[~~(69)~~] (71) "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.

[~~(70)~~] (72) "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.

[~~(71)~~] (73) "Unincorporated" means the area outside of the incorporated area of a city or town.

[~~(72)~~] (74) "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.

[~~(73)~~] (75) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts land use zones, overlays, or districts.

Section 8. Section **10-9a-504** is amended to read:

10-9a-504. Temporary land use regulations.

(1) (a) [~~A~~] Except as provided in Subsection (2)(b), a municipal legislative body may, without prior consideration of or recommendation from the planning commission, enact an

ordinance establishing a temporary land use regulation for any part or all of the area within the municipality if:

(i) the legislative body makes a finding of compelling, countervailing public interest; or

(ii) the area is unregulated.

(b) A temporary land use regulation under Subsection (1)(a) may prohibit or regulate the erection, construction, reconstruction, or alteration of any building or structure or any subdivision approval.

(c) A temporary land use regulation under Subsection (1)(a) may not impose an impact fee or other financial requirement on building or development.

(2) (a) The municipal legislative body shall establish a period of limited effect for the ordinance not to exceed [~~six months~~] 180 days.

(b) A municipal legislative body may not apply the provisions of a temporary land use regulation to the review of a specific land use application if the land use application is impaired or prohibited by proceedings initiated under Subsection 10-9a-509(1)(a)(ii)(B).

(3) (a) A municipal legislative body may, without prior planning commission consideration or recommendation, enact an ordinance establishing a temporary land use regulation prohibiting construction, subdivision approval, and other development activities within an area that is the subject of an Environmental Impact Statement or a Major Investment Study examining the area as a proposed highway or transportation corridor.

(b) A regulation under Subsection (3)(a):

(i) may not exceed [~~six months~~] 180 days in duration;

(ii) may be renewed, if requested by the Transportation Commission created under Section 72-1-301, for up to two additional [~~six-month~~] 180-day periods by ordinance enacted before the expiration of the previous regulation; and

(iii) notwithstanding Subsections (3)(b)(i) and (ii), is effective only as long as the Environmental Impact Statement or Major Investment Study is in progress.

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

10-9a-507. Conditional uses.

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

an applicable ordinance.

(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.

(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.

(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.

(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.

(4) A legislative body shall classify any use that a land use regulation allows in a zoning district as either a permitted or conditional use under this chapter.

(5) Any residential dwelling on a lot within a residential zone that is subject to a conditional use permit may be replaced without a new conditional use permit.

Section 10. Section **10-9a-508** is amended to read:

10-9a-508. Exactions -- Exaction for water interest -- Requirement to offer to original owner property acquired by exaction.

(1) A municipality may impose an exaction or exactions on development proposed in a land use application, including, subject to Subsection (3), an exaction for a water interest, if:

(a) an essential link exists between a legitimate governmental interest and each exaction; and

(b) each exaction is roughly proportionate, both in nature and extent, to the impact of the proposed development.

(2) If a land use authority imposes an exaction for another governmental entity:

(a) the governmental entity shall request the exaction; and

(b) the land use authority shall transfer the exaction to the governmental entity for which it was exacted.

(3) (a) (i) A municipality shall base any exaction for a water interest on the culinary water authority's established calculations of projected water interest requirements.

(ii) Upon an applicant's request, the culinary water authority shall provide the applicant with the basis for the culinary water authority's calculations under Subsection (3)(a)(i) on which an exaction for a water interest is based.

(b) A municipality may not impose an exaction for a water interest if the culinary water authority's existing available water interests exceed the water interests needed to meet the reasonable future water requirement of the public, as determined under Subsection 73-1-4(2)(f).

(4) (a) If a municipality plans to dispose of surplus real property that was acquired under this section and has been owned by the municipality for less than 15 years, the municipality shall first offer to reconvey the property, without receiving additional consideration, to the person who granted the property to the municipality.

(b) A person to whom a municipality offers to reconvey property under Subsection (4)(a) has 90 days to accept or reject the municipality's offer.

(c) If a person to whom a municipality offers to reconvey property declines the offer, the municipality may offer the property for sale.

(d) Subsection (4)(a) does not apply to the disposal of property acquired by exaction by a community reinvestment agency.

(5) (a) A municipality may not, as part of an infrastructure improvement, require the installation of pavement on a residential roadway at a width in excess of 32 feet.

(b) Subsection (5)(a) does not apply if a municipality requires the installation of pavement in excess of 32 feet:

(i) in a vehicle turnaround area;

(ii) in a cul-de-sac;

(iii) to address specific traffic flow constraints at an intersection, mid-block crossings, or other areas;

(iv) to address an applicable general or master plan improvement, including transportation, bicycle lanes, trails or other similar improvements that are not included within an impact fee area;

(v) to address traffic flow constraints for service to or abutting higher density developments or uses that generate higher traffic volumes, including community centers, schools and other similar uses;

(vi) as needed for the installation or location of a utility which is maintained by the municipality and is considered a transmission line or requires additional roadway width;

(vii) for third-party utility lines that have an easement preventing the installation of utilities maintained by the municipality within the roadway;

(viii) for utilities over 12 feet in depth;

(ix) for roadways with a design speed that exceeds 25 miles per hour;

(x) as needed for flood and stormwater routing;

(xi) as needed to meet fire code requirements for parking and hydrants; or

(xii) as needed to accommodate street parking.

