LOCAL GOVERNMENT LAND USE AND IMPACT FEE REVISIONS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: L. Alma Mansell
House Sponsor: ____________

LONG TITLE

General Description:
This bill modifies provisions relating to local government land use and impact fees.

Highlighted Provisions:
This bill:
- modifies the purposes of the statutory land use provisions;
- modifies what counties and municipalities may do in order to accomplish the purposes of the statutory land use provisions;
- adds a definition for "affected property owner";
- modifies the definitions of "land use application" and "lot line adjustment";
- prohibits counties and municipalities from imposing stricter land use requirements or higher land use standards than required under statute;
- modifies notice requirements related to land use applications;
- makes certain general plan notice requirements apply to all municipalities rather than just those in first and second class counties;
- expands the list of required recipients of notice regarding certain land use and general plan actions to include certain property owners;
- modifies planning commission duties;
- modifies the permissible and required content of general plans;
- modifies legislative body authority with respect to land use enactments;
provides that all actions under land use statutes, other than specified legislative
body enactments, shall be considered to be administrative in nature;
prohibits counties and municipalities from giving property a zoning designation that
materially diminishes the reasonable investment-backed expectations of the owner
or deprives the owner of all economically viable uses of the property;
limits zoning changes that make the intensity of permitted uses substantially less
than that of property in the same vicinity;
clarifies that adoption of a temporary land use regulation requires the adoption of an
ordinance;
prohibits counties and municipalities from delaying consideration of or denying a
land use application based on a temporary land use regulation, except as provided in
the temporary land use regulation statutory provision;
requires zoning changes to comply as reasonably as practicable to the request of the
property owner;
requires legislative body regulation and restriction of the erection, construction,
reconstruction, alteration, repair, or use of buildings and structures and the use of
land within zoning districts to be reasonable;
modifies the criteria that apply with respect to an applicant's entitlement to approval
of a land use application;
provides that recommendations relating to the use of land that are not required
under applicable land use ordinances are advisory only;
enacts a provision establishing a procedure and requirements for the processing of a
land use application;
modifies provisions relating to noncomplying structures and nonconforming uses,
including:
• eliminating a provision placing the burden of establishing the legal existence of
a noncomplying structure or nonconforming use on the property owner; and
• requiring counties and municipalities to allow a use that does not conform to
land use ordinances to continue as a nonconforming use if the use has been in
existence for seven years;
prohibits counties and municipalities from prohibiting cul-de-sacs that are shorter
than 600 feet;

- modifies the conditions under which an appeal authority may grant a variance;
- requires notice to applicants when a variance or an appeal of a land use decision is denied;
- requires courts to consider a decision arbitrary or capricious if it is based on public clamor, based on the personal preferences, desires, or whims of the members of the legislative body, or does not conform to local ordinances or state law;
- requires courts to grant the land use application and award court costs and attorney's fees if the decision is arbitrary, capricious, or illegal;
- establishes criteria for courts to apply in determining whether there is substantial evidence supporting a land use decision;
- creates a presumption if a decision is based on scientific or technical expert testimony;
- provides for criminal penalties for county and municipal officers and employees who violate land use ordinances or statutes;
- expands notice requirements relating to the intent to prepare a capital facilities plan for impact fee purposes to apply to land located in third class counties;
- prohibits the inclusion of certain costs in the calculation of impact fees and requires actual or certified estimates for certain costs;
- requires the exclusion of certain expenses when local political subdivisions calculate impact fees;
- requires local political subdivisions to use actual or certified estimates for certain amounts that are part of an impact fee calculation;
- requires rather than permits a local political subdivision to allow a credit against impact fees for certain items and requires additional amounts to be credited against impact fees;
- modifies the requirements for impact fee enactments;
- requires local political subdivisions to refund unspent impact fees or to deposit them into a housing loan fund;
- requires a specified accounting for impact fees; and
- prohibits the collection of impact fees after a certain date unless a local political
subdivision's capital facilities plan is updated by that date.

Monies Appropriated in this Bill:
None

Other Special Clauses:
None

Utah Code Sections Affected:
AMENDS:

10-9a-102, as renumbered and amended by Chapter 254, Laws of Utah 2005
10-9a-103, as last amended by Chapter 7 and renumbered and amended by Chapter 254, Laws of Utah 2005
10-9a-104, as renumbered and amended by Chapter 254, Laws of Utah 2005
10-9a-202, as enacted by Chapter 254, Laws of Utah 2005
10-9a-203, as last amended by Chapters 169, 245 and renumbered and amended by Chapter 254, Laws of Utah 2005
10-9a-204, as enacted by Chapter 254, Laws of Utah 2005
10-9a-205, as enacted by Chapter 254, Laws of Utah 2005
10-9a-302, as renumbered and amended by Chapter 254, Laws of Utah 2005
10-9a-401, as renumbered and amended by Chapter 254, Laws of Utah 2005
10-9a-403, as last amended by Chapter 245 and renumbered and amended by Chapter 254, Laws of Utah 2005
10-9a-501, as renumbered and amended by Chapter 254, Laws of Utah 2005
10-9a-502, as renumbered and amended by Chapter 254, Laws of Utah 2005
10-9a-504, as renumbered and amended by Chapter 254, Laws of Utah 2005
10-9a-505, as renumbered and amended by Chapter 254, Laws of Utah 2005
10-9a-509, as enacted by Chapter 254, Laws of Utah 2005
10-9a-511, as last amended by Chapters 7, 49 and renumbered and amended by Chapter 254, Laws of Utah 2005
10-9a-603, as renumbered and amended by Chapter 254, Laws of Utah 2005
10-9a-702, as renumbered and amended by Chapter 254, Laws of Utah 2005
10-9a-703, as enacted by Chapter 254, Laws of Utah 2005
10-9a-801, as renumbered and amended by Chapter 254, Laws of Utah 2005
10-9a-803, as renumbered and amended by Chapter 254, Laws of Utah 2005
11-36-201, as last amended by Chapters 169 and 254, Laws of Utah 2005
11-36-202, as last amended by Chapter 254, Laws of Utah 2005
11-36-302, as enacted by Chapter 11, Laws of Utah 1995, First Special Session
11-36-401, as last amended by Chapter 254, Laws of Utah 2005
17-27a-102, as renumbered and amended by Chapter 254, Laws of Utah 2005
17-27a-103, as last amended by Chapter 7 and renumbered and amended by Chapter 254, Laws of Utah 2005
11-36-201, as last amended by Chapters 169 and 254, Laws of Utah 2005
17-27a-104, as renumbered and amended by Chapter 254, Laws of Utah 2005
17-27a-202, as enacted by Chapter 254, Laws of Utah 2005
17-27a-203, as last amended by Chapters 169, 245 and renumbered and amended by Chapter 254, Laws of Utah 2005
17-27a-204, as enacted by Chapter 254, Laws of Utah 2005
17-27a-205, as enacted by Chapter 254, Laws of Utah 2005
17-27a-302, as renumbered and amended by Chapter 254, Laws of Utah 2005
17-27a-401, as renumbered and amended by Chapter 254, Laws of Utah 2005
17-27a-403, as last amended by Chapter 245 and renumbered and amended by Chapter 254, Laws of Utah 2005
17-27a-404, as renumbered and amended by Chapter 254, Laws of Utah 2005
17-27a-405, as enacted by Chapter 254, Laws of Utah 2005
17-27a-409, as renumbered and amended by Chapter 254, Laws of Utah 2005
17-27a-501, as renumbered and amended by Chapter 254, Laws of Utah 2005
17-27a-502, as renumbered and amended by Chapter 254, Laws of Utah 2005
17-27a-504, as renumbered and amended by Chapter 254, Laws of Utah 2005
17-27a-505, as renumbered and amended by Chapter 254, Laws of Utah 2005
17-27a-508, as enacted by Chapter 254, Laws of Utah 2005
17-27a-510, as last amended by Chapters 7, 49 and renumbered and amended by Chapter 254, Laws of Utah 2005
17-27a-603, as renumbered and amended by Chapter 254, Laws of Utah 2005
17-27a-702, as renumbered and amended by Chapter 254, Laws of Utah 2005
17-27a-703, as enacted by Chapter 254, Laws of Utah 2005
ENACTS:

10-9a-502.5, Utah Code Annotated 1953
10-9a-509.5, Utah Code Annotated 1953
11-36-601, Utah Code Annotated 1953
17-27a-502.5, Utah Code Annotated 1953
17-27a-509.5, Utah Code Annotated 1953

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

Section 1. Section 10-9a-102 is amended to read:

10-9a-102. Purposes -- General land use authority.

(1) The purposes of this chapter are to provide for the health, safety, and welfare, and promote the prosperity, improve the morals, peace and good order, [comfort: and convenience[, and aesthetics] of each municipality and its present and future inhabitants and businesses, to protect property rights, to protect the tax base, to secure economy in governmental expenditures, to foster the state's agricultural and other industries, and to protect both urban and nonurban development[, to protect and ensure access to sunlight for solar energy devices, and to protect property values].

(2) To accomplish the purposes of this chapter, municipalities may enact [shall] appropriate ordinances, resolutions, and rules that support proper community development and protect property owners' rights to own, hold, develop, and manage their property, and may enter into other forms of land use controls and development agreements that [they consider necessary or] are appropriate for the use and development of land within the municipality, including ordinances, resolutions, rules, restrictive covenants, easements, and development agreements governing uses, density, open spaces, structures, buildings, energy efficiency, light and air, air quality, transportation and public or alternative transportation, infrastructure, street and building orientation and width requirements, public facilities, and height and location of vegetation, trees, and landscaping, unless expressly prohibited by law.

Section 2. Section 10-9a-103 is amended to read:
10-9a-103. Definitions.

As used in this chapter:

(1) "Affected entity" means a county, municipality, independent special district under Title 17A, Chapter 2, Independent Special Districts, local district under Title 17B, Chapter 2, Local Districts, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified 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 municipality a copy of the entity's general or long-range plan; or

(c) the entity's boundaries or facilities are within one mile of land which is the subject of a general plan amendment or land use ordinance change.

(2) "Affected property owner" means an owner of at least two acres of commercial, residential, agricultural, institutional, or industrial land that is the subject of a proposed change in zoning designation or land use.

(3) "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.

(4) "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.

(5) "Charter school" includes:

(a) an operating charter school;

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

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

(6) "Chief executive officer" means the:

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

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

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

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

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

(b) Utah Constitution Article I, Section 22.

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

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

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

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

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

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

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

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

[(13) (14)] "Land use application" means an application required by a municipality's land use ordinance relating to the use of land, including an application for approval of a subdivision, development, conditional use permit, development agreement, change in zoning designation, general plan amendment, or other similar action.

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

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

[(16) (17)] "Legislative body" means the municipal council.

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

[(18) (19)] "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.

[(19) (20)] "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.

[(20) (21)] "Noncomplying structure" means a structure that:

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

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

[(21) (22)] "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.
"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.

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

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

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

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

(c) a survey of total residential land use;

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

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

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

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

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

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

"Residential facility for elderly persons" means a single-family or multiple-family dwelling unit that meets the requirements of Part 4, General Plan, but does not
include a health care facility as defined by Section 26-21-2.

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

(32) "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.

(33) "Special district" means an entity established under the authority of Title 17A, Special Districts, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or unit of the state.

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

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

(36) (a) "Subdivision" means any land that is divided, resubdivided or proposed to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.
(b) "Subdivision" includes:
(i) the division or development of land whether by deed, metes and bounds description, devise and testacy, plat, or other recorded instrument; and
(ii) except as provided in Subsection (36)(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
(ii) a recorded agreement between owners of adjoining unsubdivided properties adjusting their mutual boundary if:

(A) no new lot is created; and

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

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

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

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

(d) The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a subdivision under this Subsection [(35)] (36) as to the unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's subdivision ordinance.

[(36)] (37) "Unincorporated" means the area outside of the incorporated area of a city or town.

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

Section 3. Section 10-9a-104 is amended to read:

10-9a-104. Stricter requirements.

[(1) Except as provided in Subsection (2), a] A municipality may not enact an ordinance imposing stricter requirements or higher standards than are required by this chapter.

[(2) A municipality may not impose stricter requirements or higher standards than are required by:]

[(a) Section 10-9a-305;]

[(b) Section 10-9a-514;]

[(c) Section 10-9a-516; and]

[(d) Section 10-9a-520;]

Section 4. Section 10-9a-202 is amended to read:

10-9a-202. Applicant notice.
(1) For each land use application, the municipality shall:
(a) notify the applicant of the date, time, and place of each public hearing and public
meeting to consider the application;
(b) provide to each applicant a copy of each staff report and written internal
communication regarding the applicant or the pending application at least three business days
before the public hearing or public meeting; and
(c) notify the applicant of any final action on a pending application.

(2) If a municipality fails to comply with the requirements of Subsection (1)(a) or (b)
or both, an applicant may waive the failure so that the application may stay on the public
hearing or public meeting agenda and be considered as if the requirements had been met.

Section 5. Section 10-9a-203 is amended to read:

10-9a-203. Notice of intent to prepare a general plan or comprehensive general
plan amendments in certain municipalities.

(1) Before preparing a proposed general plan or a comprehensive general plan
amendment, each municipality shall provide ten calendar days notice of its intent to prepare a proposed general plan or a comprehensive general plan amendment to:
(a) each affected property owner;
(b) each affected entity;
(c) the Automated Geographic Reference Center created in Section 63F-1-506;
(d) the association of governments, established pursuant to an interlocal agreement under Title 11, Chapter 13, Interlocal Cooperation Act, of which the municipality is a member; and
(e) the state planning coordinator appointed under Section 63-38d-202.

