

**ARTICLE I**  
**TITLE, PURPOSE AND APPLICATION**

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**1-1 TITLE**

This Ordinance is entitled and may be referred to as the "Emery County Zoning Ordinance."

**1-2 PURPOSE**

The zones, boundaries, and regulations herein are designed and intended to carry out the policies set forth in the Emery County General Plan, by:

- (a) promoting the health, morals, convenience, order, prosperity, and general welfare of the inhabitants of Emery County;
- (b) channeling growth and development to those areas where they can be most effectively and economically accommodated;
- (c) promoting the safety of Emery County inhabitants and their property;
- (d) promoting economy and efficiency in the delivery of municipal services to all county residents, whether by service districts, or by county, city or town government;
- (e) relieving and preventing traffic congestion on highways, streets and roads within the county and promoting economy in road building;
- (f) fostering those agricultural and industrial activities which will develop and add value to the county's abundant natural resources and provide well-paying employment for its citizens;
- (g) stabilizing, improving and protecting private and public property values and the county's tax base;
- (h) promoting the viewing and enjoyment of Emery County landscapes and natural beauty from its roads and highways;
- (i) fostering and protecting the rural lifestyle enjoyed by its citizens, preserving open spaces where they exist, and discouraging urban sprawl;
- (j) regulating activities and uses, whether on private or public land, for the protection of the public; the orderly development of business, industry agriculture and home building; the beneficial use of the county's resources; and compliance with the laws of the State of Utah and of the United States of America; and
- (k) balancing the public interest with the rights and freedoms of its citizens, particularly with respect to their private property.

**1-3 POLICY STATEMENTS**

**1-3-1 Intent**

In establishing the several zones designated herein, their boundaries and the regulations applicable therein, due and careful consideration has been given, to the suitability of land for particular uses; to accomplishment of the purposes

outlined in the preceding section; and to the needs and desires of the cities and towns and other entities affected thereby. It is the intent of the Emery County Commission that the regulations and restrictions set forth in this Ordinance shall be so interpreted and construed as to further those stated purposes and the specific objectives and characteristics of the respective zones. It is likewise the intent and policy of the Emery County Commission that the regulations and restrictions set forth in this Ordinance shall be so interpreted and construed as to further those stated purposes and the specific objectives and characteristics of the respective zones.

**1-3-2 Authority**

Although the provisions of this Ordinance are founded generally upon the authority granted by Title 17, Chapter 27a of the Utah Code, independent authority for many of these regulations is claimed, based upon the County's mandate and power to pass and enforce Ordinances "necessary and proper to provide for the safety, and preserve the health, promote the prosperity, improve the morals, peace and good order, comfort and convenience of the County and the inhabitants thereof, and for the protection of property therein" insofar as particular provisions are not pre-empted by State or Federal law.

**1-3-3 Application of Ordinance**

While the regulations found in this Ordinance are necessary for the safe and orderly growth of Emery County and to ensure peace and harmony among its citizens, care has been taken in crafting them to weigh public interests against private personal and property rights and to limit their impacts upon such rights. In administering and implementing this Ordinance, county officers and functionaries must necessarily exercise discretion and judgment, within the limits, standards and requirements found in this Ordinance. It is intended that the administrative and quasi-judicial powers granted herein be used with restraint and careful consideration of competing legitimate public and private interests, as well as the policies established by the said General Plan and the purposes set forth in Section 1-2, above.

**1-3-4 Application to State and Federal Lands**

More than ninety percent of the lands in Emery County are owned and administered by the United States and the State of Utah. The County recognizes trends in national and state affairs which may limit its powers over these lands and the access of its citizens to them. The County, representing the interests and desires of its people, has established a Public Lands Council to facilitate discussion and cooperation among the various governmental agencies, industries and other groups interested in the future of these public lands and resources. In furtherance of its role in these ongoing discussions, it is the intent of the Emery County Commission that the regulations in this Ordinance be applied on public, as well as private, lands to the fullest extent permitted by law, and that any part hereof declared to be invalid by a court of competent jurisdiction as to a particular owner, agency, activity or use be severable from the remaining parts or applications of the Ordinance, which shall remain in force.

**1-4 INTERPRETATION AND INTENT**

It is the intent of the County Commission that the regulations and restrictions as set forth in this Ordinance shall be so interpreted and construed to further the purposes of the Ordinance and the objectives and characteristics of the respective zones.

**1-5 CONFLICTING PROVISIONS REPEALED – ILLEGAL USES PROHIBITED**

All Ordinances, resolutions, or parts thereof in conflict with the provisions of this Ordinance are hereby repealed insofar as they conflict with the provisions set forth in this Ordinance. Any building or use of land or any construction thereon which was not authorized by or under the pre-existing zoning Ordinance, as amended, or which is illegal under such Ordinance, shall remain unauthorized and illegal unless expressly authorized or permitted in the provisions of this Ordinance. This Ordinance shall not nullify more restrictive provisions of other applicable covenants or agreements.

**1-6 SEVERABILITY**

This Ordinance and the various parts, sections, and clauses, are hereby declared to be severable. If any part, section, paragraph, sentence, clause, or phrase is adjudged unconstitutional or invalid, it is hereby declared that the remainder of this Ordinance shall not be affected thereby. The County Commission hereby declare that it would have passed this Ordinance and each part, section, paragraph, sentence, clause, and phrase thereof, irrespective of the fact that any one or more portions thereof be declared invalid.

**1-7 APPLICATION TO OTHER GOVERNMENT ENTITIES**

Except as otherwise provided in Section 17-27a-305, Utah Code Annotated, this Ordinance applies to each municipality, school district, charter school, local district, special service district, and political subdivision of the state when installing, constructing, operating, or otherwise using any area, land, or building situated within the unincorporated portion of Emery County.