(c) Nothing in this section shall be construed to prevent a municipality from approving a road cross section with a pavement width less than 32 feet.

(d) (i) A land use applicant may appeal a municipal requirement for pavement in excess of 32 feet on a residential roadway.

(ii) A land use applicant that has appealed a municipal specification for a residential roadway pavement width in excess of 32 feet may request that the municipality assemble a panel of qualified experts to serve as the appeal authority for purposes of determining the technical aspects of the appeal.

(iii) Unless otherwise agreed by the applicant and the municipality, the panel described in Subsection (5)(d)(ii) shall consist of the following three experts:

(A) one licensed engineer, designated by the municipality;

(B) one licensed engineer, designated by the land use applicant; and

(C) one licensed engineer, agreed upon and designated by the two designated engineers under Subsections (5)(a)(d)(iii)(A) and (B).

(iv) A member of the panel assembled by the municipality under Subsection (5)(d)(ii) may not have an interest in the application that is the subject of the appeal.

(v) The land use applicant shall pay:

(A) 50% of the cost of the panel; and

(B) the municipality's published appeal fee.

(vi) The decision of the panel is a final decision, subject to a petition for review under Subsection (5)(d)(vii).

(vii) Pursuant to Section 10-9a-801, a land use applicant or the municipality may file a petition for review of the decision with the district court within 30 days after the date that the decision is final.

Section 11. 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

(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 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; and

(ii) (A) the proceedings have not resulted in an enactment that prohibits approval of the application as submitted[.]; or

(B) during the 12 months prior to the municipality processing the application, or multiple applications of the same type, are impaired or prohibited under the terms of a temporary land use regulation adopted under Section 10-9a-504.

(c) 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) A subsequent incorporation of a municipality or a petition that proposes the incorporation of a municipality does not affect a land use application approved by a county in accordance with Section 17-27a-508.

(e) 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.

(f) A municipality may not impose on an applicant who has submitted a complete application a requirement that is not expressed in:

(i) this chapter;

(ii) a municipal ordinance in effect on the date that the applicant submits a complete application, subject to Subsection 10-9a-509(1)(a)(ii); 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.

(g) 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; or

(vii) in a municipal specification for residential roadways in effect at the time a residential subdivision was approved.

(h) Except as provided in Subsection (1)(i), 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 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 land use permit or subdivision plat; or

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

(i) A municipality may not unreasonably withhold issuance of a certificate of occupancy where an applicant has met all requirements essential for the public health, public safety, and general welfare of the occupants, in accordance with this chapter, unless:

(i) the applicant and the municipality have agreed in a written document to the withholding of a certificate of occupancy; or

(ii) the applicant has not provided a financial assurance for required and uncompleted landscaping or infrastructure improvements in accordance with an applicable ordinance that the legislative body adopts under this chapter.

(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.

(5) (a) If sponsors of a referendum timely challenge a project in accordance with Subsection 20A-7-601(6), the project's affected owner may rescind the project's land use approval by delivering a written notice:

(i) to the local clerk as defined in Section 20A-7-101; and

(ii) no later than seven days after the day on which a petition for a referendum is determined sufficient under Subsection 20A-7-607(5).

(b) Upon delivery of a written notice described in Subsection (5)(a) the following are rescinded and are of no further force or effect:

(i) the relevant land use approval; and

(ii) any land use regulation enacted specifically in relation to the land use approval.

Section 12. Section **10-9a-532** is amended to read:

10-9a-532. Development agreements.

(1) Subject to Subsection (2), a municipality may enter into a development agreement containing any term that the municipality considers necessary or appropriate to accomplish the purposes of this chapter.

(2) (a) A development agreement may not:

(i) limit a municipality's authority in the future to:

(A) enact a land use regulation; or

(B) take any action allowed under Section 10-8-84;

(ii) require a municipality to change the zoning designation of an area of land within the municipality in the future; or

(iii) [~~contain a term that conflicts with, or is different from, a standard set forth in an existing land use regulation that governs the area subject to the development agreement~~] allow a use or development of land that applicable land use regulations governing the area subject to the development agreement would otherwise prohibit, unless the legislative body approves the development agreement in accordance with the same procedures for enacting a land use regulation under Section 10-9a-502, including a review and recommendation from the planning commission and a public hearing.

(b) A development agreement that requires the implementation of an existing land use regulation as an administrative act does not require a legislative body's approval under Section 10-9a-502.

[~~(c) A municipality may not require a development agreement as the only option for developing land within the municipality.~~]

(c) (i) If a development agreement restricts an applicant's rights under clearly established state law, the municipality shall disclose in writing to the applicant the rights of the applicant the development agreement restricts.

(ii) A municipality's failure to disclose in accordance with Subsection (2)(c)(i) voids

any provision in the development agreement pertaining to the undisclosed rights.

(d) A municipality may not require a development agreement as a condition for developing land if the municipality's land use regulations establish all applicable standards for development on the land.

[~~(d)~~] (e) To the extent that a development agreement does not specifically address a matter or concern related to land use or development, the matter or concern is governed by:

(i) this chapter; and

(ii) any applicable land use regulations.