(2) Each notice under Subsection (1) shall:
(a) indicate that the municipality intends to prepare a general plan or a comprehensive general plan amendment, as the case may be;
(b) describe or provide a map of the geographic area that will be affected by the general plan or amendment;
(c) be sent by mail, e-mail, or other effective means;
(d) invite the affected entities and affected property owners to provide information for
the municipality to consider in the process of preparing, adopting, and implementing a general
plan or amendment concerning:

(i) impacts that the use of land proposed in the proposed general plan or amendment
may have; and

(ii) uses of land within the municipality that the affected entity or affected property
owner is considering that may conflict with the proposed general plan or amendment; and

(e) include the address of an Internet website, if the municipality has one, and the name
and telephone number of a person where more information can be obtained concerning the
municipality's proposed general plan or amendment.

Section 6. Section 10-9a-204 is amended to read:

10-9a-204. Notice of public hearings and public meetings to consider general plan
or modifications.

(1) Each municipality shall provide:

(a) notice of the date, time, and place of the first public hearing to consider the original
adoption or any modification of all or any portion of a general plan; and

(b) notice of each public meeting on the subject.

(2) Each notice of a public hearing under Subsection (1)(a) shall be at least ten
calendar days before the public hearing and shall be:

(a) published in a newspaper of general circulation in the area;

(b) mailed to each affected property owner and each affected entity; and

(c) posted:

(i) in at least three public locations within the municipality; or

(ii) on the municipality's official website.

(3) Each notice of a public meeting under Subsection (1)(b) shall be at least 24 hours
before the meeting and shall be:

(a) submitted to a newspaper of general circulation in the area; and

(b) posted:

(i) in at least three public locations within the municipality; or

(ii) on the municipality's official website.

Section 7. Section 10-9a-205 is amended to read:

10-9a-205. Notice of public hearings and public meetings on adoption or
Each municipality shall give:

(a) notice of the date, time, and place of the first public hearing to consider the adoption or any modification of a land use ordinance; and

(b) notice of each public meeting on the subject.

(2) Each notice of a public hearing under Subsection (1)(a) shall be:

(a) mailed to each affected property owner and each affected entity at least ten calendar days before the public hearing;

(b) posted:

(i) in at least three public locations within the municipality; or

(ii) on the municipality's official website; and

(c) (i) published in a newspaper of general circulation in the area at least ten calendar days before the public hearing; or

(ii) mailed at least three days before the public hearing to:

(A) each property owner whose land is directly affected by the land use ordinance change; and

(B) each adjacent property owner within the parameters specified by municipal ordinance.

(3) Each notice of a public meeting under Subsection (1)(b) shall be at least 24 hours before the meeting and shall be posted:

(a) in at least three public locations within the municipality; or

(b) on the municipality's official website.

Section 8. Section 10-9a-302 is amended to read:

10-9a-302. Planning commission powers and duties.

(1) The planning commission shall make a recommendation to the legislative body for:

(a) a general plan and amendments to the general plan;

(b) land use ordinances, zoning maps, official maps, and amendments;

(c) an appropriate delegation of power to at least one designated land use authority to hear and act on a land use application;

(d) an appropriate delegation of power to at least one appeal authority to hear and act on an appeal from a decision of the land use authority; and
application processes that:

[(a)] (i) may include a designation of routine land use matters that, upon application and proper notice, will receive informal streamlined review and action if the application is uncontested; and

[(b)] (ii) shall protect the right of each:

[(A)] applicant and third party to require formal consideration of any application by a land use authority;

[(B)] applicant, adversely affected party, or municipal officer or employee to appeal a land use authority's decision to a separate appeal authority; and

[(C)] participant to be heard in each public hearing on a contested application.

(2) (a) Each planning commission meeting shall be subject to Title 52, Chapter 4, Open and Public Meetings.

(b) Planning commission records are subject to Title 63, Chapter 2, Government Records Access and Management Act.

Section 9. Section 10-9a-401 is amended to read:

10-9a-401. General plan required -- Content.

(1) In order to accomplish the purposes of this chapter, each municipality shall prepare and adopt a comprehensive, long-range general plan for:

(a) present and future needs of the municipality; and

(b) growth and development of all or any part of the land within the municipality.

(2) The plan may provide for:

(a) health, general welfare, safety, energy conservation, transportation, prosperity, civic activities, [aesthetics:] and recreational, educational, and cultural opportunities;

[(b) the reduction of the waste of physical, financial, or human resources that result from either excessive congestion or excessive scattering of population:] [(c) the use of energy conservation and solar and renewable energy resources;]

[(c) the efficient and economical use, conservation, and production of the supply of:

(i) food and water; and

(ii) drainage, sanitary, and other facilities and resources;]

[(d) the protection of urban development;]
the protection or promotion of moderate income housing;
(b) the protection and promotion of air quality;
(c) historic preservation;
(d) identifying future uses of land that are likely to require an expansion or
significant modification of services or facilities provided by each affected entity; and
(e) an official map.

(3) Subject to Subsection 10-9a-403(2), the municipality may determine the
comprehensiveness, extent, and format of the general plan.

(4) The general plan shall ensure that land use policies, restrictions, and conditions do
not violate private property rights or create unnecessary technical limitations on the use of
property.

Section 10. Section 10-9a-403 is amended to read:


(1) (a) The planning commission shall provide notice, as provided in Section
10-9a-203, of its intent to make a recommendation to the municipal legislative body for a
general plan or a comprehensive general plan amendment when the planning commission
initiates the process of preparing its recommendation.

(b) The planning commission shall make and recommend to the legislative body a
proposed general plan for the area within the municipality.

(c) The plan may include areas outside the boundaries of the municipality if, in the
planning commission's judgment, those areas are related to the planning of the municipality's
territory.

(d) Except as otherwise provided by law or with respect to a municipality's power of
eminent domain, when the plan of a municipality involves territory outside the boundaries of
the municipality, the municipality may not take action affecting that territory without the
concurrence of the county or other municipalities affected.

(2) (a) At a minimum, the proposed general plan, with the accompanying maps, charts,
and descriptive and explanatory matter, shall include the planning commission's
recommendations for the following plan elements:

(i) a land use element that:

(A) designates the long-term goals and the proposed extent, general distribution, and
location of land for housing, business, industry, agriculture, recreation, education, public
buildings and grounds, open space, and other categories of public and private uses of land as
appropriate; and

(B) may include a statement of the projections for and standards of population density
and building intensity recommended for the various land use categories covered by the plan;

(ii) a transportation and traffic circulation element consisting of the general location
and extent of existing and proposed freeways, arterial and collector streets, mass transit, and
any other modes of transportation that the planning commission considers appropriate, all
correlated with the population projections and the proposed land use element of the general
plan; and

(iii) for cities, an estimate of the need for the development of additional moderate
income housing within the city, and a plan to provide a realistic opportunity to meet estimated
needs for additional moderate income housing if long-term projections for land use and
development occur.

(b) In drafting the moderate income housing element, the planning commission:

(i) shall consider the Legislature's determination that cities should facilitate a
reasonable opportunity for a variety of housing, including moderate income housing:

(A) to meet the needs of people desiring to live there; and

(B) to allow persons with moderate incomes to benefit from and fully participate in all
aspects of neighborhood and community life; and

(ii) may include an analysis of why the recommended means, techniques, or
combination of means and techniques provide a realistic opportunity for the development of
moderate income housing within the planning horizon, which means or techniques may include
a recommendation to:

(A) rezone for densities necessary to assure the production of moderate income
housing;

(B) facilitate the rehabilitation or expansion of infrastructure that will encourage the
construction of moderate income housing;

(C) encourage the rehabilitation of existing uninhabitable housing stock into moderate
income housing;

(D) consider general fund subsidies to waive construction related fees that are
(E) consider utilization of state or federal funds or tax incentives to promote the
construction of moderate income housing;
(F) consider utilization of programs offered by the Utah Housing Corporation within
that agency's funding capacity; and
(G) consider utilization of affordable housing programs administered by the
Department of Community and Culture.

(3) The proposed general plan may include:

(a) an environmental element that addresses:
   (i) the protection, conservation, development, and use of natural resources, including
       the quality of air, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals,
       and other natural resources; and
   (ii) the reclamation of land, flood control, prevention and control of the pollution of
       streams and other waters, [regulation of the use of land on hillsides,] stream channels, and
       other environmentally sensitive areas, the prevention, control, and correction of the erosion of
       soils, protection of watersheds and wetlands, and the mapping of known geologic hazards;
(b) a public services and facilities element showing general plans for sewage, water,
    waste disposal, drainage, public utilities, rights-of-way, easements, and facilities for them,
    police and fire protection, and other public services;
(c) a rehabilitation, redevelopment, and conservation element consisting of plans and
    programs for:
       (i) historic preservation; and
       (ii) the diminution or elimination of blight; and
       (iii) redevelopment of land, including housing sites, business and industrial sites, and
    public building sites;
(d) an economic element composed of appropriate studies and forecasts, as well as an
    economic development plan, which may include review of existing and projected municipal
    revenue and expenditures, revenue sources, identification of basic and secondary industry,
    primary and secondary market areas, employment, and retail sales activity;
(e) recommendations for implementing all or any portion of the general plan, including
    the use of land use ordinances, capital improvement plans, community development and
promotions, and any other appropriate action;

(f) provisions addressing any of the matters listed in Subsection 10-9a-401(2); and

(g) any other element the municipality considers appropriate.

Section 11. Section 10-9a-501 is amended to read:

10-9a-501. Legislative body authority -- Administrative actions.

(1) The legislative body may enact land use ordinances and:

(a) a general plan;

(b) text in a zoning ordinance;

(c) a zoning map for the entire city; and

(d) a comprehensive rezoning that affects at least 25% of the land within the city.

(2) All actions taken under this chapter, other than those identified in Subsection (1), shall be considered to be administrative in nature.

Section 12. Section 10-9a-502 is amended to read:

10-9a-502. Preparation and adoption of land use ordinance or zoning map.

(1) The planning commission shall:

(a) provide notice as required by Subsection 10-9a-205(1)(a);

(b) hold a public hearing on a proposed land use ordinance or zoning map; and

(c) prepare and recommend to the legislative body a proposed land use ordinance or ordinances and zoning map that represent the planning commission's recommendation for regulating the use and development of land within all or any part of the area of the municipality.

(2) The municipal legislative body shall consider each proposed land use ordinance and zoning map recommended to it by the planning commission, and, after providing notice as required by Subsection 10-9a-205(1)(b) and holding a public meeting, the legislative body may, subject to Subsection 10-9a-505(1)(b), adopt or reject the ordinance or map either as proposed by the planning commission or after making any revision the municipal legislative body considers appropriate.

Section 13. Section 10-9a-502.5 is enacted to read:

10-9a-502.5 Limitations on changes in zoning designation.

(1) A parcel of property may not be given a zoning designation that would:

(a) materially diminish the reasonable investment-backed expectations of the property's
owner; or
(b) deprive the property owner of all economically viable uses of the property.

(2) If a change in the zoning designation applicable to a parcel of property makes the
intensity of the permitted uses of that property substantially different than the intensity of
permitted uses on property in the same vicinity, the change may not be approved unless:
(a) the differences in intensity of permitted uses is attributable to differences in
topography or other natural features; or
(b) there are countervailing, compelling public interests in favor of the change in
zoning designation.

Section 14. Section 10-9a-504 is amended to read:

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

(1) (a) 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) The municipal legislative body shall establish a period of limited effect for the
ordinance not to exceed six months.

(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 in duration;
Section 72-1-301, for up to two additional six-month periods by ordinance enacted before the expiration of the previous regulation; and

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

A regulation under this section is not effective unless adopted by ordinance.

Except as provided in this section, a municipality may not delay consideration of or disapprove a land use application based on a temporary land use regulation.

Section 15. Section 10-9a-505 is amended to read:

10-9a-505. Zoning districts.

(1) (a) Subject to Subsection (1)(b), the legislative body may divide the territory over which it has jurisdiction into zoning districts of a number, shape, and area that it considers appropriate to carry out the purposes of this chapter.

(b) Each change in the designation of a zoning district shall conform as reasonably as practicable to the request of the property owner whose property is affected by the change.

(c) [Within those zoning districts, the legislative body may reasonably regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, and the use of land.] The legislative body shall ensure that the regulations are uniform for each class or kind of buildings throughout each zoning district, but the regulations in one zone may differ from those in other zones.

(3) (a) There is no minimum area or diversity of ownership requirement for a zone designation.

(b) Neither the size of a zoning district nor the number of landowners within the district may be used as evidence of the illegality of a zoning district or of the invalidity of a municipal decision.

Section 16. Section 10-9a-509 is amended to read:

10-9a-509. When a land use applicant is entitled to approval -- Exception -- Municipality required to comply with land use ordinances.

(1) (a) (i) An applicant is entitled to approval of a land use application if the application conforms to the requirements of the general plan, the land use map, or an applicable
land use ordinance in effect when a complete application is submitted and all fees have been paid, unless:

(A) the land use authority, on the record, finds that:

(I) a compelling, countervailing public interest would be jeopardized by approving the application; or

(II) approval of the application would place the health or safety of the community at risk; or

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

(ii) A municipality may not delay consideration of or disapprove a land use application based on a proposed amendment to the municipality's ordinances if formal proceedings to adopt the amendment have not been initiated before the application is filed.