**1-7-1 Remedies for Noncompliance**

In addition to any other remedies provided by law and this Ordinance, when this Ordinance is violated or about to be violated by another political subdivision, the County may institute an injunction, mandamus, abatement, or other appropriate action or proceeding to prevent, enjoin, abate, or remove the improper installation, improvement, or use.

## **ARTICLE II DEFINITIONS**

### Sections

- 2-1 Purpose
- 2-2 Scope
- 2-3 Interpretation Rules
- 2-4 Illustrations
- 2-5 Definitions

### **2-1 PURPOSE**

The purpose of this chapter is to provide rules of interpretation, illustrations, and definitions so that the provisions of this Ordinance may be readily understood and consistently administered.

### **2-2 SCOPE**

The provisions of this chapter shall apply to the entirety of this Ordinance.

### **2-3 INTERPRETATION RULES**

#### **2-3-1 General**

All provisions, terms, phrases and expressions contained in this chapter shall be liberally construed to accomplish the purposes of this Ordinance.

#### **2-3-2 Computation of Time**

The time within which an act is to be done shall be computed as by excluding the first day and including the last day. If the last day is a Saturday, Sunday, or holiday, then the last day shall be the next following business day. In computing the time required for public hearing notice, the day of the hearing shall be excluded.

#### **2-3-3 Conjunctions**

Unless the context clearly indicates to the contrary, conjunctions shall be interpreted as follows:

- (a) "and" indicates that all connected items, conditions, provisions or events shall apply;
- (b) "or" indicates that one or more of the connected items, conditions, provisions or events shall apply; and
- (c) "either . . . or" indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.

#### **2-3-4 Mandatory and Discretionary Terms**

The word "shall" is always mandatory. The word "should" means the matter described ought to be accomplished if reasonable and possible under the circumstances. The word "may" is permissive.

#### **2-3-5 Non-Technical and Technical Words**

Words and phrases shall be construed according to the common use and understanding of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

### **2-3-6 Tense, Number, and Gender**

Words used in the past or present tense include the future as well as the past or present unless the context clearly indicates the contrary. The singular shall include the plural and the plural shall include the singular as the context and application of this Ordinance may reasonably suggest. Words of one gender shall apply to any person, natural or fictitious, regardless of gender, as the context and application of this Ordinance may reasonably suggest.

### **2-3-7 Fractional Numbers**

In determining compliance with the numerical requirements of this Ordinance, any computation or measurement resulting in a fractional number shall be rounded to the nearest whole number.

### **2-3-8 Public Officials, Bodies and Agencies**

All public officials, bodies, and agencies to which reference is made are those of Emery County, Utah unless otherwise indicated.

### **2-3-9 Delegation of Authority**

Whenever a provision appears requiring or authorizing a particular officer to act, it shall be construed to authorize such officer to authorize subordinates to perform the required act unless the terms of the provision or section specify otherwise.

**2-4 ILLUSTRATIONS:** For the convenience of users of this Ordinance, certain terms may be illustrated and attached hereto as Appendix "A". If any conflict arises between an illustration and a definition, the definition shall apply.

## **2-5 DEFINITIONS**

For the purpose of this Ordinance, certain words and terms are defined as set forth in this section. Words not included herein, but which are defined in the Building Codes shall be construed as defined therein.

**Accessory Building** - A detached subordinate building, the use of which is appropriate, subordinate, and customarily incidental to that of the main building, or to the main use of the land, and which is located on the same lot or parcel of land with the main building or use.

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

- (a) the entity's services or facilities are likely to require expansion or significant modification because of an intended use of land;
- (b) the entity has filed with the County a copy of the entity's general or long-range plan; or
- (c) the entity has filed with the County a request for notice during the same calendar year and before the County provides notice to an affected entity in compliance with a requirement imposed under this Ordinance.

**Agriculture** - Any activity in which the earth is cultivated, crops and pastures are grown and/or livestock are bred, kept or raised. The term is meant to apply to such activities on

a scale beyond that which is customary within incorporated areas, as opposed, for example, to gardening or the keeping of pets. No distinction is made between agriculture for profit, subsistence or personal enjoyment and satisfaction, although certain intensive agricultural activities are not included.

**Airport** - A tract of land or water that is maintained for the landing and takeoff of aircraft and for the receiving and discharging passengers and cargo. Airports usually have facilities for the shelter, supply and repair of aircraft.

**Airport Approach Zone** - An area at each end of an airport land strip or take-off strip, broadening from a width of one thousand (1,000) feet at the end of the strip to a width of four thousand (4,000) feet at a distance of seven thousand five hundred (7,500) feet from the end of such strip, its center line being a continuation of the center line of the strip.

**Airport Transition Zone** - A triangular area adjacent to each side of an airport approach zone located with reference thereto as follows: One corner of said transition zone shall be identical with the corner of the approach zone nearest to the landing strip; a second corner shall be located at the end of a line, said line extending from the end of the landing strip to a point one thousand five hundred fifty (1,550) feet from the center line of said landing strip and at right angles thereto; a third corner shall be located at a point along said approach zone boundary line, which point is seven thousand five hundred (7,500) feet distance from the first corner above mentioned.

**Airport Turning Zone** - A circular area surrounding an airport encompassing all of the land lying within a radius of two (2) miles distance from the landing strip of an airport, except that area covered by the airport, the transition zones and the approach zones.

**Appeal Authority** - The body or person having authority to decide an appeal of a decision of a land use application or a variance as set forth in this Ordinance, including but not limited to, the County Commission, Planning Commission, Board of Adjustment, and Zoning Administrator.

**Assisted Living Facility** - A residential facility, licensed by the State of Utah with a home-like setting that provides an array of coordinated supportive personal and health care services, available twenty-four (24) hours per day, to residents who have been assessed under Utah Department of Health or the Utah Department of Human Services rules to need any of these services and who have a service plan based on the assessment, which may include:

- (a) specified services of intermittent nursing care;
- (b) administration of medication; and
- (c) support services promoting resident's independence and self-sufficiency.