Section 13. Section **10-9a-534** is amended to read:

10-9a-534. Regulation of building design elements prohibited -- Exceptions.

(1) As used in this section, "building design element" means:

(a) exterior color;

(b) type or style of exterior cladding material;

(c) style, dimensions, or materials of a roof structure, roof pitch, or porch;

(d) exterior nonstructural architectural ornamentation;

(e) location, design, placement, or architectural styling of a window or door;

(f) location, design, placement, or architectural styling of a garage door, not including a rear-loading garage door;

(g) number or type of rooms;

(h) interior layout of a room;

(i) minimum square footage over 1,000 square feet, not including a garage;

(j) rear yard landscaping requirements;

(k) minimum building dimensions; or

(l) a requirement to install front yard fencing.

(2) Except as provided in Subsection (3), a municipality may not impose a requirement for a building design element on a one to two family dwelling.

(3) Subsection (2) does not apply to:

(a) a dwelling located within an area designated as a historic district in:

(i) the National Register of Historic Places;

(ii) the state register as defined in Section 9-8-402; or

(iii) a local historic district or area, or a site designated as a local landmark, created by

ordinance before January 1, 2021;

(b) an ordinance enacted as a condition for participation in the National Flood Insurance Program administered by the Federal Emergency Management Agency;

(c) an ordinance enacted to implement the requirements of the Utah Wildland Urban Interface Code adopted under Section 15A-2-103;

(d) building design elements agreed to under a development agreement;

(e) a dwelling located within an area that:

(i) is zoned primarily for residential use; and

(ii) was substantially developed before calendar year 1950;

(f) an ordinance enacted to implement water efficient landscaping in a rear yard;

(g) an ordinance enacted to regulate type of cladding, in response to findings or evidence from the construction industry of:

(i) defects in the material of existing cladding; or

(ii) consistent defects in the installation of existing cladding; or

(h) a land use regulation, including a planned unit development or overlay zone, that a property owner requests:

(i) the municipality to apply to the owner's property; and

(ii) in exchange for an increase in density or other benefit not otherwise available as a permitted use in the zoning area or district.

(4) A municipality may not include subterranean improvements in any determination or evaluation of whether a single family dwelling and any accessory buildings comply with a land use regulation, plat, or other location restriction.

Section 14. Section **10-9a-604.5** is amended to read:

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

(1) As used in this section, "public landscaping improvement" means landscaping that an applicant is required to install to comply with published installation and inspection specifications for public improvements that:

(a) will be dedicated to and maintained by the municipality; or

(b) are associated with and proximate to trail improvements that connect to planned or

existing public infrastructure.

[~~(1)~~] (2) A land use authority shall establish objective inspection standards for acceptance of a [~~landscaping~~] public landscaping improvement or infrastructure improvement that the land use authority requires.

[~~(2)~~] (3) (a) Before an applicant conducts any development activity or records a plat, the applicant shall:

(i) complete any required [~~landscaping~~] public landscaping improvements or infrastructure improvements; or

(ii) post an improvement completion assurance for any required [~~landscaping~~] public landscaping improvements or infrastructure improvements.

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

(i) completion of 100% of the required [~~landscaping~~] public landscaping improvements or infrastructure improvements; or

(ii) if the municipality has inspected and accepted a portion of the [~~landscaping~~] public landscaping improvements or infrastructure improvements, 100% of the incomplete or unaccepted [~~landscaping~~] public landscaping improvements or infrastructure improvements.

(c) A municipality shall:

(i) establish a minimum of two acceptable forms of completion assurance;

(ii) 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;

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

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

(d) A municipality may not require an applicant to post an improvement completion assurance for:

(i) [~~landscaping~~] public landscaping improvements or an infrastructure improvement that the municipality has previously inspected and accepted;

(ii) infrastructure improvements that are private and not essential or required to meet

the building code, fire code, flood or storm water management provisions, street and access requirements, or other essential necessary public safety improvements adopted in a land use regulation; [~~or~~]

(iii) in a municipality where ordinances require all infrastructure improvements within the area to be private, infrastructure improvements within a development that the municipality requires to be private[~~.~~]; or

(iv) landscaping improvements that are not public landscaping improvements, as defined in Section 10-9a-103, unless the landscaping improvements and completion assurance are required under the terms of a development agreement.

(4) (a) Except as provided in Subsection (4)(c), as a condition for increased density or other entitlement benefit not currently available under the existing zone, a municipality may require a completion assurance bond for landscaped amenities and common area that are dedicated to and maintained by a homeowners association.

(b) Any agreement regarding a completion assurance bond under Subsection (4)(a) between the applicant and the municipality shall be memorialized in a development agreement.

(c) A municipality may not require a completion assurance bond for the landscaping of residential lots or the equivalent open space surrounding single family attached homes, whether platted as lots or common area.

(5) The sum of the improvement completion assurance required under Subsections (3) and (4) may not exceed the sum of:

(a) 100% of the estimated cost of the public landscaping improvements or infrastructure improvements, as evidenced by an engineer's estimate or licensed contractor's bid; and

(b) 10% of the amount of the bond to cover administrative costs incurred by the municipality to complete the improvements, if necessary.