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

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

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

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

(d) Any checklist or additional recommendations provided by the municipality to an applicant relating to the use of the applicant's land that are not required under applicable land use ordinances are advisory only, and the applicant is under no obligation to comply with them.

(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 and is not affected by any municipal action or inaction.

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

Section 17. Section 10-9a-509.5 is enacted to read:

10-9a-509.5. Land use applications -- Approval process.
Development of a parcel of real property may not be permitted without an approved land use application for that purpose.

Each land use application shall be submitted:

(a) on a form provided by the municipality;
(b) under the ordinances of the municipality in effect at the time the application is submitted;
(c) with the fees required by the municipality; and
(d) with any other information required by the municipality by ordinance.

A municipality may not require a land use application for a preliminary subdivision plat to include any information other than:

(a) street and transportation layout;
(b) lot layouts with side yard requirement and square footage designations;
(c) utility easements;
(d) parks, trails, and open space designations;
(e) landscape features;
(f) density and land use analysis;
(g) essential infrastructure; and
(h) scale drawings.

A municipality may confer with a land use applicant to determine whether completing staff review of the land use application within the time specified in this section will require the municipality to retain an outside consultant or to pay overtime to regular staff.

If the municipality determines, in its sole discretion, to use an outside consultant or to pay overtime to regular staff to process a land use application within the time specified in this section, the applicant shall pay the municipality the amount the municipality reasonably estimates to be the difference between the cost of the outside consultant or overtime pay and the cost of routine review by the municipality.

Upon completion of the review of the land use application:

(i) the applicant shall immediately pay the municipality the difference between the actual cost of the outside consultant or overtime and the estimated cost, if the actual cost exceeds the estimated cost; or
(ii) the municipality shall immediately credit the applicant for the difference between

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the estimated cost of the outside consultant or overtime and the actual cost, if the actual cost is
less than the estimated cost.

(5) Unless the land use application applicant otherwise agrees in writing, the
municipality shall, within 45 days after its receipt of the land use application:
(a) complete the initial staff review of the land use application; and
(b) (i) notify the applicant that the land use application is complete and deliver it to:
(A) the land use authority; or
(B) the planning commission, if the planning commission is not the land use authority
and the municipality's ordinances require planning commission review and recommendation
before being submitted to the land use authority; or
(ii) return the land use application to the applicant indicating any deficiencies in the
land use application.

(6) After the applicant has corrected any deficiencies identified in the staff review
process and resubmitted the land use application to the municipality, the application shall
immediately be delivered to:
(a) the planning commission, if the planning commission is not the land use authority
and is required to review and make a recommendation on a land use application before it is
considered by the municipality's land use authority; or
(b) the land use authority.

(7) (a) If a municipality's planning commission is not the land use authority and is
required to review and make a recommendation on a land use application before it is
considered by the municipality's land use authority, the planning commission shall hold a
public hearing and make a recommendation on the land use application to the land use
authority within 28 days after the land use application is delivered to the planning commission,
unless the applicant agrees in writing to a longer period of time.
(b) If the planning commission, if applicable, fails to make a recommendation
regarding the land use application within the time required under Subsection (7)(a), the
planning commission shall be considered to have recommended approval of the land use
application.
(c) If the planning commission recommends disapproval of a land use application, the
planning commission shall state on the record its reasons for its recommendation.
Each land use authority shall hold a public hearing and approve or disapprove a land use application within 28 days after the land use application is delivered to the land use authority, unless the applicant agrees in writing to a longer period of time.

If the land use authority fails to approve or disapprove the land use application within the time required under Subsection (8)(a), the land use authority shall be considered to have recommended approval of the land use application.

If the land use authority disapproves a land use application, the land use authority shall state on the record its reasons for the disapproval.

A municipality may not deny a land use application on a scientific or technical basis if:

(a) the applicant has presented relevant scientific or technical expert testimony in support of the application; and

(b) the scientific or technical expert testimony presented by the applicant is not contradicted by the testimony of a similarly qualified scientific or technical expert.

Each municipality that receives a land use application shall cooperate in good faith to assist the applicant to obtain any third-party approval necessary for approval of the land use application.

Each approval or denial of a land use application shall be:

(i) in writing; and

(ii) based upon sound reason and practical application of recognized principles of law.

Each denial of a land use application shall be accompanied by a reasoned statement that:

(i) explains the criteria and standards considered relevant;

(ii) states the relevant contested facts relied upon;

(iii) explains the rationale for the decision based on the applicable provisions of the general plan, relevant ordinance, statutory, and constitutional provisions, and factual information contained in the record.

Nothing in this chapter may be construed to prohibit a municipality from specifying in ordinance or in a development agreement a shorter time period for processing a land use application than specified in this chapter.

Nothing in this section may be construed to require a hearing before the planning
commission or municipal legislative body if the hearing is not otherwise required by this
chapter or municipal ordinance.

Section 18. Section 10-9a-511 is amended to read:

10-9a-511. Nonconforming uses and noncomplying structures.

(1) (a) Except as provided in this section, a nonconforming use or noncomplying
structure may be continued by the present or a future property owner.

(b) A nonconforming use may be extended through the same building, provided no
structural alteration of the building is proposed or made for the purpose of the extension.

(c) For purposes of this Subsection (1), the addition of a solar energy device to a
building is not a structural alteration.

(2) The legislative body may provide for:

(a) the establishment, restoration, reconstruction, extension, alteration, expansion, or
substitution of nonconforming uses upon the terms and conditions set forth in the land use
ordinance;

(b) the termination of all nonconforming uses, except billboards, by providing a
formula establishing a reasonable time period during which the owner can recover or amortize
the amount of his investment in the nonconforming use, if any; and

(c) the termination of a nonconforming use due to its abandonment.

(3) (a) A municipality may not prohibit the reconstruction or restoration of a
noncomplying structure or terminate the nonconforming use of a structure that is involuntarily
destroyed in whole or in part due to fire or other calamity unless the structure or use has been
abandoned.

(b) A municipality may prohibit the reconstruction or restoration of a noncomplying
structure or terminate the nonconforming use of a structure if:

(i) the structure is allowed to deteriorate to a condition that the structure is rendered
uninhabitable and is not repaired or restored within six months after written notice to the
property owner that the structure is uninhabitable and that the noncomplying structure or
nonconforming use will be lost if the structure is not repaired or restored within six months; or

(ii) the property owner has voluntarily demolished a majority of the noncomplying
structure or the building that houses the nonconforming use.

[(4) (a) Unless the municipality establishes, by ordinance, a uniform presumption of

[(4) (a) Unless the municipality establishes, by ordinance, a uniform presumption of
establishing the legal existence of a noncomplying structure or nonconforming use.]

(b) Any party, including a municipality, claiming that a nonconforming use has been abandoned shall have the burden of establishing the abandonment.

(b) A use in existence for a period of at least seven years that does not conform to a municipality's land use ordinances shall be considered a nonconforming use that shall be allowed to continue until terminated as provided in this section, regardless of whether the use has previously been declared to be or acknowledged as a nonconforming use or whether the use was lawful at the time it was established.

(c) Abandonment may be presumed to have occurred if:

(i) a majority of the primary structure associated with the nonconforming use has been voluntarily demolished without prior written agreement with the municipality regarding an extension of the nonconforming use;

(ii) the use has been discontinued for a minimum of one year; or

(iii) the primary structure associated with the nonconforming use remains vacant for a period of one year.

(d) The property owner may rebut the presumption of abandonment under Subsection (4)(c), and shall have the burden of establishing that any claimed abandonment under Subsection (4)(c) has not in fact occurred.

(5) A municipality may terminate the nonconforming status of a school district or charter school use or structure when the property associated with the school district or charter school use or structure ceases to be used for school district or charter school purposes for a period established by ordinance.

Section 19. Section 10-9a-603 is amended to read:

10-9a-603. Plat required when land is subdivided -- Approval of plat -- Recording plat.

(1) Unless exempt under Section 10-9a-605 or excluded from the definition of subdivision under Subsection 10-9a-103(34) (36), whenever any land is laid out and platted, the owner of the land shall provide an accurate plat that describes or specifies:

(a) a name or designation of the subdivision that is distinct from any plat already recorded in the county recorder's office;
(b) the boundaries, course, and dimensions of all of the parcels of ground divided, by their boundaries, course, and extent, whether the owner proposes that any parcel of ground is intended to be used as a street or for any other public use, and whether any such area is reserved or proposed for dedication for a public purpose;

(c) the lot or unit reference, block or building reference, street or site address, street name or coordinate address, acreage or square footage for all parcels, units, or lots, and length and width of the blocks and lots intended for sale; and

(d) every existing right-of-way and easement grant of record for underground facilities, as defined in Section 54-8a-2, and for other utility facilities.

(2) Subject to Subsections (3), (4), and (5), if the plat conforms to the municipality's ordinances and this part and has been approved by the culinary water authority and the sanitary sewer authority, the municipality shall approve the plat.

(3) A municipality may not prohibit a cul-de-sac that is shorter than 600 feet in length.

[4] (4) The municipality may withhold an otherwise valid plat approval until the owner of the land provides the legislative body with a tax clearance indicating that all taxes, interest, and penalties owing on the land have been paid.

[4] (5) (a) The owner of the land shall acknowledge the plat before an officer authorized by law to take the acknowledgement of conveyances of real estate and shall obtain the signature of each individual designated by the municipality.

(b) The surveyor making the plat shall certify that the surveyor:

(i) holds a license in accordance with Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;

(ii) has completed a survey of the property described on the plat in accordance with Section 17-23-17 and has verified all measurements; and

(iii) has placed monuments as represented on the plat.

(c) As applicable, the owner or operator of the underground and utility facilities shall approve the:

(i) boundary, course, dimensions, and intended use of the right-of-way and easement grants of record;

(ii) location of existing underground and utility facilities; and

(iii) conditions or restrictions governing the location of the facilities within the
right-of-way, and easement grants of records, and utility facilities within the subdivision.

(5) (6) (a) After the plat has been acknowledged, certified, and approved, the owner of the land shall, within the time period designated by ordinance, record the plat in the county recorder's office in the county in which the lands platted and laid out are situated.

(b) An owner's failure to record a plat within the time period designated by ordinance renders the plat voidable.

Section 20. Section 10-9a-702 is amended to read:

10-9a-702. Variances.

(1) Any person or entity desiring a waiver or modification of the requirements of a land use ordinance as applied to a parcel of property that he owns, leases, or in which he holds some other beneficial interest may apply to the applicable appeal authority for a variance from the terms of the ordinance.

(2) (a) The appeal authority may grant a variance only if:

(i) literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances;

(ii) there are special circumstances attached to the property that do not generally apply to other properties in the same zone;

(iii) granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;

(iv) the variance will not substantially affect the general plan and will not be contrary to the public interest; and

(v) the spirit of the land use ordinance is observed and substantial justice done.

(b) (i) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (2)(a), the appeal authority may not find an unreasonable hardship unless the alleged hardship:

(A) is located on or associated with the property for which the variance is sought; and

(B) comes from circumstances peculiar to the property or conditions imposed by the municipality, not from conditions that are general to the neighborhood.

(ii) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (2)(a), the appeal authority may not find an unreasonable hardship if the hardship is self-imposed [or economic].
(c) In determining whether or not there are special circumstances attached to the property under Subsection (2)(a), the appeal authority may find that special circumstances exist only if the special circumstances:

(i) relate to the hardship complained of; and

(ii) deprive the property of privileges granted to other properties in the same zone or requested zone.

(3) The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.

(4) Variances run with the land.

(5) The appeal authority may not grant a use variance.

(6) In granting a variance, the appeal authority may impose additional requirements on the applicant that will:

(a) mitigate any harmful affects of the variance; or

(b) serve the purpose of the standard or requirement that is waived or modified.

(7) Each appeal authority shall notify each applicant who has been denied a variance of the place and time for filing an appeal.

Section 21. Section 10-9a-703 is amended to read:

10-9a-703. Appealing a land use authority's decision.

(1) The applicant, a board or officer of the municipality, or any person adversely affected by the land use authority's decision administering or interpreting a land use ordinance may, within the time period provided by ordinance, appeal that decision to the appeal authority by alleging that there is error in any order, requirement, decision, or determination made by the land use authority in the administration or interpretation of the land use ordinance.

(2) In each decision denying a land use application, the municipality shall notify the applicant of the time and place for filing an appeal.

Section 22. Section 10-9a-801 is amended to read:

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

(1) No person may challenge in district court a municipality's land use decision made under this chapter, or under a regulation made under authority of this chapter, until that person
has exhausted the person's administrative remedies as provided in Part 7, Appeal Authority and
Variances, if applicable.

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

(b) (i) The time under Subsection (2)(a) to file a petition is tolled from the date a
property owner files a request for arbitration of a constitutional taking issue with the property
rights ombudsman under Section 63-34-13 until 30 days after:

(A) the arbitrator issues a final award; or

(B) the property rights ombudsman issues a written statement under Subsection
63-34-13[(4) (5)] (b) declining to arbitrate or to appoint an arbitrator.

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

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

(3) (a) [The] Subject to Subsection (3)(e), the courts shall:

(i) presume that a decision, ordinance, or regulation made under the authority of this
chapter is valid; and

(ii) determine only whether or not the decision, ordinance, or regulation is arbitrary,
capricious, or illegal.