An assisted living facility does not include adult day care provided in conjunction with a residential facility for elderly persons or a residential facility for persons with a disability.

**Buildable Area** - A portion of a lot which is free of any physical or legal constraint which would render it unacceptable or ineligible as a location for the placement of a dwelling (i.e. pre-existing easement, steep slope, inadequate soils for septic tank or foundation purposes, wetland or flood hazard.)

**Building** - Any structure having a roof supported by columns or walls, built for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind.

**Campground** - An area of land on which accommodations for temporary occupation are located or may be placed not to exceed one (1) month. This includes, but is not limited to tents and recreational vehicles.

**Chair** - The chairman, chairwoman or chairperson of a board or commission mentioned herein, including any acting or duly authorized substitute chairman, chairwoman, or chairperson.

**Commercial Timber Harvest** - The cutting and removal of standing timber, alive or dead, for sale or under contract of sale with the owner of the property from which such timber is harvested, not including cutting of timber by the property owner for such owner's personal use, cutting of trees for sale as Christmas trees or for posts or poles, nor cutting or removal of trees or dead wood for firewood.

**Conditional Use** - 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.

**Conditional Use Permit** – A document issued in accordance with this Ordinance which grants permission for a particular conditional use and states the terms and conditions upon which such permission is granted.

**Constitutional Taking** - 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.

**Construction Code** – Any code, or part thereof, which sets standards for building, electrical wiring, plumbing, and mechanical installations and the like which has been adopted by the State of Utah.

**Construction Type**

- (a) **Conventional ("Stick built")** - A dwelling which is constructed in compliance with the provisions of applicable construction codes.
- (b) **Factory Built Housing Set-Up Contractor** - An individual licensed by the Utah Division of Occupational and Professional Licensing to set up or install factory built housing on a temporary or permanent basis, including:
  - (i) the placement and or securing of a factory built housing on a permanent or temporary foundation,
  - (ii) securing the units together if required, and
  - (iii) connection of the utilities to such housing unit.
  - (iv) the license does not include site preparation, construction of a permanent foundation, and construction of utility services to the near proximity of the manufactured home. Dealers not licensed as factory-built housing set-up contractors must subcontract the connection services to individuals who are so licensed under the Title 58, Chapter 55, Utah Construction Trades Licensing Act; Utah Code Annotated.
- (c) **HUD Code** - The Federal manufactured Housing Construction and Safety Standards Act of 1974. (See also Code of Federal Regulations, Part 3280)
- (d) **Installation Standard** - The standard for installing a factory built housing unit adopted by State of Utah.
- (e) **Manufactured Home** - A transportable factory built housing unit constructed on or after June 15, 1976, according to the HUD Code, in one (1) or more sections, which:
  - (i) in the traveling mode, is eight (8) body feet or more in width or forty (40)

body feet or more in length, or when erected on site, is four hundred (400) or more square feet, and

- (ii) is built on a permanent chassis and the sign to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes plumbing, heating, air-conditioning, and electrical systems.
- (f) **Mobile Home** - A transportable factory-built housing unit built prior to June 15, 1976, in accordance with the state mobile home code which existed prior to the HUD code.
- (g) **Modular Unit** - A structure built from sections which are manufactured in accordance with the construction standards adopted pursuant to Section 58-56-4, Utah Code Annotated, and transported to a building site, the purpose of which is for human habitation, occupancy, or use.

**County** - Emery County, State of Utah.

**County Commission** - The Board of County Commissioners of Emery County, State of Utah.

**Critical Angle of Repose** - The angle of slope for a given material at which no more material can be added without creating a slide; the maximum angle from horizontal at which a given material will rest on a given surface without sliding or rolling.

**Culinary Water Authority** - 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.

**Designated County Road** - A Federal, State, or Class B or C County road, which road has been designated on the Official Map of Emery County, for public use and access.

**Development or Development Activity** - Any of the following:

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

**Disability** - 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. "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.

**Dwelling Unit, One-Family** - A building designed as a unit for occupancy by only one (1) family for living, eating and sleeping purposes. A one-family dwelling unit is all that is allowed on a single building lot unless specifically allowed otherwise. A one-family dwelling unit does not include a hotel, tourist cabin, or boarding house.

**Dwelling, Farm**

- (a) **Labor** - One or more dwelling units constructed and maintained as a unit by a farmer or a non profit corporation, and which are occupied exclusively by an individual or family, whose primary source of income is derived from doing farm work.
- (b) **Primary Caretaker** - A conventional one-family dwelling which is located on a

Bona Fide farm unit as determined in accordance with the criteria and procedures of this Ordinance, and which is occupied by the owner, manager, or employee of said farm unit.

- (c) **Secondary Caretaker** - A supplementary dwelling which is located on the same designated farm unit as the primary farm caretaker dwelling and is occupied by a person or family whose primary source of income is derived from the operation of a farm on which the secondary farm dwelling is located.

**Dwelling, Caretaker (Non-Farm)** - A conventional one-family dwelling which is occupied by a person, persons, or family whose function it is to watch or take care of a business, industry, or livestock operation, which is located on the same lot or tract of land as the building.

**Elderly Person (or the Elderly)** – A person who is sixty (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.

**Erected** - To put up by the fitting together of materials or parts. For the purpose of this Ordinance "erected" has the same meaning as "constructed", "altered", "moved", or "repaired".

**Family** - An individual, two (2) or more persons related by blood, marriage, or adoption, or a group of not more than three (3) unrelated persons living together in a dwelling unit. A family does not include guests in excess of two (2) who pay for meals or room who shall be considered as boarders.