[~~(3)~~] (6) At any time before a municipality accepts a [~~landscaping~~] public landscaping improvement 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)~~] (7) When a municipality accepts an improvement completion assurance for [~~landscaping~~] public landscaping improvements or infrastructure improvements for a development in accordance with [~~Subsection (2)(c)(ii)~~] Subsection (3)(c)(ii), 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.

[~~(5)~~] (8) 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 15. Section **17-27a-103** is amended to read:

17-27a-103. Definitions.

As used in this chapter:

(1) "Accessory dwelling unit" means a habitable living unit added to, created within, or detached from a primary single-family dwelling and contained on one lot.

(2) "Adversely affected party" means a person other than a land use applicant who:

(a) owns real property adjoining the property that is the subject of a land use application or land use decision; or

(b) will suffer a damage different in kind than, or an injury distinct from, that of the general community as a result of the land use decision.

(3) "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 property owner, property owner's association, public utility, 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 county a copy of the entity's general or long-range plan; or

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

(4) "Affected owner" means the owner of real property that is:

(a) a single project;

(b) the subject of a land use approval that sponsors of a referendum timely challenged in accordance with Subsection 20A-7-601(6); and

(c) determined to be legally referable under Section 20A-7-602.8.

(5) "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.

(6) "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.

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

(i) an operating charter school;

(ii) a charter school applicant that a charter school authorizer approves in accordance with Title 53G, Chapter 5, Part 3, Charter School Authorization; 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.

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

(9) "Conditional use" means a land use that, because of the unique characteristics or potential impact of the land use 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.

(10) "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.

(11) "County utility easement" means an easement that:

(a) a plat recorded in a county recorder's office described as a county utility easement or otherwise as a utility easement;

(b) is not a protected utility easement or a public utility easement as defined in Section 54-3-27;

(c) the county or the county's affiliated governmental entity owns or creates; and

(d) (i) either:

(A) no person uses or occupies; or

(B) the county or the county's affiliated governmental entity uses and occupies to provide a utility service, including sanitary sewer, culinary water, electrical, storm water, or communications or data lines; or

(ii) a person uses or occupies with or without an authorized franchise or other agreement with the county.

(12) "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.

(13) "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.

(14) (a) "Development agreement" means a written agreement or amendment to a written agreement between a county and one or more parties that regulates or controls the use or development of a specific area of land.

(b) "Development agreement" does not include an improvement completion assurance.

(15) (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. Sec. 802.

(16) "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 (16)(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 (16)(a)(i); and

(B) used in support of the purposes of a building described in Subsection (16)(a)(i); or

(ii) a therapeutic school.

(17) "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.

(18) "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.

(19) "Gas corporation" has the same meaning as defined in Section 54-2-1.

(20) "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.

(21) "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.

(22) "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.

(23) "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.

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

(25) "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.

(26) "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.

(27) "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.

(28) "Infrastructure improvement" means permanent infrastructure that is essential for the public health and safety or that:

(a) is required for human consumption; and

(b) an applicant must install:

(i) in accordance with published installation and inspection specifications for public improvements; and

(ii) as a condition of:

(A) recording a subdivision plat;

(B) obtaining a building permit; or

(C) developing a commercial, industrial, mixed use, condominium, or multifamily

project.

(29) "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.

(30) "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.

(31) "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.

(32) "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.

(33) "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.

(34) "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.

(35) "Land use decision" means 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.

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

(37) "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;

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

(c) does not include:

(i) 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

(ii) 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.

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

(39) "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.

(40) "Lot" means a tract of land, regardless of any label, that is created by and shown on a subdivision plat that has been recorded in the office of the county recorder.

(41) (a) "Lot line adjustment" means a relocation of a lot line boundary between adjoining lots or between a lot and adjoining parcels in accordance with Section 17-27a-608:

(i) whether or not the lots are located in the same subdivision; and

(ii) with the consent of the owners of record.

(b) "Lot line adjustment" does not mean a new boundary line that:

(i) creates an additional lot; or

(ii) constitutes a subdivision.

(c) "Lot line adjustment" does not include a boundary line adjustment made by the Department of Transportation.

(42) "Major transit investment corridor" means public transit service that uses or

occupies:

(a) public transit rail right-of-way;

(b) dedicated road right-of-way for the use of public transit, such as bus rapid transit; or

(c) fixed-route bus corridors subject to an interlocal agreement or contract between a municipality or county and:

(i) a public transit district as defined in Section 17B-2a-802; or

(ii) an eligible political subdivision as defined in Section 59-12-2219.

(43) "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.

(44) "Mountainous planning district" means an area designated by a county legislative body in accordance with Section 17-27a-901.

(45) "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.

(46) "Noncomplying structure" means a structure that:

(a) legally existed before the structure's 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.

(47) "Nonconforming use" means a use of land that:

(a) legally existed before the 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.

(48) "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.

(49) "Parcel" means any real property that is not a lot.

(50) (a) "Parcel boundary adjustment" means a recorded agreement between owners of adjoining parcels adjusting the mutual boundary, either by deed or by a boundary line agreement in accordance with Section 17-27a-523, if no additional parcel is created and:

(i) none of the property identified in the agreement is a lot; or

(ii) the adjustment is to the boundaries of a single person's parcels.