(b) [A] Except as provided in Subsection (3)(e), a decision, ordinance, or regulation
involving the exercise of legislative discretion is valid if the decision, ordinance, or regulation
is [reasonably debatable and not illegal] supported by substantial evidence in the record and is
not arbitrary, capricious, or illegal.

(c) A final decision of a land use authority or an appeal authority is valid if the decision
is supported by substantial evidence in the record and is not arbitrary, capricious, or illegal.

(d) A determination of illegality requires a determination that the decision, ordinance,
or regulation violates a law, statute, or ordinance in effect at the time the decision was made or
the ordinance or regulation adopted.

(e) Reasons for which the court shall consider a decision to be arbitrary or capricious
include that the decision:

(i) is based on public clamor;

(ii) is based on the personal preferences, desires, or whims of the members of the

legislative body; or

(iii) does not conform to municipal ordinances or state or federal law.

(f) In determining whether there is substantial evidence supporting a decision, the court
shall determine whether the evidence supporting the decision would convince a reasonable
person, after weighing all the evidence in the record supporting and opposing the decision, to
agree with the decision.

(g) If a decision is based on scientific or technical expert testimony, the evidence
presented by the expert shall be presumed to be substantial evidence unless it is contradicted by
the testimony of a similarly qualified scientific or technical expert.

(h) In reviewing a decision, the court shall consider the proceedings as a whole and
evaluate the adequacy of procedures and of the decision in light of practical considerations with
an emphasis on fundamental fairness and the essentials of reasoned decision-making.

(i) If a decision is found to be arbitrary, capricious, or illegal, the court shall:

(i) grant the land use application that is the subject of the court review; and

(ii) award court costs and a reasonable attorney's fee to the applicant.

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

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

(6) The petition is barred unless it is filed within 30 days after the appeal authority's
decision is final.

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

(b) If the proceeding was tape recorded, a transcript of that tape recording is a true and
correct transcript for purposes of this Subsection (7).
(8) (a) (i) If there is a record, the district court's review is limited to the record provided by the land use authority or appeal authority, as the case may be, including all information supplied by the applicant or petitioner to the land use authority or appeal authority.
(ii) The court may not accept or consider any evidence outside the record of the land use authority or appeal authority, as the case may be, unless that evidence was offered to the land use authority or appeal authority, respectively, and the court determines that it was improperly excluded.
(b) If there is no record, the court may call witnesses and take evidence.
(9) (a) The filing of a petition does not stay the decision of the land use authority or authority appeal authority, as the case may be.
(b) (i) Before filing a petition under this section or a request for mediation or arbitration of a constitutional taking issue under Section 63-34-13, the aggrieved party may petition the appeal authority to stay its decision.
(ii) Upon receipt of a petition to stay, the appeal authority may order its decision stayed pending district court review if the appeal authority finds it to be in the best interest of the municipality.
(iii) After a petition is filed under this section or a request for mediation or arbitration of a constitutional taking issue is filed under Section 63-34-13, the petitioner may seek an injunction staying the appeal authority's decision.
(10) The court shall award court costs and a reasonable attorney's fee to each person who prevails against the municipality in a challenge of the municipality's land use decision or a petition for review of a final decision under this section.
Section 23. Section 10-9a-803 is amended to read:
10-9a-803. Penalties.
(1) The municipality may, by ordinance, establish civil penalties for violations of any of the provisions of this chapter or of any ordinances adopted under the authority of this chapter.
(2) Violation of any of the provisions of this chapter or of any ordinances adopted under the authority of this chapter is punishable as a class C misdemeanor upon conviction either:
(a) as a class C misdemeanor; or
(b) by imposing the appropriate civil penalty adopted under the authority of this section.

(3) Each officer or employee of a municipality who violates a provision of the municipality's land use ordinances or this chapter is guilty of a class B misdemeanor.


(1) (a) Each local political subdivision and private entity shall comply with the requirements of this chapter before establishing or modifying any impact fee.

(b) A local political subdivision may not:
(i) establish any new impact fees that are not authorized by this chapter; or
(ii) impose or charge any other fees as a condition of development approval unless those fees are a reasonable charge for the service provided.

(c) Notwithstanding any other requirements of this chapter, each local political subdivision shall ensure that each existing impact fee that is charged for any public facility not authorized by Subsection 11-36-102(12) is repealed by July 1, 1995.

(d) (i) Existing impact fees for public facilities authorized in Subsection 11-36-102(12) that are charged by local political subdivisions need not comply with the requirements of this chapter until July 1, 1997.

(ii) By July 1, 1997, each local political subdivision shall:
(A) review any impact fees in existence as of the effective date of this act, and prepare and approve the analysis required by this section for each of those impact fees; and
(B) ensure that the impact fees comply with the requirements of this chapter.

(2) (a) Before imposing impact fees, each local political subdivision shall prepare a capital facilities plan.

(b) (i) As used in this Subsection (2)(b):
(A) (I) "Affected entity" means each county, municipality, independent special district under Title 17A, Chapter 2, Independent Special Districts, local district under Title 17B, Chapter 2, Local Districts, school district, interlocal cooperation entity established under Chapter 13, Interlocal Cooperation Act, and specified public utility:
whose services or facilities are likely to require expansion or significant
modification because of the facilities proposed in the proposed capital facilities plan; or
(Bb) that has filed with the local political subdivision or private entity a copy of the
general or long-range plan of the county, municipality, independent special district, local
district, school district, interlocal cooperation entity, or specified public utility.

"Affected entity" does not include the local political subdivision or private entity
that is required under this Subsection (2) to provide notice.

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

Before preparing a capital facilities plan for facilities proposed on land located
within a county of the first, second, or third class, each local political subdivision and each
private entity shall provide written notice, as provided in this Subsection (2)(b), of its intent to
prepare a capital facilities plan.

Each notice under Subsection (2)(b)(ii) shall:

(A) indicate that the local political subdivision or private entity intends to prepare a
capital facilities plan;

(B) describe or provide a map of the geographic area where the proposed capital
facilities will be located;

(C) be sent to:

(I) each county in whose unincorporated area and each municipality in whose
boundaries is located the land on which the proposed facilities will be located;

(II) each affected entity;

(III) the Automated Geographic Reference Center created in Section 63F-1-506;

(IV) the association of governments, established pursuant to an interlocal agreement
under Title 11, Chapter 13, Interlocal Cooperation Act, in which the facilities are proposed to
be located; and

(V) the state planning coordinator appointed under Section 63-38d-202; and

(D) with respect to the notice to affected entities, invite the affected entities to provide
information for the local political subdivision or private entity to consider in the process of
preparing, adopting, and implementing a capital facilities plan concerning:

(I) impacts that the facilities proposed in the capital facilities plan may have on the
affected entity; and

(II) facilities or uses of land that the affected entity is planning or considering that may conflict with the facilities proposed in the capital facilities plan.

c) The plan shall identify:

(i) demands placed upon existing public facilities by new development activity; and

(ii) the proposed means by which the local political subdivision will meet those demands.

d) Municipalities and counties need not prepare a separate capital facilities plan if the general plan required by Sections [10-9-301] 10-9a-401 and [17-27-301] 17-27a-401 contains the elements required by Subsection (2)(c).

e) (i) If a local political subdivision prepares an independent capital facilities plan rather than including a capital facilities element in the general plan, the local political subdivision shall, before adopting the capital facilities plan:

(A) give public notice of the plan according to this Subsection (2)(e);

(B) at least 14 days before the date of the public hearing:

(I) make a copy of the plan, together with a summary designed to be understood by a lay person, available to the public; and

(II) place a copy of the plan and summary in each public library within the local political subdivision; and

(C) hold a public hearing to hear public comment on the plan.

(ii) Municipalities shall comply with the notice and hearing requirements of, and, except as provided in Subsection 11-36-401(4)(f), receive the protections of Sections 10-9a-205 and 10-9a-801 and Subsection 10-9a-502(2).

(iii) Counties shall comply with the notice and hearing requirements of, and, except as provided in Subsection 11-36-401(4)(f), receive the protections of Sections 17-27a-205 and 17-27a-801 and Subsection 17-27a-502(2).

(iv) Special districts and private entities shall comply with the notice and hearing requirements of, and receive the protections of, Section 17A-1-203.

(v) Nothing contained in this Subsection (2)(e) or in the subsections referenced in Subsections (2)(e)(ii) and (iii) may be construed to require involvement by a planning commission in the capital facilities planning process.
(f) (i) Local political subdivisions with a population or serving a population of less than 5,000 as of the last federal census need not comply with the capital facilities plan requirements of this part, but shall ensure that the impact fees imposed by them are based upon a reasonable plan.

(ii) Subsection (2)(f)(i) does not apply to private entities.

(3) In preparing the plan, each local political subdivision shall generally consider all revenue sources, including impact fees, to finance the impacts on system improvements.

(4) A local political subdivision may only impose impact fees on development activities when its plan for financing system improvements establishes that impact fees are necessary to achieve an equitable allocation to the costs borne in the past and to be borne in the future, in comparison to the benefits already received and yet to be received.

(5) (a) Each local political subdivision imposing impact fees shall prepare a written analysis of each impact fee that:

(i) identifies the impact on system improvements required by the development activity;

(ii) demonstrates how those impacts on system improvements are reasonably related to the development activity;

(iii) estimates the proportionate share of the costs of impacts on system improvements that are reasonably related to the new development activity; and

(iv) based upon those factors and the requirements of this chapter, identifies how the impact fee was calculated.

(b) In analyzing whether or not the proportionate share of the costs of public facilities are reasonably related to the new development activity, the local political subdivision shall identify, if applicable:

(i) the cost of existing public facilities;

(ii) the manner of financing existing public facilities, such as user charges, special assessments, bonded indebtedness, general taxes, or federal grants;

(iii) the relative extent to which the newly developed properties and the other properties in the municipality have already contributed to the cost of existing public facilities, by such means as user charges, special assessments, or payment from the proceeds of general taxes;

(iv) the relative extent to which the newly developed properties and the other
properties in the municipality will contribute to the cost of existing public facilities in the
future;

(v) the extent to which the newly developed properties are entitled to a credit because
the municipality is requiring their developers or owners, by contractual arrangement or
otherwise, to provide common facilities, inside or outside the proposed development, that have
been provided by the municipality and financed through general taxation or other means, apart
from user charges, in other parts of the municipality;

(vi) extraordinary costs, if any, in servicing the newly developed properties; and
(vii) the time-price differential inherent in fair comparisons of amounts paid at
different times.

(c) Each local political subdivision that prepares a written analysis under this
Subsection (5) on or after July 1, 2000 shall also prepare a summary of the written analysis,
designed to be understood by a lay person.

(6) Each local political subdivision that adopts an impact fee enactment under Section
11-36-202 on or after July 1, 2000 shall, at least 14 days before adopting the enactment, submit
to each public library within the local political subdivision:

(a) a copy of the written analysis required by Subsection (5)(a); and
(b) a copy of the summary required by Subsection (5)(c).

(7) Nothing in this chapter may be construed to repeal or otherwise eliminate any
impact fee in effect on the effective date of this [act] chapter that is pledged as a source of
revenues to pay bonded indebtedness that was incurred before the effective date of this [act]
chapter.

(8) After December 31, 2006, a local political subdivision may not collect impact fees
unless by that date it has updated its capital facilities plan to reflect and be consistent with the
provisions of this chapter then in effect.

Section 25. Section 11-36-202 is amended to read:


(1) (a) Each local political subdivision wishing to impose impact fees shall pass an

impact fee enactment.

(b) The impact fee imposed by that enactment may not exceed the highest fee justified

by the impact fee analysis performed pursuant to Section 11-36-201.
In calculating the impact fee, each local political subdivision may include only:

(i) the construction contract price;

(ii) the cost of acquiring land, improvements, materials, and fixtures;

(iii) the cost for planning, surveying, and engineering fees for services provided for and directly related to the construction of the system improvements; and

(iv) debt service charges, if the political subdivision might use impact fees as a revenue stream to pay the principal and interest on bonds, notes, or other obligations issued to finance the costs of the system improvements.

In calculating the impact fee, a local political subdivision may not include an expense for an impact that the development does not directly cause, including overhead, maintenance, expenses related to staff compensation, the local political subdivision's operating costs, or any other item paid from the local political subdivision's general fund or budget.

In calculating the impact fee, the local political subdivision shall base amounts calculated under Subsection (1)(c) on actual or certified estimates directly related to building or acquiring the capital facility.

In enacting an impact fee enactment:

(i) municipalities shall:

(A) make a copy of the impact fee enactment available to the public at least 14 days before the date of the public hearing; and

(B) comply with the notice and hearing requirements of, and, except as provided in Subsection 11-36-401(4)(f), receive the protections of Sections 10-9a-207 and 10-9a-801;

(ii) counties shall:

(A) make a copy of the impact fee enactment available to the public at least 14 days before the date of the public hearing; and

(B) comply with the notice and hearing requirements of, and, except as provided in Subsection 11-36-401(4)(f), receive the protections of Sections 17-27a-207 and 17-27a-801;

and

(iii) special districts shall:

(A) make a copy of the impact fee enactment available to the public at least 14 days before the date of the public hearing; and

(B) comply with the notice and hearing requirements of, and receive the protections of,
Section 17A-1-203.

[(e) (g)] Nothing contained in Subsection (1)(d)(f) or in the subsections referenced in Subsections (1)(d)(f)(i)(B) and (ii)(B) may be construed to require involvement by a planning commission in the impact fee enactment process.