**Farm, Ranch** - Any enterprise or tract of land in which the primary activity is agriculture. Factors in determining whether a particular property constitutes a farm or ranch are size, eligibility for "green belt" classification for tax purposes, numbers of animals, regular sales of animals or crops, etc., with the primary consideration being whether the land is being put to productive use. The determination of whether a particular use constitutes a farm or not shall be made by the Zoning Administrator, who may, however, refer the matter to the Planning Commission, subject to appeal. The term includes orchards, tree farms, turf farms, or other designations if the primary activity on the site falls within this definition, and includes all activities and structures generally and traditionally associated with agriculture.

**Fire Authority** - The department, agency, or public entity with responsibility to review and approve the feasibility of fire protection and suppression services for the subject property.

**Flood Plain** - Land that:

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

**Gas Corporation** - Has the meaning set forth in Section 54-2-1, Utah Coded Annotated.

**Gas and Oil Wells** - Any operation utilizing equipment which advances a bore hole into strata for the purpose of discovery, development, and/or production of oil or gas.

**General Plan** - The document adopted by the County Commission that sets forth general

guidelines for proposed future development of the unincorporated land within the County.

**Geologic Hazard** - Any of the following constitute a geologic hazard:

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

**Grade (Ground Level)** - Grade is the lowest point of elevation of the finished surface of ground, paving or sidewalk within a five foot area from the building.

**Granting Authority** – The officer, board, or commission authorized herein to approve a land permit under this Ordinance.

**Guest** - Any person or persons staying, without charge, in a dwelling unit for less than thirty (30) days.

**Health, Board of** - The Health Department, County Commission, or any person authorized by the County Commission to represent the Commission in matters relating to health and sanitation.

**Height of Building** - The vertical distance from the grade to the square of the building at its highest spot.

**Home Occupation (Business)** - An occupation for compensation conducted entirely within a residential dwelling.

**House, Boarding** - A building containing rooms in which meals are provided for compensation to more than two (2) persons, but which does not include provision for cooking in any guest room.

**Kitchen** - Any room used for or intended to be used for cooking and preparing food.

**Identical Plans** - Building plans submitted to the 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.

**Improvement Assurance** - A surety bond, letter of credit, cash, or other security:

- (a) to guaranty the proper completion of an improvement;
- (b) that is required as a condition precedent to:
  - (i) recording a subdivision plat; or
  - (ii) beginning development activity; and
- (c) that is offered to a land use authority to induce the land use authority, before actual construction of required improvements, to:
  - (i) consent to the recording of a subdivision plat; or

- (ii) issue a permit for development activity.

**Improvement Assurance Warranty** - A promise that the materials and workmanship of improvements:

- (a) comport with standards that the county has officially adopted; and
- (b) will not fail in any material respect within a warranty period.

**Industrial Project** - All land and structures occupied by a manufacturing, processing, fabrication or similar industrial activity which, because of the nature of the activity, emits fumes, smoke, noise, vibration, dust, glare or odor in amounts which are discernable beyond the limits of the site.

**Interstate Pipeline Company** - 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. 717, et seq.

**Intrastate Pipeline Company** - A person or entity engaged in natural gas transportation not subject to the jurisdiction of the Federal Energy Regulatory Commission under 15 U.S.C. 717, et seq., of the Natural Gas Act.

**Land Use Application** - An application required this Ordinance.

**Land Use Authority** - The body or person having authority to act upon a land use application as set forth in this Ordinance, including but not limited to, the County Commission, Planning Commission, and Zoning Administrator.

**Land Use Ordinance** - This Ordinance, which governs planning, zoning, development, and subdivision development. The Emery County General Plan is not part of this Ordinance.

**Land Use Permit** - A permit issued by a land use authority.

**Legislative Body** - The Emery County Commission.

**Local District** - Any entity under Title 17B, Limited Purpose Local Government Entities - Local Districts, Utah Code Annotated, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or unit of the state.

**Lot of Record** - A parcel of land designed as a lot on a subdivision plat or described by metes and bounds which parcel is duly recorded as an independent tract or parcel on the plat records of the County Recorder, or a portion of a larger parcel of land being sold under a real estate contract for which a notice of interest has been filed in the office of the County Recorder indicating that said portion is in the process of being sold under contract.

**Lot Line Adjustment** - The relocation of the property boundary line in a subdivision between two adjoining lots with the consent of the owners of record.

**Lot Shape and Sizing** -

- (a) **Depth** - The horizontal distance between a front lot line and a rear lot line measured in the mean direction of the side lot lines.
- (b) **Front Lot Line** - The boundary of a lot bordering on a street.
- (c) **Setback** - The shortest distance between the property line and the building or part thereof.
- (d) **Rear Lot Line** - The boundary of a lot which is opposite and more or less parallel to the front lot line.
- (e) **Side Lot Line** - Any lot line that is not a front lot line or a rear lot line. A side lot line separating two lots is an interior side lot line.
- (f) **Width (Frontage)** - The width of a lot measured at the front setback line.

**Lot, Type -**

- (a) **Corner Lot** - A lot located at the junction of and fronting on two (2) or more intersecting streets.
- (b) **Interior Lot** - A lot which is not a corner lot, but which has frontage on a public street.

**Lot, Zoning** - A parcel of land which:

- (a) complies with all applicable area, frontage, width, setback, access and supplementary requirements of the zone in which it is located; and
- (b) is shown as a separate lot in a subdivision plat or plan which plat or plan has been approved in accordance with applicable Ordinances; or
- (c) is a lot which is exempt from compliance with this Ordinance.

**Major Underground and Surface Mine Developments** - Those activities conducted on the surface of the land for the development or extraction of mineral deposits from their natural occurrence together with the appurtenant on-site support buildings, structures, and areas for the following:

- (a) coal mines regardless of size or surface area utilized;
- (b) uranium mines disturbing a surface area of one acre or larger; and
- (c) any other mining operation disturbing or proposing to disturb a surface area of one acre or more or from which 500 tons or more of material are proposed to be removed during twelve (12) consecutive months.