(b) "Parcel boundary adjustment" does not mean an adjustment of a parcel boundary line that:

(i) creates an additional parcel; or

(ii) constitutes a subdivision.

(c) "Parcel boundary adjustment" does not include a boundary line adjustment made by the Department of Transportation.

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

(52) "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;

(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.

(53) "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.

(54) "Plat" means an instrument subdividing property into lots as depicted on a map or other graphical representation of lands that a licensed professional land surveyor makes and prepares in accordance with Section 17-27a-603 or 57-8-13.

(55) "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.

(56) "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.

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

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

(59) "Public street" means a public right-of-way, including a public highway, public avenue, public boulevard, public parkway, public road, public lane, public alley, public viaduct, public subway, public tunnel, public bridge, public byway, other public transportation easement, or other public way.

(60) "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.

(61) "Record of survey map" means a map of a survey of land prepared in accordance with Section 10-9a-603, 17-23-17, 17-27a-603, or 57-8-13.

(62) "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.

(63) "Residential roadway" means a public local residential road that:

(a) will serve primarily to provide access to adjacent primarily residential areas and property;

(b) is designed to accommodate minimal traffic volumes or vehicular traffic;

(c) is not identified as a supplementary to a collector or other higher system classified street in an approved municipal street or transportation master plan;

(d) has a posted speed limit of 25 miles per hour or less;

(e) does not have higher traffic volumes resulting from connecting previously separated areas of the municipal road network;

(f) cannot have a primary access, but can have a secondary access, and does not abut lots intended for high volume traffic or community centers, including schools, recreation centers, sports complexes, or libraries; and

(g) is primarily serves traffic within a neighborhood or limited residential area and is not necessarily continuous through several residential areas.

[~~(63)~~] (64) "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.

[~~(64)~~] (65) "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.

[~~(65)~~] (66) "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.

[~~(66)~~] (67) "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.

[~~(67)~~] (68) "Specified public agency" means:

(a) the state;

(b) a school district; or

(c) a charter school.

[~~(68)~~] (69) "Specified public utility" means an electrical corporation, gas corporation, or telephone corporation, as those terms are defined in Section 54-2-1.

[~~(69)~~] (70) "State" includes any department, division, or agency of the state.

[~~(70)~~] (71) (a) "Subdivision" means any land that is divided, resubdivided, or proposed to be divided into two or more lots 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, regardless of whether the division includes all or a portion of a parcel or lot; and

(ii) except as provided in Subsection (70)(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 boundary line agreement recorded with the county recorder's office between owners of adjoining parcels adjusting the mutual boundary in accordance with Section 17-27a-523 if no new lot is created;

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

(A) revising the legal descriptions of multiple parcels into one legal description

encompassing all such parcels; or

(B) joining a lot to a parcel;

(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 boundary line agreement between owners of adjoining subdivided properties adjusting the mutual lot line boundary in accordance with Sections 17-27a-523 and 17-27a-608 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 of land by deed or other instrument if the deed or other instrument states in writing that the division:

(A) is in anticipation of future land use approvals on the parcel or parcels;

(B) does not confer any land use approvals; and

(C) has not been approved by the land use authority;

(vii) a parcel boundary adjustment;

(viii) a lot line adjustment;

(ix) a road, street, or highway dedication plat;

(x) a deed or easement for a road, street, or highway purpose; or

(xi) any other division of land authorized by law.

[~~(71)~~] (72) (a) "Subdivision amendment" means an amendment to a recorded subdivision in accordance with Section 17-27a-608 that:

[~~(a)~~] (i) vacates all or a portion of the subdivision;

[~~(b)~~] (ii) alters the outside boundary of the subdivision;

[~~(c)~~] (iii) changes the number of lots within the subdivision;

[~~(d)~~] (iv) alters a public right-of-way, a public easement, or public infrastructure within the subdivision; or

[~~(e)~~] (v) alters a common area or other common amenity within the subdivision.

(b) "Subdivision amendment" does not include a lot line adjustment, between a single lot and an adjoining lot or parcel, that alters the outside boundary of the subdivision.

[~~(72)~~] (73) "Substantial evidence" means evidence that:

(a) is beyond a scintilla; and

(b) a reasonable mind would accept as adequate to support a conclusion.

(74) "Subterranean improvement" means an improvement or area for connecting structures that is:

(a) located entirely below grade; and

(b) constructed or will be constructed consistent with Title 15A, Chapter 2, State Construction and Fire Codes Act.

[~~(73)~~] (75) "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) gypsiferous silt and clay, gypsum, or bedrock units containing abundant gypsum commonly associated with dissolution and collapse features.

[~~(74)~~] (76) "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.

[~~(75)~~] (77) "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.

[~~(76)~~] (78) "Unincorporated" means the area outside of the incorporated area of a municipality.

[~~(77)~~] (79) "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.

[~~(78)~~] (80) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts land use zones, overlays, or districts.

Section 16. Section **17-27a-504** is amended to read:

17-27a-504. Temporary land use regulations.

(1) (a) [~~A~~] Except as provided in Subsection 2(b), a county legislative body may, without prior consideration of or recommendation from the planning commission, enact an ordinance establishing a temporary land use regulation for any part or all of the area within the county if:

(i) the legislative body makes a finding of compelling, countervailing public interest; or

(ii) the area is unregulated.