(2) The local political subdivision shall ensure that the impact fee enactment contains:

(a) a provision establishing one or more service areas within which it shall calculate and impose impact fees for various land use categories;

(b) either:

(i) a schedule of impact fees for each type of development activity that specifies the amount of the impact fee to be imposed for each type of system improvement; or

(ii) the formula that the local political subdivision will use to calculate each impact fee;

(c) a provision authorizing the local political subdivision to adjust the standard impact fee at the time the fee is charged to:

(i) respond to unusual circumstances in specific cases; and

(ii) ensure that the impact fees are imposed fairly; and

(d) a provision governing calculation of the amount of the impact fee to be imposed on a particular development that permits adjustment of the amount of the fee based upon studies and data submitted by the developer.

(3) The local political subdivision may include a provision in the impact fee enactment that:

(a) exempts low income housing and other development activities with broad public purposes from impact fees and establishes one or more sources of funds other than impact fees to pay for that development activity; and

(b) imposes an impact fee for public facility costs previously incurred by a local political subdivision to the extent that new growth and development will be served by the previously constructed improvement.[and]

(4) (a) Each local political subdivision shall include a provision in the impact fee enactment that:

[(e) (i)] allows a credit against impact fees for any dedication of land for, improvement to, or new construction of, any system improvements provided by the developer if the facilities:

[(i)] (A) are identified in the capital facilities plan; [and] or
(ii) allows a credit against applicable impact fees for facilities, including street
improvements, water facilities, sewer facilities, storm drainage facilities, sidewalks, and parks
and other open space and related improvements, provided by the developer, to the extent that
the facilities reduce the impact of the new development or its residents on the local political
subdivision's public facilities, regardless of whether the facilities provided by the developer are
required by or dedicated to the local political subdivision or opened for use by the public at
large; and
(iii) provides a credit for an improvement, facility, land, or fee required by the local
political subdivision in excess of what is required to offset the project's impact on public
facilities.

(b) (i) The improvements, facilities, and lands for which a credit is required under
Subsection (4)(a)(iii) include:
(A) a street or sidewalk that the local political subdivision requires to be wider than
necessary to offset the impact of the project;
(B) a water, sewer, or storm drain line that the local political subdivision requires to be
larger than necessary to offset the impact of the project; and
(C) a park or open space that the local political subdivision requires in excess of what
is necessary to offset the impact of the project.
(ii) A credit under Subsection (4)(a)(iii) may be:
(A) used to offset other development charges or fees; and
(B) transferred to and used for another property of the recipient of the credit or
transferred to and used by another developer.

Except as provided in Subsection (3)(b), the local political subdivision may
not impose an impact fee to cure deficiencies in public facilities serving existing development.
Notwithstanding the requirements and prohibitions of this chapter, a local
political subdivision may impose and assess an impact fee for environmental mitigation when:
(a) the local political subdivision has formally agreed to fund a Habitat Conservation
or other state or federal environmental law or regulation;
(b) the impact fee bears a reasonable relationship to the environmental mitigation
required by the Habitat Conservation Plan; and
(c) the legislative body of the local political subdivision adopts an ordinance or
resolution:
(i) declaring that an impact fee is required to finance the Habitat Conservation Plan;
(ii) establishing periodic sunset dates for the impact fee; and
(iii) requiring the legislative body to:
(A) review the impact fee on those sunset dates;
(B) determine whether or not the impact fee is still required to finance the Habitat
Conservation Plan; and
(C) affirmatively reauthorize the impact fee if the legislative body finds that the impact
fee must remain in effect.

[(6) (7)] Each political subdivision shall ensure that any existing impact fee for
environmental mitigation meets the requirements of Subsection [(5) (6)] by July 1, 1995.
[(7) (8)] Notwithstanding any other provision of this chapter, municipalities imposing
impact fees to fund fire trucks as of the effective date of this act may impose impact fees for
fire trucks until July 1, 1997.
[(8) (9)] Notwithstanding any other provision of this chapter, a local political
subdivision may impose and collect impact fees on behalf of a school district if authorized by
Section 53A-20-100.5.

Section 26. Section 11-36-302 is amended to read:


(1) A local political subdivision may expend impact fees only for:
(a) system improvements for public facilities identified in the capital facilities plan;
and
(b) system improvements for the specific public facility type for which the fee was
collected.

(2) (a) Except as provided in Subsection (2)(b), a local political subdivision shall
expend or encumber the impact fees for a permissible use within six years of their receipt.
(b) A local political subdivision may hold the fees for longer than six years if it
identifies, in writing:
(i) an extraordinary and compelling reason why the fees should be held longer than six years; and

(ii) an absolute date by which the fees will be expended.

(3) If a local political subdivision does not expend or encumber impact fees within the time provided in Subsection (2), the local political subdivision shall:

(a) within 90 days after the expiration of the time provided in Subsection (2), return the impact fees to the person from which the fees were collected; or

(b) if the local political subdivision is unable to locate the person from whom the impact fees were collected, deposit the impact fees into the Olene Walker Housing Loan Fund created in Section 9-4-702.

(4) Each local political subdivision shall account for impact fees as separate line items in its budget, identified by the year received and the project for which collected and budgeted and with an indication of whether the impact fees are expected to be spent within the current fiscal year.

Section 27. Section 11-36-401 is amended to read:


(1) Any person or entity residing in or owning property within a service area, and any organization, association, or corporation representing the interests of persons or entities owning property within a service area, may file a declaratory judgment action challenging the validity of the fee.

(2) (a) Any person or entity required to pay an impact fee who believes the fee does not meet the requirements of law may file a written request for information with the local political subdivision who established the fee.

(b) Within two weeks of the receipt of the request for information, the local political subdivision shall provide the person or entity with the written analysis required by Section 11-36-201, the capital facilities plan, and with any other relevant information relating to the impact fee.

(3) (a) Any local political subdivision may establish, by ordinance, an administrative appeals procedure to consider and decide challenges to impact fees.

(b) If the local political subdivision establishes an administrative appeals procedure, the local political subdivision shall ensure that the procedure includes a requirement that the
local political subdivision make its decision no later than 30 days after the date the challenge to
the impact fee is filed.

(4) (a) In addition to the method of challenging an impact fee under Subsection (1), a
person or entity that has paid an impact fee that was imposed by a local political subdivision may challenge:

(i) if the impact fee enactment was adopted on or after July 1, 2000:

(A) whether the local political subdivision complied with the notice requirements of
this chapter with respect to the imposition of the impact fee; and

(B) whether the local political subdivision complied with other procedural
requirements of this chapter for imposing the impact fee; and

(ii) except as limited by Subsection (4)(a)(i), the impact fee.

(b) A challenge under Subsection (4)(a) may not be initiated unless it is initiated
within:

(i) for a challenge under Subsection (4)(a)(i)(A), 30 days after the person or entity pays
the impact fee;

(ii) for a challenge under Subsection (4)(a)(i)(B), 180 days after the person or entity
pays the impact fee; or

(iii) for a challenge under Subsection (4)(a)(ii), one year after the person or entity pays
the impact fee.

(c) A challenge under Subsection (4)(a) is initiated by filing:

(i) if the local political subdivision has established an administrative appeals procedure
under Subsection (3), the necessary document, under the administrative appeals procedure, for
initiating the administrative appeal;

(ii) a request for arbitration as provided in Subsection 11-36-402(1); or

(iii) an action in district court.

(d) (i) The sole remedy for a challenge under Subsection (4)(a)(i)(A) is the equitable
remedy of requiring the local political subdivision to correct the defective notice and repeat the
process.

(ii) The sole remedy for a challenge under Subsection (4)(a)(i)(B) is the equitable
remedy of requiring the local political subdivision to correct the defective process.

(iii) The sole remedy for a challenge under Subsection (4)(a)(ii) is a refund of the
difference between what the person or entity paid as an impact fee and the amount the impact
fee should have been if it had been correctly calculated.

(e) Nothing in this Subsection (4) may be construed as requiring a person or entity to
exhaust administrative remedies with the local political subdivision before filing an action in
district court under this Subsection (4).

(f) The protections given to a municipality under Section 10-9a-801 and to a county
under Section 17-27a-801 do not apply in a challenge under Subsection (4)(a)(i)(A).

(5) The [judge may] court shall award reasonable attorneys' fees and costs to [the
prevailing party in any action brought under this section] each person or entity that prevails in a
declaratory judgment action under Subsection (1) or a district court challenge under Subsection
(4).

(6) Nothing in this chapter may be construed as restricting or limiting any rights to
challenge impact fees that were paid before the effective date of this chapter.

Section 28. Section 11-36-601 is enacted to read:

11-36-601. Penalties.

(1) A local political subdivision may by ordinance establish penalties for a violation of
any provision of this chapter or of any ordinance adopted under the authority of this chapter.

(2) Violation of any of the provisions of this chapter or of any ordinance adopted under
the authority of this chapter is punishable as a class B misdemeanor upon conviction either:

(a) as a class B misdemeanor; or

(b) by imposing the appropriate civil penalty adopted under the authority of this
section.

(3) Each officer or employee of a local political subdivision who violates a provision of
the local political subdivision's land use ordinance or this chapter is guilty of a class B
misdemeanor.

Section 29. Section 17-27a-102 is amended to read:


(1) (a) The purposes of this chapter are to provide for the health, safety, and welfare,
and promote the prosperity, improve the [morals,] peace and good order, [comfort,] and
convenience[and aesthetics] of each county and its present and future inhabitants and
businesses, to protect property rights, to protect the tax base, to secure economy in
governmental expenditures, to foster the state's agricultural and other industries, and to protect both urban and nonurban development, to protect and ensure access to sunlight for solar energy devices, and to protect property values.

(b) To accomplish the purposes of this chapter, counties may enact appropriate ordinances, resolutions, and rules that support proper community development and protect property owners' rights to own, hold, develop, and manage their property, and may enter into other forms of land use controls and development agreements that they consider necessary or appropriate for the use and development of land within the unincorporated area of the county, including ordinances, resolutions, rules, restrictive covenants, easements, and development agreements governing uses, density, open spaces, structures, buildings, energy-efficiency, light and air, air quality, transportation and public or alternative transportation, infrastructure, street and building orientation and width requirements, public facilities, and height and location of vegetation, trees, and landscaping, unless expressly prohibited by law.

(2) Each county shall comply with the mandatory provisions of this part before any agreement or contract to provide goods, services, or municipal-type services to any storage facility or transfer facility for high-level nuclear waste, or greater than class C radioactive waste, may be executed or implemented.

Section 30. Section 17-27a-103 is amended to read:

17-27a-103. Definitions.

As used in this chapter:

(1) "Affected entity" means a county, municipality, independent special district under Title 17A, Chapter 2, Independent Special Districts, local district under Title 17B, Chapter 2, Local Districts, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified 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's boundaries or facilities are within one mile of land that is the subject of
a general plan amendment or land use ordinance change.

(2) "Affected property owner" means an owner of at least two acres of commercial, residential, agricultural, institutional, or industrial land that is the subject of a proposed change in zoning designation or land use.

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

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

[(4)] (5) "Charter school" includes:

(a) an operating charter school;

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

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

[(5)] (6) "Chief executive officer" means the person or body that exercises the executive powers of the county.

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

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

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

(b) Utah Constitution Article I, Section 22.

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

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

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

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

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

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

[(13) (14) "Identical plans" means building plans submitted to a county that are
substantially identical building plans that were previously submitted to and reviewed and
approved by the county and describe a building that is:

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

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

[(14) (15) "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.

[(15) (16) "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.

[(16) (17) "Land use application" means an application required by a county's land use
ordinance.

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

[(18) (19) "Land use ordinance" means a planning, zoning, development, or
subdivision ordinance of the county, but does not include the general plan.
"Legislative body" means the county legislative body, or for a county that has adopted an alternative form of government, the body exercising legislative powers.

"Lot line adjustment" means the relocation of the property boundary line between two adjoining lots with the consent of the owners of record.

"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.

"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.

"Noncomplying structure" means a structure that:

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

"Nonconforming use" means a use of land that:

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

"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
has been adopted as an element of the county's general plan.

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

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

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

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

(c) a survey of total residential land use;

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

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

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

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

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

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

"Residential facility for elderly persons" means a single-family or multiple-family dwelling unit that meets the requirements of Part 4, General Plan, but does not include a health care facility as defined by Section 26-21-2.

"Residential facility for persons with a disability" means a residence:

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

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

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

"Special district" means any entity established under the authority of Title 17A, Special Districts, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or unit of the state.