**Major Utility Transmission or Railroad Project** - A construction project involving the installation of one (1) or more of the following:

- (a) electric power transmission lines having a capacity of more than 69kv together with any appurtenant substation and/or similar ancillary facilities;
- (b) gas and oil transmission lines having a design pressure of 600 P.S.I. or more, or a pipe diameter of 8 inches or more together with any appurtenant pump stations and/or similar ancillary facilities;
- (c) water transmission pipelines having a pipe diameter of 8 inches or more together with any appurtenant pump stations and/or similar ancillary facilities;
- (d) conveyor belts, slurry lines, and related facilities (permanent installation only); or
- (e) railroad tracks and appurtenant ancillary facilities.

**Map** - Any drawn or plotted document which depicts geographical information. With the advances in computer technology, such information is no longer restricted to a particular map, but is contained in databases created and accessed by Geographic Information Systems (GIS). Maps may be produced from the most current data contained in the official GIS database maintained by the Emery County Information Technology (IT). See Section 9-2.

**Minor Mine Development** - Any mine, quarry or similar excavation, except one qualifying as a sand or gravel pit, operated for the extraction of mineral deposits from their natural occurrence at levels less than established for qualification as a major underground and surface mine development.

**Minor Utility Transmission Projects** - A project involving the construction of utility transmission and distribution lines and facilities for cable TV, telephone, microwave and electric power, gas, oil, and water at levels less than those established for major transmission projects.

**Moderate Income Housing** - Housing occupied or reserved for occupancy by

households with a gross household income equal to or less than eighty percent (80%) of the median gross income for households of the same size in the County.

**Moved Buildings** - A structure or dwelling physically separated from its original foundation and moved to an additional property other than its original location.

**Municipal Landfill** - A facility for the disposal of household waste, commercial solid waste, and non-hazardous materials.

**Nominal Fee** - 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** - A structure that:

- (a) legally existed before its current land use designation; and
- (b) because of one (1) 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.

**Non-Conforming Use** - A use of land that:

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

**Nuisance** - Any activity or condition which annoys, injures, or endangers the comfort, repose, health, or safety of others by:

- (a) being unsightly, obnoxious or offensive to the senses;
- (b) offending public decency;
- (c) Interfering with, obstructing or rendering dangerous for passage any lake, stream, canal, or basin, or any public park, square, street, right-of-way, or highway;
- (d) attracting and/or harboring extraordinary numbers of skunks, raccoons, rats, mice or other vermin;
- (e) creating excessive noise, foul odors, dust, toxic materials, effluents or other pollutants which escape from the premises; or
- (f) engendering or spreading disease or otherwise creating danger to the health, welfare, peace or safety of people, pets and livestock. (See also Public Nuisance)

**Off-Street Parking** - An area adjoining a building providing for the parking of motor vehicles which does not include a public street, but has convenient access to it.

**Official Map** - A map drawn by Emery County authorities and recorded in the County Recorder's office that:

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

**On-Premise Occupation (Business)** - An occupation for compensation on a lot and/or within additional accessory buildings in addition to the residential dwelling situated on

the same lot.

**Oil and Gas Operation** - Any structure, facility or activity which is constructed on or disturbs land in association with oil and gas drilling, production or waste water treatment and disposal, including but not necessarily limited to gathering and collector systems, compressors, wells, tanks, tank batteries, pits, associated power lines, access roads for ingress and egress and pipelines.

**Permitted Use** - A land use which is designated herein as a permitted use within the zone in which it is located and is therefore allowed therein without a conditional use permit.

**Person** - An individual, corporation, partnership, organization, association, trust, governmental agency, or any other legal entity.

**Picnic Facility** - An area of land used for temporary day use picnicking and gatherings. (For overnight camping, see "Campgrounds").

**Plan for Moderate Income Housing** - A written document adopted by the County Commission 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 (5) 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.

**Planned Seasonal Development (Mountain Home Development)** - A development permitted as a conditional use in which the roads, travel easements, water lines, and open spaces are not dedicated to the public, but are retained as private facilities, and in which the dwellings or lots are designed to be occupied only during the months of April, May, June, July, August, September, and October.

**Plat** - A map or other graphical representation of lands being laid out and prepared in accordance with applicable requirements of Article XIII of this Ordinance.

**Plot Plan** - An easily readable plan or recordable quality drawn to scale which includes at least the following:

- (a) measurement sufficient to be able to clearly identify the sizes and location of buildings, utilities, orientation on property, roads and parking areas, easements, drainages, storage areas;
- (b) standard drafting indicators such as size scale, north arrow, and the like; and
- (c) an engineer's stamp and number, if required by this Ordinance.

**Potential Geologic Hazard Area** - An area that:

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

**Protective Housing Facility** - A facility operated, licensed or contracted by a governmental entity, or operated by a charitable, non-profit organization, where, for no

compensation, temporary, protective housing is provided to:

- (a) abused or neglected children awaiting placement in foster care;
- (b) pregnant or parenting teens;
- (c) victims of sexual abuse; or
- (d) victims of domestic abuse.

**Public Hearing** - A hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.

**Public Meeting** - A meeting required to be open to the public under Title 52, Chapter 4, Utah Code Annotated, Open and Public Meetings Act.

**Public Nuisance** – Any nuisance as defined herein which affects three or more persons. (Also see "Nuisance")

**Ranch** - See "Farm, Ranch"

**Record of Survey Map** - A map of a survey of land prepared in accordance with Section 17-23-17, Utah Code Annotated.

**Recreation Vehicle** - A vehicle used, designed, or maintained primarily as a temporary dwelling for travel, vacation, or recreation purposes, having a width of not more than eight (8) feet and length of not more than forty (40) feet, and which can be driven or pulled upon the highways without a special permit.

**Rehabilitation/treatment Facility** - A facility licensed by or contracted by the State of Utah to provide temporary occupancy and supervision of adults or juveniles in order to provide rehabilitation, treatment, counseling, or educational services. Without limitation, such services may include rehabilitation, treatment, counseling, or assessment and evaluation services related to delinquent behavior, alcohol and drug abuse, sex offenders, sexual abuse, or mental health.