(b) A temporary land use regulation under Subsection (1)(a) may prohibit or regulate the erection, construction, reconstruction, or alteration of any building or structure or any subdivision approval.

(c) A temporary land use regulation under Subsection (1)(a) may not impose an impact fee or other financial requirement on building or development.

(2) (a) The legislative body shall establish a period of limited effect for the ordinance not to exceed [~~six months~~] 180 days.

(b) A county legislative body may not apply the provisions of a temporary land use regulation to the review of a specific land use application if the land use application is impaired or prohibited by proceedings initiated under Subsection 17-27a-508(1)(a)(ii)(B).

(3) (a) A legislative body may, without prior planning commission consideration or

recommendation, enact an ordinance establishing a temporary land use regulation prohibiting construction, subdivision approval, and other development activities within an area that is the subject of an Environmental Impact Statement or a Major Investment Study examining the area as a proposed highway or transportation corridor.

(b) A regulation under Subsection (3)(a):

(i) may not exceed [~~six months~~] 180 days in duration;

(ii) may be renewed, if requested by the Transportation Commission created under Section 72-1-301, for up to two additional [~~six-month~~] 180-day periods by ordinance enacted before the expiration of the previous regulation; and

(iii) notwithstanding Subsections (3)(b)(i) and (ii), is effective only as long as the Environmental Impact Statement or Major Investment Study is in progress.

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

17-27a-506. Conditional uses.

(1) (a) A county may adopt a land use ordinance that includes conditional uses and provisions for conditional uses that require compliance with objective 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 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.

(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 a conditional use is an administrative land use decision.

(4) A legislative body shall classify any use that a land use regulation allows in a zoning district as either a permitted or conditional use under this chapter.

(5) Any residential dwelling on a lot within a residential zone that is subject to a conditional use permit may be replaced without a new conditional use permit.

Section 18. Section **17-27a-507** is amended to read:

17-27a-507. Exactions -- Exaction for water interest -- Requirement to offer to original owner property acquired by exaction.

(1) A county may impose an exaction or exactions on development proposed in a land use application, including, subject to Subsection (3), an exaction for a water interest, if:

(a) an essential link exists between a legitimate governmental interest and each exaction; and

(b) each exaction is roughly proportionate, both in nature and extent, to the impact of the proposed development.

(2) If a land use authority imposes an exaction for another governmental entity:

(a) the governmental entity shall request the exaction; and

(b) the land use authority shall transfer the exaction to the governmental entity for which it was exacted.

(3) (a) (i) A county or, if applicable, the county's culinary water authority shall base any exaction for a water interest on the culinary water authority's established calculations of projected water interest requirements.

(ii) Upon an applicant's request, the culinary water authority shall provide the applicant with the basis for the culinary water authority's calculations under Subsection (3)(a)(i) on which an exaction for a water interest is based.

(b) A county or its culinary water authority may not impose an exaction for a water interest if the culinary water authority's existing available water interests exceed the water interests needed to meet the reasonable future water requirement of the public, as determined under Subsection 73-1-4(2)(f).

(4) (a) If a county plans to dispose of surplus real property under Section 17-50-312 that was acquired under this section and has been owned by the county for less than 15 years,

the county shall first offer to reconvey the property, without receiving additional consideration, to the person who granted the property to the county.

(b) A person to whom a county offers to reconvey property under Subsection (4)(a) has 90 days to accept or reject the county's offer.

(c) If a person to whom a county offers to reconvey property declines the offer, the county may offer the property for sale.

(d) Subsection (4)(a) does not apply to the disposal of property acquired by exaction by a community development or urban renewal agency.

(5) (a) A county may not, as part of an infrastructure improvement, require the installation of pavement on a residential roadway at a width in excess of 32 feet.

(b) Subsection (5)(a) does not apply if a county requires the installation of pavement in excess of 32 feet:

(i) in a vehicle turnaround area;

(ii) in a cul-de-sac;

(iii) to address specific traffic flow constraints at an intersection, mid-block crossings, or other areas;

(iv) to address an applicable general or master plan improvement, including transportation, bicycle lanes, trails or other similar improvements that are not included within an impact fee area;

(v) to address traffic flow constraints for service to or abutting higher density developments or uses that generate higher traffic volumes, including community centers, schools and other similar uses;

(vi) as needed for the installation or location of a utility which is maintained by the county and is considered a transmission line or requires additional roadway width;

(vii) for third-party utility lines that have an easement preventing the installation of utilities maintained by the county within the roadway;

(viii) for utilities over 12 feet in depth;

(ix) for roadways with a design speed that exceeds 25 miles per hour;

(x) as needed for flood and stormwater routing;

(xi) as needed to meet fire code requirements for parking and hydrants; or

(xii) as needed to accommodate street parking.

(c) Nothing in this section shall be construed to prevent a county from approving a road cross section with a pavement width less than 32 feet.

(d) (i) A land use applicant may appeal a municipal requirement for pavement in excess of 32 feet on a residential roadway.

(ii) A land use applicant that has appealed a municipal specification for a residential roadway pavement width in excess of 32 feet may request that the county assemble a panel of qualified experts to serve as the appeal authority for purposes of determining the technical aspects of the appeal.