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

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

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

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

(c) "Subdivision" does not include:
   (i) a bona fide division or partition of agricultural land for agricultural purposes;
   (ii) a recorded agreement between owners of adjoining properties adjusting their mutual boundary if:
      (A) no new lot is created; and
      (B) the adjustment does not violate applicable land use ordinances;
      (iii) a recorded document, executed by the owner of record:
      (A) revising the legal description of more than one contiguous unsubdivided parcel of property into one legal description encompassing all such parcels of property; or
      (B) joining a subdivided parcel of property to another parcel of property that has not
been subdivided, if the joinder does not violate applicable land use ordinances; or
(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 unmanned facility appurtenant to a pipeline owned or operated by a gas
corporation, interstate pipeline company, or intrastate pipeline company; or
(B) an unmanned telecommunications, microwave, fiber optic, electrical, or other
utility service regeneration, transformation, retransmission, or amplification facility.
(d) The joining of a subdivided parcel of property to another parcel of property that has
not been subdivided does not constitute a subdivision under this Subsection [(38) (39) as to
the unsubdivided parcel of property or subject the unsubdivided parcel to the county's
subdivision ordinance.
[(39) (40) "Township" means a contiguous, geographically defined portion of the
unincorporated area of a county, established under this part or reconstituted or reinstated under
Section [17-27a-307] 17-27a-306, with planning and zoning functions as exercised through the
township planning commission, as provided in this chapter, but with no legal or political
identity separate from the county and no taxing authority, except that "township" means a
former township under Chapter 308, Laws of Utah 1996 where the context so indicates.
[(40) (41) "Unincorporated" means the area outside of the incorporated area of a
municipality.
[(41) (42) "Zoning map" means a map, adopted as part of a land use ordinance, that
depicts land use zones, overlays, or districts.
Section 31. Section 17-27a-104 is amended to read:
17-27a-104. Stricter requirements.
[(1) Except as provided in Subsection (2), a] A county may not
impose stricter requirements or higher standards than are required by this chapter.
[(2) A county may not impose stricter requirements or higher standards than are
required by:]
[(a) Section 17-27a-305;]
[(b) Section 17-27a-513;]
[(c) Section 17-27a-515; and]
[(d) Section 17-27a-519.]
Section 32. Section 17-27a-202 is amended to read:


(1) For each land use application, the county shall:

(a) notify the applicant of the date, time, and place of each public hearing and public

(b) provide to each applicant a copy of each staff report and written internal

(c) notify the applicant of any final action on a pending application.

(2) If a county fails to comply with the requirements of Subsection (1)(a) or (b) or both,

an applicant may waive the failure so that the application may stay on the public hearing or

public meeting agenda and be considered as if the requirements had been met.

Section 33. Section 17-27a-203 is amended to read:

17-27a-203. Notice of intent to prepare a general plan or comprehensive general

plan amendments in certain counties.

(1) Before preparing a proposed general plan or a comprehensive general plan

amendment, each county [of the first or second class] shall provide ten calendar days notice of

its intent to prepare a proposed general plan or a comprehensive general plan amendment to:

(a) each affected property owner;

(b) each affected entity;

(c) the Automated Geographic Reference Center created in Section 63F-1-506;

d the association of governments, established pursuant to an interlocal

agreement under Title 11, Chapter 13, Interlocal Cooperation Act, of which the county is a

member; and

e the state planning coordinator appointed under Section 63-38d-202.

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

(a) indicate that the county intends to prepare a general plan or a comprehensive

general plan amendment, as the case may be;

(b) describe or provide a map of the geographic area that will be affected by the general

plan or amendment;

(c) be sent by mail, e-mail, or other effective means;
invite the affected entities to provide information for the county to consider in the process of preparing, adopting, and implementing a general plan or amendment concerning:

(i) impacts that the use of land proposed in the proposed general plan or amendment may have; and

(ii) uses of land within the county that the affected entity is considering that may conflict with the proposed general plan or amendment; and

(e) include the address of an Internet website, if the county has one, and the name and telephone number of a person where more information can be obtained concerning the county's proposed general plan or amendment.

Section 34. Section 17-27a-204 is amended to read:

17-27a-204. Notice of public hearings and public meetings to consider general plan or modifications.

(1) A county shall provide:

(a) notice of the date, time, and place of the first public hearing to consider the original adoption or any modification of all or any portion of a general plan; and

(b) notice of each public meeting on the subject.

(2) Each notice of a public hearing under Subsection (1)(a) shall be at least ten calendar days before the public hearing and shall be:

(a) published in a newspaper of general circulation in the area;

(b) mailed to each affected property owner and each affected entity; and

(c) posted:

(i) in at least three public locations within the county; or

(ii) on the county's official website.

(3) Each notice of a public meeting under Subsection (1)(b) shall be at least 24 hours before the meeting and shall be:

(a) submitted to a newspaper of general circulation in the area; and

(b) posted:

(i) in at least three public locations within the county; or

(ii) on the county's official website.

Section 35. Section 17-27a-205 is amended to read:

17-27a-205. Notice of public hearings and public meetings on adoption or
modification of land use ordinance.

(1) Each county shall give:

(a) notice of the date, time, and place of the first public hearing to consider the adoption or modification of a land use ordinance; and

(b) notice of each public meeting on the subject.

(2) Each notice of a public hearing under Subsection (1)(a) shall be:

(a) mailed to each affected property owner and each affected entity at least ten calendar days before the public hearing;

(b) posted:

(i) in at least three public locations within the county; or

(ii) on the county's official website; and

(c) (i) published in a newspaper of general circulation in the area at least ten calendar days before the public hearing; or

(ii) mailed at least three days before the public hearing to:

(A) each property owner whose land is directly affected by the land use ordinance change; and

(B) each adjacent property owner within the parameters specified by county ordinance.

(3) Each notice of a public meeting under Subsection (1)(b) shall be at least 24 hours before the hearing and shall be posted:

(a) in at least three public locations within the county; or

(b) on the county's official website.

Section 36. Section 17-27a-302 is amended to read:

17-27a-302. Planning commission powers and duties.

(1) Each countywide or township planning commission shall, with respect to the unincorporated area of the county, or the township, make a recommendation to the county legislative body for:

(a) a general plan and amendments to the general plan;

(b) land use ordinances, zoning maps, official maps, and amendments;

(c) an appropriate delegation of power to at least one designated land use authority to hear and act on a land use application;

(d) an appropriate delegation of power to at least one appeal authority to hear and act
on an appeal from a decision of the land use authority; and
(e) application processes that:
(i) [may] shall include a designation of routine land use matters that, upon application
and proper notice, will receive informal streamlined review and action if the application is
uncontested; and
(ii) shall protect the right of each:
(A) applicant and third party to require formal consideration of any application by a
land use authority;
(B) applicant, adversely affected party, or county officer or employee to appeal a land
use authority's decision to a separate appeal authority; and
(C) participant to be heard in each public hearing on a contested application.
(2) The planning commission of a township under this part may recommend to the
legislative body of the county in which the township is located:
(a) that the legislative body support or oppose a proposed incorporation of an area
located within the township, as provided in Subsection 10-2-105(4); or
(b) that the legislative body file a protest to a proposed annexation of an area located
within the township, as provided in Subsection 10-2-407(1)(b).
(3) (a) Each planning commission meeting shall be subject to Title 52, Chapter 4, Open
and Public Meetings.
(b) Planning commission records are subject to Title 63, Chapter 2, Government
Records Access and Management Act.
Section 37. Section 17-27a-401 is amended to read:
17-27a-401. General plan required -- Content -- Provisions related to radioactive
waste facility.
(1) In order to accomplish the purposes of this chapter, each county shall prepare and
adopt a comprehensive, long-range general plan for:
(a) present and future needs of the county; and
(b) growth and development of all or any part of the land within the unincorporated
portions of the county.
(2) The plan may provide for:
(a) health, general welfare, safety, energy conservation, transportation, prosperity, civic
activities, [aesthetics,] and recreational, educational, and cultural opportunities;

[(b) the reduction of the waste of physical, financial, or human resources that result from either excessive congestion or excessive scattering of population;]

[(c) the efficient and economical use, conservation, and production of the supply of:

(i) food and water; and
(ii) drainage, sanitary, and other facilities and resources;
[(d) the use of energy conservation and solar and renewable energy resources;
[(e) the protection of urban development;
[(f) the protection or promotion of moderate income housing;
[(g) the protection and promotion of air quality;
[(h) historic preservation;
[(i) identifying future uses of land that are likely to require an expansion or significant modification of services or facilities provided by each affected entity; and
[(j) an official map.

(3) The general plan shall ensure that land use policies, restrictions, and conditions do not violate private property rights or create unnecessary technical limitations on the use of property.

[(3) (a) The plan shall include specific provisions related to any areas within, or partially within, the exterior boundaries of the county, or contiguous to the boundaries of a county, which are proposed for the siting of a storage facility or transfer facility for the placement of high-level nuclear waste or greater than class C radioactive nuclear waste, as these wastes are defined in Section 19-3-303. The provisions shall address the effects of the proposed site upon the health and general welfare of citizens of the state, and shall provide:

(i) the information identified in Section 19-3-305;
(ii) information supported by credible studies that demonstrates that the provisions of Subsection 19-3-307(2) have been satisfied; and
(iii) specific measures to mitigate the effects of high-level nuclear waste and greater than class C radioactive waste and guarantee the health and safety of the citizens of the state.

(b) A county may, in lieu of complying with Subsection [(3) (a), adopt an ordinance indicating that all proposals for the siting of a storage facility or transfer facility for the...
placement of high-level nuclear waste or greater than class C radioactive waste wholly or partially within the county are rejected.

(c) A county may adopt the ordinance listed in Subsection [(3)] (4)(b) at any time.

(d) The county shall send a certified copy of the ordinance under Subsection [(3)] (4)(b) to the executive director of the Department of Environmental Quality by certified mail within 30 days of enactment.

(e) If a county repeals an ordinance adopted pursuant to Subsection [(3)] (4)(b) the county shall:

(i) comply with Subsection [(3)] (4)(a) as soon as reasonably possible; and

(ii) send a certified copy of the repeal to the executive director of the Department of Environmental Quality by certified mail within 30 days after the repeal.

[(4)] (5) The plan may define the county's local customs, local culture, and the components necessary for the county's economic stability.

[(5)] (6) Subject to Subsection 17-27a-403(2), the county may determine the comprehensiveness, extent, and format of the general plan.

Section 38. Section 17-27a-403 is amended to read:


(1) (a) The planning commission shall provide notice, as provided in Section 17-27a-203, of its intent to make a recommendation to the county legislative body for a general plan or a comprehensive general plan amendment when the planning commission initiates the process of preparing its recommendation.

(b) The planning commission shall make and recommend to the legislative body a proposed general plan for the unincorporated area within the county.

(c) (i) The plan may include planning for incorporated areas if, in the planning commission's judgment, they are related to the planning of the unincorporated territory or of the county as a whole.

(ii) Elements of the county plan that address incorporated areas are not an official plan or part of a municipal plan for any municipality, unless it is recommended by the municipal planning commission and adopted by the governing body of the municipality.

(2) (a) At a minimum, the proposed general plan, with the accompanying maps, charts, and descriptive and explanatory matter, shall include the planning commission's
recommendations for the following plan elements:

(i) a land use element that:

(A) designates the long-term goals and the proposed extent, general distribution, and location of land for housing, business, industry, agriculture, recreation, education, public buildings and grounds, open space, and other categories of public and private uses of land as appropriate; and

(B) may include a statement of the projections for and standards of population density and building intensity recommended for the various land use categories covered by the plan;

(ii) a transportation and traffic circulation element consisting of the general location and extent of existing and proposed freeways, arterial and collector streets, mass transit, and any other modes of transportation that the planning commission considers appropriate, all correlated with the population projections and the proposed land use element of the general plan; and

(iii) an estimate of the need for the development of additional moderate income housing within the unincorporated area of the county, and a plan to provide a realistic opportunity to meet estimated needs for additional moderate income housing if long-term projections for land use and development occur.

(b) In drafting the moderate income housing element, the planning commission:

(i) shall consider the Legislature's determination that counties should facilitate a reasonable opportunity for a variety of housing, including moderate income housing:

(A) to meet the needs of people desiring to live there; and

(B) to allow persons with moderate incomes to benefit from and fully participate in all aspects of neighborhood and community life; and

(ii) may include an analysis of why the recommended means, techniques, or combination of means and techniques provide a realistic opportunity for the development of moderate income housing within the planning horizon, which means or techniques may include a recommendation to:

(A) rezone for densities necessary to assure the production of moderate income housing;

(B) facilitate the rehabilitation or expansion of infrastructure that will encourage the construction of moderate income housing;
(C) encourage the rehabilitation of existing uninhabitable housing stock into moderate
income housing;

(D) consider general fund subsidies to waive construction related fees that are
otherwise generally imposed by the county;

(E) consider utilization of state or federal funds or tax incentives to promote the
construction of moderate income housing;

(F) consider utilization of programs offered by the Utah Housing Corporation within
that agency's funding capacity; and

(G) consider utilization of affordable housing programs administered by the
Department of Community and Culture.