**Residential Facility for Elderly Persons** - A single-family or multiple-family dwelling unit that meets the requirements of Section 17-27a-515, Utah Code Annotated, and any ordinance adopted under authority of that part. A residential facility for elderly persons does not include a health care facility defined by Section 26-21-2, Utah Code Annotated.

**Residential Facility for Persons with a Disability** - a residence:

- (a) in which more than one person with a disability resides; and
  - (i) is licensed or certified by the Department of Human Services under Title 62A, Chapter 2, Utah Code Annotated, Licensure of Programs and Facilities; or
  - (ii) is licensed or certified by the Department of Health under Title 26, Chapter 21, Utah Code Annotated, Health Care Facility Licensing and Inspection Act.

**Sand and Gravel Pits** - Those activities conducted on the surface of the land for the extraction of sand, gravel, clay, fill material, and similar earth products.

**Sanitary Sewer Authority** - The department, agency, or public entity with responsibility to review and approve the feasibility of sanitary sewer services or onsite wastewater systems.

**Significant Sand and Gravel Operations** - A sand or gravel pit which:

- (a) is situated on a parcel of land located one thousand (1,000) feet or less from an existing city boundary; or occupies or anticipates occupying an area of five (5) acres or more; or
- (b) utilizes reciprocating screens, crushers, washers, dryers, or similar equipment for

the processing of the extracted material.

**Significant Expansion of an Existing Mine Development** - Any change in a mining operation which includes:

- (a) the relocation of a portal or extraction area from that shown on the approved site plan and/or
- (b) the relocation, enlargement, or addition of structures, storage areas, transportation facilities or similar appurtenant facilities which in the opinion of the Zoning Administrator or Planning Commission constitute a more than incidental amendment to the approved site plan, or
- (c) any change in a minor mine development or sand or gravel pit which would have the effect of changing its classification to a major mine development or significant sand or gravel operation as applicable.

**Small Warehouse Facility** - A warehouse which does not:

- (a) exceed three thousand (3,000) square feet of storage;
- (b) create any objectionable noise, fumes, odors, dusts, or safety hazards, etc. that would not be in keeping with the zone it is located;
- (c) have any customer display area or customer onsite sales, service, delivery, or pickup and has no more than two (2) vehicles, at least one (1) of which does not exceed a one (1) ton rating.

**Specified Public Utility** - An electrical corporation, gas corporation, or telephone corporation, as those terms are defined in Section 54-2-1, Utah Code Annotated.

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

**Structure** - Anything constructed or erected which requires location on the ground, but not including a tent or vehicle.

**Subdivision** - Any land that is divided, re-subdivided or proposed to be divided into two (2) 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.
- (b) "Subdivision" does not include:
  - (i) a bona fide division or partition of agricultural land for agricultural purposes;
  - (ii) a recorded agreement between owners of adjoining properties adjusting their mutual boundary if:
    - (A) no new lot is created; and
    - (B) the adjustment does not violate applicable land use ordinances;
  - (iii) a recorded document, executed by the owner of record:
    - (A) revising the legal description of more than one contiguous unsubdivided parcel of property into one legal description

- encompassing all such parcels of property; or
    - (B) joining a subdivided parcel of property to another parcel of property that has not been subdivided, if the joinder does not violate applicable land use ordinances;
  - (iv) a bona fide division or partition of land for the purpose of siting, on one (1) 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; or
  - (v) a recorded agreement between owners of adjoining subdivided properties adjusting their mutual boundary if:
    - (A) no new dwelling lot or housing unit will result from the adjustment; and
    - (B) the adjustment will not violate any applicable land use ordinance; or
  - (vi) the joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a subdivision as to the unsubdivided parcel of property or subject the unsubdivided parcel to Article XIII of this Ordinance.

**Temporary Use** - A dwelling or structure placed on a lot or tract of land for a period not to exceed one (1) year (non-permanent).

**Unincorporated** - The area outside of the incorporated area of a municipality.

**Transitional Housing Facility** - A facility owned, operated or contracted by a governmental entity, or a charitable, non-profit organization, where, for no compensation, temporary housing is provided to homeless persons, while they obtain work, job skills, or otherwise take steps to stabilize their circumstances. A transitional housing facility does not include a homeless shelter.

**Well, Exploratory** - A well, drilled for the purpose of determining the presence and/or extent of a mineral deposit, and including the appurtenant on-site equipment and facilities.

**Well, Production** - A well, drilled for the purpose of recovering mineral deposits from their natural occurrence, and including the appurtenant on-site equipment and facilities necessary for the drilling and operation of the well and the recovery of the mineral. This definition shall not include water wells.

**Wellhead** - The upper terminal of a well, including adapter ports, seals, valves and other attachments.

**Yard** - Any space on a lot other than a court, which is open and unobstructed from the ground to the sky by man-made structures

**Yard, Front of** - A yard extending across the full width of the lot, the depth of which is the minimum horizontal distance between the main building and the front of the lot.

**Zoning Map** - A map, adopted as part of a land use ordinance that depicts land use zones, overlays, or districts.

**ARTICLE III  
PLANNING COMMISSION**

Sections

- 3-1 Established
- 3-2 Membership
- 3-3 Term of Office – Vacancy
- 3-4 Organization – Meetings – Records
- 3-5 Powers and Duties
- 3-6 Staff Referral
- 3-7 Entry onto Private Property
- 3-8 Ordinance Record

**3-1 ESTABLISHED**

The Emery County Planning Commission, consisting of nine (9) members, is hereby established as authorized by Section 17-27a-301, Utah Code Annotated, and as provided in this Chapter. The Emery County Planning Commission shall also be known, and may be referred to in this Ordinance, as the Planning Commission. The Planning Commission shall operate in conformance with and be governed by the provisions of this Ordinance, unless otherwise required by state law.