(iii) Unless otherwise agreed by the applicant and the county, the panel described in Subsection (5)(d)(ii) shall consist of the following three experts:

(A) one licensed engineer, designated by the county;

(B) one licensed engineer, designated by the land use applicant; and

(C) one licensed engineer, agreed upon and designated by the two designated engineers under Subsections (5)(a)(d)(iii)(A) and (B).

(iv) A member of the panel assembled by the county under Subsection (5)(d)(ii) may not have an interest in the application that is the subject of the appeal.

(v) The land use applicant shall pay:

(A) 50% of the cost of the panel; and

(B) the county's published appeal fee.

(vi) The decision of the panel is a final decision, subject to a petition for review under Subsection (5)(d)(vii).

(vii) Pursuant to Section 17-27a-801, a land use applicant or the county may file a petition for review of the decision with the district court within 30 days after the date that the decision is final.

Section 19. Section **17-27a-508** is amended to read:

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.

(1) (a) (i) An applicant who has submitted a complete land use application, 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

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

(ii) An applicant is entitled to approval of a land use application if the application conforms to the requirements of the applicable land use regulations, land use decisions, and development standards in effect when the applicant submits a complete application and pays all 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 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 described in Subsection (1)(a)(ii)(B) if:

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

(ii) (A) the proceedings have not resulted in an enactment that prohibits approval of the application as submitted[.]; or

(B) during the 12 months prior to the county processing the application or multiple applications of the same type, the application is impaired or prohibited under the terms of a temporary land use regulation adopted under Section 17-27a-504.

(c) 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 a requirement that is not expressed in:

(i) [~~in~~] this chapter;

(ii) [~~in~~] a county ordinance in effect on the date that the applicant submits a complete

application, subject to Subsection 17-27a-508(1)(a)(ii); 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; or

(vii) in a county specification for residential roadways in effect at the time a residential subdivision was approved.

(g) Except as provided in Subsection (1)(h), 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.

(h) A county may not unreasonably withhold issuance of a certificate of occupancy where an applicant has met all requirements essential for the public health, public safety, and general welfare of the occupants, in accordance with this chapter, unless:

(i) the applicant and the county have agreed in a written document to the withholding of a certificate of occupancy; or

(ii) the applicant has not provided a financial assurance for required and uncompleted landscaping or infrastructure improvements in accordance with an applicable ordinance that the legislative body adopts under this chapter.

(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.

(5) (a) If sponsors of a referendum timely challenge a project in accordance with Subsection 20A-7-601(6), the project's affected owner may rescind the project's land use approval by delivering a written notice:

(i) to the local clerk as defined in Section 20A-7-101; and

(ii) no later than seven days after the day on which a petition for a referendum is determined sufficient under Subsection 20A-7-607(5).

(b) Upon delivery of a written notice described in Subsection(5)(a) the following are rescinded and are of no further force or effect:

(i) the relevant land use approval; and

(ii) any land use regulation enacted specifically in relation to the land use approval.

Section 20. Section **17-27a-528** is amended to read:

17-27a-528. Development agreements.

(1) Subject to Subsection (2), a county may enter into a development agreement containing any term that the county considers necessary or appropriate to accomplish the purposes of this chapter.

(2) (a) A development agreement may not:

(i) limit a county's authority in the future to:

(A) enact a land use regulation; or

(B) take any action allowed under Section 17-53-223;

(ii) require a county to change the zoning designation of an area of land within the county in the future; or

(iii) [~~contain a term that conflicts with, or is different from, a standard set forth in an existing land use regulation that governs the area subject to the development agreement~~] allow

a use or development of land that applicable land use regulations governing the area subject to the development agreement would otherwise prohibit, unless the legislative body approves the development agreement in accordance with the same procedures for enacting a land use regulation under Section 17-27a-502, including a review and recommendation from the planning commission and a public hearing.

(b) A development agreement that requires the implementation of an existing land use regulation as an administrative act does not require a legislative body's approval under Section 17-27a-502.

[~~(c) A county may not require a development agreement as the only option for developing land within the county.~~]

[~~(d)~~]

(c) (i) If a development agreement restricts an applicant's rights under clearly established state law, the county shall disclose in writing to the applicant the rights of the applicant the development agreement restricts.

(ii) A county's failure to disclose in accordance with Subsection (2)(c)(i) voids any provision in the development agreement pertaining to the undisclosed rights.

(d) A county may not require a development agreement as a condition for developing land if the county's land use regulations establish all applicable standards for development on the land.

(e) To the extent that a development agreement does not specifically address a matter or concern related to land use or development, the matter or concern is governed by:

(i) this chapter; and

(ii) any applicable land use regulations.

Section 21. Section **17-27a-530** is amended to read:

17-27a-530. Regulation of building design elements prohibited -- Exceptions.

(1) As used in this section, "building design element" means:

(a) exterior color;

(b) type or style of exterior cladding material;

(c) style, dimensions, or materials of a roof structure, roof pitch, or porch;

(d) exterior nonstructural architectural ornamentation;

(e) location, design, placement, or architectural styling of a window or door;

(f) location, design, placement, or architectural styling of a garage door, not including a rear-loading garage door;

(g) number or type of rooms;

(h) interior layout of a room;

(i) minimum square footage over 1,000 square feet, not including a garage;

(j) rear yard landscaping requirements;

(k) minimum building dimensions; or

(l) a requirement to install front yard fencing.