(3) The proposed general plan may include:

(a) an environmental element that addresses:

(i) the protection, conservation, development, and use of natural resources, including
the quality of air, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals,
and other natural resources; and

(ii) the reclamation of land, flood control, prevention and control of the pollution of
streams and other waters, [regulation of the use of land on hillsides;] stream channels, and
other environmentally sensitive areas, the prevention, control, and correction of the erosion of
soils, protection of watersheds and wetlands, and the mapping of known geologic hazards;

(b) a public services and facilities element showing general plans for sewage, water,
waste disposal, drainage, public utilities, rights-of-way, easements, and facilities for them,
police and fire protection, and other public services;

(c) a rehabilitation, redevelopment, and conservation element consisting of plans and
programs for:

(i) historic preservation; and

(ii) the diminution or elimination of blight; and

(iii) redevelopment of land, including housing sites, business and industrial sites, and
public building sites;

(d) an economic element composed of appropriate studies and forecasts, as well as an
economic development plan, which may include review of existing and projected county
revenue and expenditures, revenue sources, identification of basic and secondary industry,
primary and secondary market areas, employment, and retail sales activity;
(e) recommendations for implementing all or any portion of the general plan, including
the use of land use ordinances, capital improvement plans, community development and
promotion, and any other appropriate action;
(f) provisions addressing any of the matters listed in Subsection 17-27a-401(2); and
(g) any other element the county considers appropriate.
Section 39. Section 17-27a-404 is amended to read:
17-27a-404. Public hearing by planning commission on proposed general plan or
amendment -- Notice -- Revisions to general plan or amendment -- Adoption or rejection
by legislative body.
(1) (a) After completing its recommendation for a proposed general plan, or proposal to
amend the general plan, the planning commission shall schedule and hold a public hearing on
the proposed plan or amendment.
(b) The planning commission shall provide notice of the public hearing, as required by
Section 17-27a-204.
(c) After the public hearing, the planning commission may modify the proposed
general plan or amendment.
(2) The planning commission shall forward the proposed general plan or amendment to
the legislative body.
(3) (a) As provided by local ordinance and by Section 17-27a-204, the legislative body
shall provide notice of its intent to consider the general plan proposal.
(b) (i) In addition to the requirements of Subsections (1), (2), and (3)(a), the legislative
body shall hold a public hearing in Salt Lake City on provisions of the proposed county plan
regarding Subsection 17-27a-401[(3)] (4). The hearing procedure shall comply with this
Subsection (3)(b).
(ii) The hearing format shall allow adequate time for public comment at the actual
public hearing, and shall also allow for public comment in writing to be submitted to the
legislative body for not fewer than 90 days after the date of the public hearing.
(c) (i) The legislative body shall give notice of the hearing in accordance with this
Subsection (3) when the proposed plan provisions required by Subsection 17-27a-401[(3)] (4)
are complete.
(ii) Direct notice of the hearing shall be given, in writing, to the governor, members of
the state Legislature, executive director of the Department of Environmental Quality, the state
planning coordinator, the Resource Development Coordinating Committee, and any other
citizens or entities who specifically request notice in writing.

(iii) Public notice shall be given by publication in at least one major Utah newspaper
having broad general circulation in the state, and also in at least one Utah newspaper having a
general circulation focused mainly on the county where the proposed high-level nuclear waste
or greater than class C radioactive waste site is to be located.

(iv) The notice in these newspapers shall be published not fewer than 180 days prior to
the date of the hearing to be held under this Subsection (3), to allow reasonable time for
interested parties and the state to evaluate the information regarding the provisions of
Subsection 17-27a-401[(3) (4)].

(4) (a) After the public hearing required under this section, the legislative body may
make any revisions to the proposed general plan that it considers appropriate.

(b) The legislative body shall respond in writing and in a substantive manner to all
those providing comments as a result of the hearing required by Subsection (3).

(5) (a) The county legislative body may adopt or reject the proposed general plan or
amendment either as proposed by the planning commission or after making any revision the
county legislative body considers appropriate.

(b) If the county legislative body rejects the proposed general plan or amendment, it
may provide suggestions to the planning commission for its consideration.

(6) The legislative body shall adopt:

(a) a land use element as provided in Subsection 17-27a-403(2)(a)(i);

(b) a transportation and traffic circulation element as provided in Subsection
17-27a-403(2)(a)(ii); and

(c) after considering the factors included in Subsection 17-27a-403(2)(b), a plan to
provide a realistic opportunity to meet estimated needs for additional moderate income housing
if long-term projections for land use and development occur.

Section 40. Section 17-27a-405 is amended to read:

17-27a-405. Effect of general plan.

(1) Except for the mandatory provisions in Subsection 17-27a-401[(3)] (4)(b) and
Section 17-27a-406, the general plan is an advisory guide for land use decisions, the impact of which shall be determined by ordinance.

(2) The legislative body may adopt an ordinance mandating compliance with the general plan, and shall adopt an ordinance requiring compliance with all provisions of Subsection 17-27a-401[(3) (4)](b).

Section 41. Section 17-27a-409 is amended to read:

17-27a-409. State to indemnify county regarding refusal to site nuclear waste -- Terms and conditions.

If a county is challenged in a court of law regarding its decision to deny siting of a storage or transfer facility for the placement of high-level nuclear waste or greater than class C radioactive waste or its refusal to provide municipal-type services regarding the operation of the storage or transfer facility, the state shall indemnify, defend, and hold the county harmless from any claims or damages, including court costs and attorney fees that are assessed as a result of the county's action, if:

(1) the county has complied with the provisions of Subsection 17-27a-401[(3) (4)](b) by adopting an ordinance rejecting all proposals for the siting of a storage or transfer facility for the placement of high-level nuclear waste or greater than class C radioactive waste wholly or partially within the boundaries of the county;

(2) the county has complied with Subsection 17-34-1(3) regarding refusal to provide municipal-type services; and

(3) the court challenge against the county addresses the county's actions in compliance with Subsection 17-27a-401[(3) (4)](b) or 17-34-1(3).

Section 42. Section 17-27a-501 is amended to read:

17-27a-501. Authority to enact land use ordinances and zoning map.

(1) The legislative body may enact [land use ordinances and]:

(a) a general plan;

(b) text in a zoning ordinance;

(c) a zoning map for the entire unincorporated area of the county; and

(d) a comprehensive rezoning that affects at least 25% of the land within the unincorporated area of the county.

(2) All actions taken under this chapter, other than those identified in Subsection (1),
shall be considered to be administrative in nature.

Section 43. Section 17-27a-502 is amended to read:

17-27a-502. Preparation and adoption of land use ordinance or zoning map.

(1) The planning commission shall:

(a) provide notice as required by Subsection 17-27a-205(1)(a);

(b) hold a public hearing on a proposed land use ordinance or zoning map; and

(c) prepare and recommend to the legislative body a proposed land use ordinance or ordinances and zoning map that represent the planning commission's recommendation for regulating the use and development of land within all or any part of the unincorporated area of the county.

(2) The county legislative body shall consider each proposed land use ordinance and zoning map recommended to it by the planning commission, and, after providing notice as required by Subsection 17-27a-205(1)(b) and holding a public meeting, the legislative body may, subject to Subsection 17-27a-505(1)(b), adopt or reject the proposed ordinance or map either as proposed by the planning commission or after making any revision the county legislative body considers appropriate.

Section 44. Section 17-27a-502.5 is enacted to read:

17-27a-502.5. Limitations on changes in zoning designation.

(1) A parcel of property may not be given a zoning designation that would:

(a) materially diminish the reasonable investment-backed expectations of the property's owner; or

(b) deprive the property owner of all economically viable uses of the property.

(2) If a change in the zoning designation applicable to a parcel of property makes the intensity of the permitted uses of that property substantially less than the intensity of permitted uses on property in the same vicinity, after considering all relevant differences in topography or other natural features, the change may not be approved unless there are countervailing, compelling public interests in favor of the change in zoning designation.

Section 45. Section 17-27a-504 is amended to read:

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

(1) (a) 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) The legislative body shall establish a period of limited effect for the ordinance not
to exceed six months.

(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 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 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.

(4) A regulation under this section is not effective unless adopted by ordinance.

(5) Except as provided in this section, a county may not delay consideration of or
disapprove a land use application based on a temporary land use regulation.

Section 46. Section 17-27a-505 is amended to read:

17-27a-505. Zoning districts.

(1) (a) [The] Subject to Subsection (1)(b), the legislative body may divide the territory
over which it has jurisdiction into zoning districts of a number, shape, and area that it considers
appropriate to carry out the purposes of this chapter.
(b) Each change in the designation of a zoning district shall conform as reasonably as practicable to the request of the property owner whose property is affected by the change.

Within those zoning districts, the legislative body may reasonably regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, and the use of land.

(2) The legislative body shall ensure that the regulations are uniform for each class or kind of buildings throughout each zone, but the regulations in one zone may differ from those in other zones.

(3) (a) There is no minimum area or diversity of ownership requirement for a zone designation.

(b) Neither the size of a zoning district nor the number of landowners within the district may be used as evidence of the illegality of a zoning district or of the invalidity of a county decision.

Section 47. Section 17-27a-508 is amended to read:

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

County required to comply with land use ordinances.

(1) (a) (i) An applicant is entitled to approval of a land use application if the application conforms to the requirements of the general plan, the land use map, or an applicable land use ordinance in effect when a complete application is submitted and all fees have been paid, unless:

(A) the land use authority, on the record, finds that:

(I) a compelling, countervailing public interest would be jeopardized by approving the application; or

(II) approval of the application would place the health or safety of the community at risk; or

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

(ii) A county may not delay consideration of or disapprove a land use application based on a proposed amendment to the county's ordinances if formal proceedings to adopt the amendment have not been initiated before the application is filed.
2074 (b) The county shall process an application without regard to proceedings initiated to
2075 amend the county's ordinances if:
2076 (i) 180 days have passed since the proceedings were initiated; and
2077 (ii) the proceedings have not resulted in an enactment that prohibits approval of the
2078 application as submitted.
2079 (c) An application for a land use approval is considered submitted and complete when
2080 the application is provided in a form that complies with the requirements of applicable
2081 ordinances and all applicable fees have been paid.
2082 (d) Any checklist or additional recommendations provided by the county to an
2083 applicant relating to the use of the applicant's land that are not required under applicable land
2084 use ordinances are advisory only, and the applicant is under no obligation to comply with them.
2085 (e) The continuing validity of an approval of a land use application is conditioned
2086 upon the applicant proceeding after approval to implement the approval with reasonable
2087 diligence and is not affected by any county action or inaction.
2088 (2) A county is bound by the terms and standards of applicable land use ordinances and
2089 shall comply with mandatory provisions of those ordinances.
2090 Section 48. Section 17-27a-509.5 is enacted to read:
2091 17-27a-509.5. Development applications -- Approval process.
2092 (1) Development of a parcel of real property may not be permitted without an approved
2093 development application.
2094 (2) Each development application shall be submitted:
2095 (a) on a form provided by the county;
2096 (b) under the ordinances of the county in effect at the time the application is submitted;
2097 (c) with the fees required by the county; and
2098 (d) with any other information required by the ordinances of the county.
2099 (3) A county may not require a development application for a preliminary subdivision
2100 plat to include any information other than:
2101 (a) street and transportation layout;
2102 (b) lot layouts with side yard requirement and square footage designations;
2103 (c) utility easements;
2104 (d) parks, trails, and open space designations;
(e) landscape features;
(f) density and land use analysis;
(g) essential infrastructure; and
(h) scale drawings.

(4) (a) A county may confer with a development application applicant to determine whether completing staff review of the development application within the time specified in this section will require the county to retain an outside consultant or to pay overtime to regular staff.

(b) If the county determines, in its sole discretion, to use an outside consultant or to pay overtime to regular staff to process a development application within the time specified in this section, the applicant shall pay the county the amount the county reasonably estimates to be the difference between the cost of the outside consultant or overtime pay and the cost of routine review by the county.

(c) Upon completion of the review of the development application:

(i) the applicant shall immediately pay the county the difference between the actual cost of the outside consultant or overtime and the estimated cost, if the actual cost exceeds the estimated cost; or

(ii) the county shall immediately credit the applicant for the difference between the estimated cost of the outside consultant or overtime and the actual cost, if the actual cost is less than the estimated cost.

(5) Unless the land use application applicant otherwise agrees in writing, the county shall, within 45 days after its receipt of the land use application:

(a) complete the initial staff review of the land use application; and

(b) (i) notify the applicant that the land use application is complete and deliver it to:

(A) the land use authority; or

(B) the planning commission, if the planning commission is not the land use authority and the county's ordinances require planning commission review and recommendation before being submitted to the land use authority; or

(ii) return the land use application to the applicant indicating any deficiencies in the land use application.

(6) After the applicant has corrected any deficiencies identified in the staff review
process and resubmitted the land use application to the county, the application shall
immediately be delivered to:

(a) the planning commission, if the planning commission is not the land use authority
and is required to review and make a recommendation on a land use application before it is
considered by the county's land use authority; or

(b) the land use authority.

(7) (a) If a county's planning commission is not the land use authority and is required to
review and make a recommendation on a land use application before it is considered by the
county's land use authority, the planning commission shall hold a public hearing and make a
recommendation on the land use application to the land use authority within 28 days after the
land use application is delivered to the planning commission, unless the applicant agrees in
writing to a longer period of time.

(b) If the planning commission, if applicable, fails to make a recommendation
regarding the land use application within the time required under Subsection (7)(a), the
planning commission shall be considered to have recommended approval of the land use
application.

(c) If the planning commission recommends disapproval of a land use application, the
planning commission shall state on the record its reasons for its recommendation.

(8) (a) Each land use authority shall hold a public hearing and approve or disapprove a
land use application within 28 days after the land use application is delivered to the land use
authority, unless the applicant agrees in writing to a longer period of time.

(b) If the land use authority fails to approve or disapprove the land use application
within the time required under Subsection (8)(a), the land use authority shall be considered to
have recommended approval of the land use application.

(c) If the land use authority disapproves a land use application, the land use authority
shall state on the record its reasons for the disapproval.

(9) A county may not deny a land use application on a scientific or technical basis if:

(a) the applicant has presented relevant scientific or technical expert testimony in
support of the application; and

(b) the scientific or technical expert testimony presented by the applicant is not
contradicted by the testimony of a similarly qualified scientific or technical expert.
(10) Each county that receives a land use application shall cooperate in good faith to assist the applicant to obtain any third-party approval necessary for approval of the land use application.

(11) (a) Each approval or denial of a land use application shall be:

(i) in writing; and

(ii) based upon sound reason and practical application of recognized principles of law.