**3-2 MEMBERSHIP**

**3-2-1 Number of Members**

The Planning Commission shall consist of nine (9) members appointed by the County Commission from among residents of Emery County.

**3-2-2 Other Public Office**

At least five (5) Planning Commission members shall hold no other public office or position; provided, however, that employment with a public entity not involving policy making, administration, or elected office in such entity, shall not be considered a public office or position under this section.

**3-2-3 Non-partisan**

Planning Commission members shall be selected without respect to political affiliation and shall serve without compensation, except for per diem compensation to be fixed by the County Commission, based on necessary and reasonable expenses and on meetings actually attended.

**3-2-4 Alternate Members**

The County Commission may appoint two (2) alternate Planning Commission members who shall serve in the absence of a regular member. The appointment, term, vacancy, and removal of an alternate member shall be the same as for a regular Planning Commission member.

**3-3 TERM OF OFFICE – VACANCIES**

**3-3-1 Term of Office**

The term of office of each Planning Commissioner shall be for four (4) years and until a successor has been appointed.

**3-3-2 Vacancy**

A vacancy occurring other than through the expiration of a member's term shall be filled by appointment by the County Commission.

### **3-3-3 Unexcused Absence**

A Planning Commission member may be removed for unexcused failure to attend three (3) consecutive Planning Commission meetings or unexcused failure to attend five (5) or more meetings during a year. The Planning Commission Chair may excuse an absence of a Planning Commission member for good cause, provided that:

- (a) such action is taken on or before the next regularly scheduled meeting of the Planning Commission;
- (b) the excuse is stated, together with the reason given by the absent member, in the minutes;
- (c) the chair's findings and excuse of such an absence may be vacated by the vote of four (4) of the members; and
- (d) no absence of a member may be excused after action is instigated before the County Commission to remove such member under this Section.

### **3-3-4 Removal for Cause**

A Planning Commission member may also be removed for misconduct, which, for purposes of this Article shall consist of ethical violations under state law, conviction of a felony or other offense which would, in the opinion of the County Commission, bring discredit upon Emery County or the Planning Commission. A member accused of misconduct shall be entitled to a public hearing, upon reasonable notice, to confront and question witnesses upon whose evidence such accusations are brought and to call witnesses to testify in such member's defense.

## **3-4 ORGANIZATION – MEETINGS – RECORDS**

The Planning Commission shall elect from its membership a Chairman and Vice-Chairman, whose terms shall be for one (1) year, and shall maintain by-laws, not in conflict with County ordinances or state law, to govern its proceedings and the transaction of its business. It shall also maintain a record of its proceedings, which shall be open to inspection by the public at all reasonable times.

## **3-5 POWERS AND DUTIES**

The Planning Commission shall have all the powers and duties, explicit or implied, given planning commissions by Utah State law, including but not limited to the powers and duties set forth in this section. Each of such powers and duties shall be exercised pursuant to the procedural and other provisions of this Ordinance. The Planning Commission shall:

- (a) review and recommend changes in the General Plan to the County Commission as provided by state law and this Ordinance;
- (b) prepare and recommend amendments to this Ordinance, including the provisions regarding subdivisions, as well as the number and descriptions of zone, zone boundaries, etc. adopted hereunder, to the County Commission, as provided by state law;
- (c) administer provisions of this Ordinance, as provided herein and under state law;
- (d) conduct regular reviews of land use and development in Emery County and report its findings to the County Commission, and advise the County Commission on such specific matters as the County Commission may request from time to time;
- (e) hear or decide those matters designated herein or which the County Commission may designate by resolution of this Ordinance, including, among other things, approving or denying, or recommending approval or denial of, conditional use

- permits, subdivision plats, etc.;
- (f) conduct investigations and studies, and prepare reports and recommendations concerning matters referred to it by the County Commission; and
- (g) exercise any other powers that are either necessary for it to perform its functions pursuant to state law and this Ordinance, or delegated to it by the County Commission.

### **3-6 STAFF REFERRAL**

The Planning Commission may direct that any land use application over which it has jurisdiction be referred to the Zoning Administrator for review and preparation of recommendations in accordance with the provisions of this Ordinance. Such action shall be taken either by motion of the Planning Commission or pursuant to duly adopted bylaws of the Planning Commission. The authority for such referrals may be revoked at any time by motion of the Planning Commission or amendment of its bylaws, as the case may be.

- (a) the Zoning Administrator shall review any referred land use application as provided in this Ordinance, including any necessary hearing, and prepare written recommendations for the Planning Commission.
- (b) unless the Planning Commission shall otherwise direct, a land use applicant may in writing consent to the recommendations of the Zoning Administrator and waive further action by the Planning Commission. If the applicant waives further Planning Commission action, the Zoning Administrator's recommendation shall be deemed approved by the Planning Commission. Thereafter necessary permits may be issued subject to the terms of this Ordinance and any applicable conditions of approval.
- (c) this section shall not apply to any action with respect to which the Planning Commission is required by law to take direct action.

### **3-7 ENTRY ONTO PRIVATE PROPERTY**

The County's authorized agents may enter upon any land within its jurisdiction, at reasonable times, to make examinations and surveys pertinent to the:

- (a) preparation of its General Plan, or
- (b) preparation or enforcement of its land use ordinances.
- (c) See Appendix B to this Ordinance.

### **3-8 ORDINANCE RECORD**

The Planning Commission shall keep and maintain a current copy of the full text of this Ordinance, together with copies of all orders, resolutions, current maps and recommendations issued by said commission. It shall also maintain an archive of prior versions of this Ordinance and its predecessor, Resolution 1-70, sufficient to allow a determination of the County zoning law and regulations in effect at a particular time in the past, for purposes of determining the status of particular uses or properties.