(2) Except as provided in Subsection (3), a county may not impose a requirement for a building design element on a one to two family dwelling.

(3) Subsection (2) does not apply to:

(a) a dwelling located within an area designated as a historic district in:

(i) the National Register of Historic Places;

(ii) the state register as defined in Section 9-8-402; or

(iii) a local historic district or area, or a site designated as a local landmark, created by ordinance before January 1, 2021;

(b) an ordinance enacted as a condition for participation in the National Flood Insurance Program administered by the Federal Emergency Management Agency;

(c) an ordinance enacted to implement the requirements of the Utah Wildland Urban Interface Code adopted under Section 15A-2-103;

(d) building design elements agreed to under a development agreement;

(e) a dwelling located within an area that:

(i) is zoned primarily for residential use; and

(ii) was substantially developed before calendar year 1950;

(f) an ordinance enacted to implement water efficient landscaping in a rear yard;

(g) an ordinance enacted to regulate type of cladding, in response to findings or evidence from the construction industry of:

(i) defects in the material of existing cladding; or

(ii) consistent defects in the installation of existing cladding; or

(h) a land use regulation, including a planned unit development or overlay zone, that a property owner requests:

(i) the county to apply to the owner's property; and

(ii) in exchange for an increase in density or other benefit not otherwise available as a permitted use in the zoning area or district.

(4) A county may not include subterranean improvements in any determination or evaluation of whether a single family dwelling and any accessory buildings comply with a land use regulation, plat or other location restriction.

Section 22. 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) As used in this section, "public landscaping improvement" means landscaping that an applicant is required to install to comply with published installation and inspection specifications for public improvements that:

(a) will be dedicated to and maintained by the county; or

(b) are associated with and proximate to trail improvements that connect to planned or existing public infrastructure

(2) A land use authority shall establish objective inspection standards for acceptance of a required [~~landscaping~~] public landscaping improvement or infrastructure improvement.

[~~(2)~~] (3) (a) Before an applicant conducts any development activity or records a plat, the applicant shall:

(i) complete any required [~~landscaping~~] public landscaping improvements or infrastructure improvements; or

(ii) post an improvement completion assurance for any required [~~landscaping~~] public landscaping improvements or infrastructure improvements.

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

(i) completion of 100% of the required [~~landscaping~~] public landscaping improvements or infrastructure improvements; or

(ii) if the county has inspected and accepted a portion of the [~~landscaping~~] public landscaping improvements or infrastructure improvements, 100% of the incomplete or unaccepted [~~landscaping~~] public landscaping improvements or infrastructure improvements.

(c) A county shall:

(i) establish a minimum of two acceptable forms of completion assurance;

(ii) 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;

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

(iv) issue or deny a building permit in accordance with Section 17-27a-802 based on the installation of [~~landscaping~~] public landscaping improvements or infrastructure improvements.

(d) A county may not require an applicant to post an improvement completion assurance for:

(i) [~~landscaping or an infrastructure improvement~~] public landscaping improvements or infrastructure improvements that the county has previously inspected and accepted;

(ii) infrastructure improvements that are private and not essential or required to meet the building code, fire code, flood or storm water management provisions, street and access requirements, or other essential necessary public safety improvements adopted in a land use regulation; or

(iii) in a county where ordinances require all infrastructure improvements within the area to be private, infrastructure improvements within a development that the county requires to be private[~~.~~];

(iv) landscaping improvements that are not public landscaping improvements, as defined in Section 17-27a-103, unless the landscaping improvements and completion assurance are required under the terms of a development agreement.

(4) (a) Except as provided in Subsection (4)(c), as a condition for increased density or other entitlement benefit not currently available under the existing zone, a county may require a completion assurance bond for landscaped amenities and common area that are dedicated to and maintained by a homeowners association.

(b) Any agreement regarding a completion assurance bond under Subsection (4)(a) between the applicant and the county shall be memorialized in a development agreement.

(c) A county may not require a completion assurance bond for the landscaping of

residential lots or the equivalent open space surrounding single family attached homes, whether platted as lots or common area.

(5) The sum of the improvement completion assurance required under Subsections (3) and (4) may not exceed the sum of:

(a) 100% of the estimated cost of the public landscaping improvements or infrastructure improvements, as evidenced by an engineer's estimate or licensed contractor's bid; and

(b) 10% of the amount of the bond to cover administrative costs incurred by the county to complete the improvements, if necessary.

[~~(3)~~] (6) At any time before a county accepts a [~~landscaping~~] public landscaping improvement or infrastructure improvement, and for the duration of each improvement warranty period, the land use authority 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 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)~~] (7) When a county accepts an improvement completion assurance for [~~landscaping~~] public landscaping improvements or infrastructure improvements for a development in accordance with [~~Subsection (2)(c)(ii)~~] Subsection (3)(c)(ii), 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.

[~~(5)~~] (8) The provisions of this section do not supersede the terms of a valid development agreement, an adopted phasing plan, or the state construction code.