(b) Each denial of a land use development application shall be accompanied by a reasoned statement that:

(i) explains the criteria and standards considered relevant;

(ii) states the relevant contested facts relied upon;

(iii) explains the rationale for the decision based on the applicable provisions of the general plan, relevant ordinance, statutory, and constitutional provisions, and factual information contained in the record.

(12) (a) Nothing in this chapter may be construed to prohibit a county from specifying in ordinance or in a development agreement a shorter time period for processing a land use application than specified in this chapter.

(b) Nothing in this section may be construed to require a hearing before the planning commission or county legislative body if the hearing is not otherwise required by this chapter or county ordinance.

Section 49. Section 17-27a-510 is amended to read:

17-27a-510. Nonconforming uses and noncomplying structures.

(1) (a) Except as provided in this section, a nonconforming use or a noncomplying structure may be continued by the present or a future property owner.

(b) A nonconforming use may be extended through the same building, provided no structural alteration of the building is proposed or made for the purpose of the extension.

(c) For purposes of this Subsection (1), the addition of a solar energy device to a building is not a structural alteration.

(2) The legislative body may provide for:

(a) the establishment, restoration, reconstruction, extension, alteration, expansion, or substitution of nonconforming uses upon the terms and conditions set forth in the land use ordinance;
(b) the termination of all nonconforming uses, except billboards, by providing a
formula establishing a reasonable time period during which the owner can recover or amortize
the amount of his investment in the nonconforming use, if any; and
(c) the termination of a nonconforming use due to its abandonment.

(3) (a) A county may not prohibit the reconstruction or restoration of a noncomplying
structure or terminate the nonconforming use of a structure that is involuntarily destroyed in
whole or in part due to fire or other calamity unless the structure or use has been abandoned.
(b) A county may prohibit the reconstruction or restoration of a noncomplying structure
or terminate the nonconforming use of a structure if:

(i) the structure is allowed to deteriorate to a condition that the structure is rendered
uninhabitable and is not repaired or restored within six months after written notice to the
property owner that the structure is uninhabitable and that the noncomplying structure or
nonconforming use will be lost if the structure is not repaired or restored within six months; or
(ii) the property owner has voluntarily demolished a majority of the noncomplying
structure or the building that houses the nonconforming use.

[(4) (a) Unless the county establishes, by ordinance, a uniform presumption of legal
existence for nonconforming uses, the property owner shall have the burden of establishing the
legal existence of a noncomplying structure or nonconforming use.]

[(b)] (4) (a) Any party, including a county, claiming that a nonconforming use has been
abandoned shall have the burden of establishing the abandonment.
(b) A use in existence for a period of at least seven years that does not conform to a
county's land use ordinances shall be considered a nonconforming use that shall be allowed to
continue until terminated as provided in this section, regardless of whether the use has
previously been declared to be or acknowledged as a nonconforming use or whether the use
was lawful at the time it was established.

(c) Abandonment may be presumed to have occurred if:

(i) a majority of the primary structure associated with the nonconforming use has been
voluntarily demolished without prior written agreement with the county regarding an extension
of the nonconforming use;
(ii) the use has been discontinued for a minimum of one year; or
(iii) the primary structure associated with the nonconforming use remains vacant for a
period of one year.
(d) The property owner may rebut the presumption of abandonment under Subsection (4)(c), and shall have the burden of establishing that any claimed abandonment under Subsection (4)(c) has not in fact occurred.

(5) A county may terminate the nonconforming status of a school district or charter school use or structure when the property associated with the school district or charter school use or structure ceases to be used for school district or charter school purposes for a period established by ordinance.

Section 50. Section 17-27a-603 is amended to read:

17-27a-603. Plat required when land is subdivided -- Approval of plat --

Recording plat.

(1) Unless exempt under Section 17-27a-605 or excluded from the definition of subdivision under Subsection 17-27a-103([37]) (39), whenever any land is laid out and platted, the owner of the land shall provide an accurate plat that describes or specifies:

(a) a name or designation of the subdivision that is distinct from any plat already recorded in the county recorder's office;

(b) the boundaries, course, and dimensions of all of the parcels of ground divided, by their boundaries, course, and extent, whether the owner proposes that any parcel of ground is intended to be used as a street or for any other public use, and whether any such area is reserved or proposed for dedication for a public purpose;

(c) the lot or unit reference, block or building reference, street or site address, street name or coordinate address, acreage or square footage for all parcels, units, or lots, and length and width of the blocks and lots intended for sale; and

(d) every existing right-of-way and easement grant of record for underground facilities, as defined in Section 54-8a-2, and for other utility facilities.

(2) Subject to Subsections (3), (4), [and] (5), and (6), if the plat conforms to the county's ordinances and this part and has been approved by the culinary water authority and the sanitary sewer authority, the county shall approve the plat.

(3) A county may not prohibit a cul-de-sac that is shorter than 600 feet in length.

[([37]) (4) The county may withhold an otherwise valid plat approval until the owner of the land provides the legislative body with a tax clearance indicating that all taxes, interest, and
penalties owing on the land have been paid.

(a) The owner of the land shall acknowledge the plat before an officer authorized by law to take the acknowledgment of conveyances of real estate and shall obtain the signature of each individual designated by the county.

(b) The surveyor making the plat shall certify that the surveyor:

(i) holds a license in accordance with Title 58, Chapter 22, Professional Engineers and Land Surveyors Licensing Act;

(ii) has completed a survey of the property described on the plat in accordance with Section 17-23-17 and has verified all measurements; and

(iii) has placed monuments as represented on the plat.

(c) As applicable, the owner or operator of the underground and utility facilities shall approve the:

(i) boundary, course, dimensions, and intended use of the right-of-way and easement grants of record;

(ii) location of existing underground and utility facilities; and

(iii) conditions or restrictions governing the location of the facilities within the right-of-way, and easement grants of records, and utility facilities within the subdivision.

(a) After the plat has been acknowledged, certified, and approved, the owner of the land shall, within the time period designated by ordinance, record the plat in the county recorder's office in the county in which the lands platted and laid out are situated.

(b) An owner's failure to record a plat within the time period designated by ordinance renders the plat voidable.

Section 51. Section 17-27a-702 is amended to read:

17-27a-702. Variances.

(1) Any person or entity desiring a waiver or modification of the requirements of a land use ordinance as applied to a parcel of property that he owns, leases, or in which he holds some other beneficial interest may apply to the applicable appeal authority for a variance from the terms of the ordinance.

(a) The appeal authority may grant a variance only if:

(i) literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances;
(ii) there are special circumstances attached to the property that do not generally apply
to other properties in the same zone;

(iii) granting the variance is essential to the enjoyment of a substantial property right
possessed by other property in the same zone;

(iv) the variance will not substantially affect the general plan and will not be contrary
to the public interest; [and]

(v) the spirit of the land use ordinance is observed and substantial justice done.

(b) (i) In determining whether or not enforcement of the land use ordinance would
cause unreasonable hardship under Subsection (2)(a), the appeal authority may not find an
unreasonable hardship unless the alleged hardship:

(A) is located on or associated with the property for which the variance is sought; and
(B) comes from circumstances peculiar to the property or conditions imposed by the
county, not from conditions that are general to the neighborhood.

(ii) In determining whether or not enforcement of the land use ordinance would cause
unreasonable hardship under Subsection (2)(a), the appeal authority may not find an
unreasonable hardship if the hardship is self-imposed [or economic].

(c) In determining whether or not there are special circumstances attached to the
property under Subsection (2)(a), the appeal authority may find that special circumstances exist
only if the special circumstances:

(i) relate to the hardship complained of; and
(ii) deprive the property of privileges granted to other properties in the same zone or
requested zone.

(3) The applicant shall bear the burden of proving that all of the conditions justifying a
variance have been met.

(4) Variances run with the land.

(5) The appeal authority may not grant a use variance.

(6) In granting a variance, the appeal authority may impose additional requirements on
the applicant that will:

(a) mitigate any harmful affects of the variance; or
(b) serve the purpose of the standard or requirement that is waived or modified.

(7) Each appeal authority shall notify each applicant who has been denied a variance of
the place and time for filing an appeal.

Section 52. Section 17-27a-703 is amended to read:

17-27a-703. Appealing a land use authority's decision.

(1) The applicant, a board or officer of the county, or any person adversely affected by
the land use authority's decision administering or interpreting a land use ordinance may, within
the time period provided by ordinance, appeal that decision to the appeal authority by alleging
that there is error in any order, requirement, decision, or determination made by the land use
authority in the administration or interpretation of the land use ordinance.

(2) In each decision denying a land use application, the county shall notify the
applicant of the time and place for filing an appeal.

Section 53. Section 17-27a-801 is amended to read:

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

(1) No person may challenge in district court a county's land use decision made under
this chapter, or under a regulation made under authority of this chapter, until that person has
exhausted the person's administrative remedies as provided in Part 7, Appeal Authority and
Variances, if applicable.

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

(b) (i) The time under Subsection (2)(a) to file a petition is tolled from the date a
property owner files a request for arbitration of a constitutional taking issue with the property
rights ombudsman under Section 63-34-13 until 30 days after:

(A) the arbitrator issues a final award; or

(B) the property rights ombudsman issues a written statement under Subsection
63-34-13[(4) (5)] (b) declining to arbitrate or to appoint an arbitrator.

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

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

(3) (a) [The] Subject to Subsection (3)(e), the courts shall:

(i) presume that a decision, ordinance, or regulation made under the authority of this chapter is valid; and

(ii) determine only whether or not the decision, ordinance, or regulation is arbitrary, capricious, or illegal.

(b) [A] Except as provided in Subsection (3)(e), a decision, ordinance, or regulation involving the exercise of legislative discretion is valid if the decision, ordinance, or regulation is supported by substantial evidence in the record and is not arbitrary, capricious, or illegal.

(c) A final decision of a land use authority or an appeal authority is valid if the decision is supported by substantial evidence in the record and is not arbitrary, capricious, or illegal.

(d) A determination of illegality requires a determination that the decision, ordinance, or regulation violates a law, statute, or ordinance in effect at the time the decision was made or the ordinance or regulation adopted.

(e) Reasons for which the court shall consider a decision to be arbitrary or capricious include that the decision:

(i) is based on public clamor;

(ii) is based on the personal preferences, desires, or whims of the members of the legislative body; or

(iii) does not conform to municipal ordinances or state or federal law.

(f) In determining whether there is substantial evidence supporting a decision, the court shall determine whether the evidence supporting the decision would convince a reasonable person, after weighing all the evidence in the record supporting and opposing the decision, to agree with the decision.

(g) If a decision is based on scientific or technical expert testimony, the evidence presented by the expert shall be presumed to be substantial evidence unless it is contradicted by the testimony of a similarly qualified scientific or technical expert.

(h) In reviewing a decision, the court shall consider the proceedings as a whole and evaluate the adequacy of procedures and of the decision in light of practical considerations with an emphasis on fundamental fairness and the essentials of reasoned decision-making.
(i) If a decision is found to be arbitrary or capricious, the court shall:

(i) grant the land use application that is the subject of the court review; and

(ii) award court costs and a reasonable attorney's fee to the applicant.

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

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

(6) The petition is barred unless it is filed within 30 days after land use authority or the appeal authority's decision is final.

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

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

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

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

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

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

(b) (i) Before filing a petition under this section or a request for mediation or arbitration of a constitutional taking issue under Section 63-34-13, the aggrieved party may petition the appeal authority to stay its decision.

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

(iii) After a petition is filed under this section or a request for mediation or arbitration of a constitutional taking issue is filed under Section 63-34-13, the petitioner may seek an injunction staying the appeal authority's decision.

Section 54. Section 17-27a-803 is amended to read:

17-27a-803. Penalties.

(1) The county may, by ordinance, establish civil penalties for violations of any of the provisions of this chapter or of any ordinances adopted under the authority of this chapter.

(2) Violation of any of the provisions of this chapter or of any ordinances adopted under the authority of this chapter is punishable as a class C misdemeanor upon conviction either:

(a) as a class C misdemeanor; or

(b) by imposing the appropriate civil penalty adopted under the authority of this section.

(3) Each officer or employee of a county who violates a provision of the county's land use ordinances or this chapter is guilty of a class B misdemeanor.

Section 55. Section 17-34-6 is amended to read:

17-34-6. State to indemnify county regarding refusal to site nuclear waste -- Terms and conditions.

If a county is challenged in a court of law regarding its decision to deny siting of a storage or transfer facility for the placement of high-level nuclear waste or greater than class C radioactive waste or its refusal to provide municipal-type services regarding the operation of the storage or transfer facility, the state shall indemnify, defend, and hold the county harmless from any claims or damages, including court costs and attorney fees that are assessed as a result of the county's action, if:

(1) the county has complied with the provisions of Subsection 17-27a-401[(3)](4)(b) by adopting an ordinance rejecting all proposals for the siting of a storage or transfer facility for the placement of high-level nuclear waste or greater than class C radioactive waste wholly or partially within the boundaries of the county;

(2) the county has complied with Subsection 17-34-1(3) regarding refusal to provide
municipal-type services; and

(3) the court challenge against the county addresses the county's actions in compliance with Subsection 17-27a-401[(3)] (4)(b) or 17-34-1(3).

Legislative Review Note

as of 1-11-06 9:28 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel
State Impact
Passage of this bill could result in increased cost to local government to implement the changes into computer systems.

Individual and Business Impact
No fiscal impact.

Office of the Legislative Fiscal Analyst