## **ARTICLE IV GENERAL PLAN**

### Sections

- 4-1 General Plan Review – Format – Contents
- 4-2 Procedure for Amending General Plan
- 4-3 Notice of Public Hearings and Public Meetings to Consider General Plan or Modifications
- 4-4 Ongoing Review by Planning Commission
- 4-5 Effect of General Plan
- 4-6 Effect of Official Maps

### **4-1 GENERAL PLAN REVIEW – FORMAT – CONTENTS**

#### **4-1-1 Continued Review**

The Planning Commission is charged with the maintenance and review of the Emery County General Plan, and shall, as it deems necessary, recommend to the County Commission changes thereto.

#### **4-1-2 Contents**

The General Plan may include recommendations 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; provided, however, that such elements are not binding upon an affected municipality unless they are adopted by the municipal planning commission and the governing body of such municipality.

#### **4-1-3 Format**

The General Plan shall be prepared in documentary form, with accompanying maps, plats, charts and other descriptive or explanatory matter, and shall be organized in Elements, dealing with such matters as are set forth in this Article. Each such Element shall be presented in a format containing:

- (a) a statement of the history and current conditions in the County;
- (b) a statement of observed or anticipated trends, developments, problems, etc. which may affect the subject matter of that element;
- (c) a statement of County policy in reference to said subject matter; and
- (d) a statement of measures or actions to be undertaken by the County for implementing such policy.

#### **4-1-4 Elements**

The General Plan shall include, but is not limited to, the following elements:

- (a) a land use element addressing the distribution, density, and locations of residential, business, industrial, agricultural, recreational, educational, public, open space, and other categories of public and private uses of land; identifying and considering each agriculture protection area within the unincorporated area of the County and avoiding proposing a use of land within an agriculture protection area that is inconsistent with or detrimental to the use of the land for agriculture; identifying present uses, anticipated trends and problems, and making recommendations for standards, zoning, and other measures for regulating and directing land use patterns in the future;

- (b) a housing element in accordance with Subsection 17-27a-403(2)(a)(iii), Utah Code Annotated, addressing the availability of moderate income housing, as defined in said Statute, as well as other housing needs; a plan, based on the factors included in Subsection 17-27a-403(2)(b), Utah Code Annotated, to provide a realistic opportunity to meet estimated needs for additional moderate income housing if long-term projections for land use and development occur; methods of encouraging such housing in the County, infrastructure and zoning requirements for increasing the availability thereof, goals and timetables for achieving same, and such other matters as may be required by law or pertinent to this subject;
- (c) a transportation and traffic circulation element consisting of the general location and extent of existing freeways, highways, streets, roads, airports and other modes of transportation; identifying new and improved transportation resources required by projected population growth and development in the County; and making recommendations for meeting such requirements;
- (d) an environmental element identifying the natural setting of the County, including scenic areas and vistas, air quality, forests, soils, rivers and other waters, fisheries, wildlife, minerals, and other natural resources; identifying potential threats to such resources and problems involved with development of such resources; and making recommendations for mitigating such problems, including measures to protect, conserve and enhance the environmental quality of the County, measures to regulate and direct the development and use of natural resources, reclamation of water, land, soils, wetlands, forests, etc. as directed and permitted by state and federal law;
- (e) a public services and facilities element describing current facilities, and their capacities, for sewage treatment, waste disposal, drainage; electric, gas, water, and communications utilities, together with the rights-of-way, easements, and facilities used by them; police and fire protection; ambulance and health care facilities; senior citizen centers and residential facilities; and other public services;
- (f) a rehabilitation, redevelopment, and conservation element identifying historic sites and resources; areas of current and future blight; recommending measures for preserving the County's heritage and for eliminating blight and undesirable development patterns;
- (g) an economic element addressing the current economic health of the County and identifying current and anticipated trends, and recommending an economic development plan for encouraging the types of economic development most desirable and congenial to the County's history and values and for regulating development so as to protect the heritage, values and lifestyles of the County;
- (h) a demographic element addressing population of the County, together with the distribution, ethnicity, history, religious and other traditions, lifestyles and values of its inhabitants;
- (i) a government and taxation element addressing the types of governmental

entities active within the County, including cities, towns, school districts, service and improvement districts, boards and councils, interlocal agreements, state and federal agencies, etc. and describing the tax base and other revenue sources available to the County, together with any special conditions or circumstances which may affect County policies and planning;

- (j) an education element addressing the school systems in Emery County, resources for vocational and higher education currently available to its inhabitants, and future needs in terms of facilities and institutions; and
- (k) a public lands element addressing issues involving public lands management and policies in Emery County.

#### **4-1-5 Other elements**

The General Plan may include other elements as may be designated by the County Commission as appropriate for inclusion in the plan.

## **4-2 PROCEDURE FOR AMENDING GENERAL PLAN**

Additions or amendments to the General Plan or any major review thereof shall be developed with consideration for the elements and concerns identified in Part 4 of Chapter 17-27a, Utah Code Annotated, and in accordance with the by-laws and procedures adopted by the Planning Commission; provided, however, that all such changes shall be first submitted to the public as follows:

### **4-2-1 Notice**

After providing notice as required in Section 4-3, during which the proposed addition or amendment shall be made available for inspection in the office of the County Clerk, and such other places as it may designate, the Planning Commission shall conduct a public hearing to receive comments from the general public concerning the proposed addition or amendment.

### **4-2-2 Planning Commission Review**

Following such hearing, the Planning Commission shall prepare a draft of the addition or amendment and submit the same to the County Commission with its recommendation for adoption of the same. The Planning Commission shall avoid proposing a use of land within an agriculture protection area that is inconsistent with or detrimental to the use of the land for agriculture.

### **4-2-3 County Commission Public Hearing**

Upon receipt of the draft addition or amendment, the County Commission shall set a date and time for a public hearing and shall give public notice thereof in the manner required by law not less than fourteen (14) days prior to the same, and shall make the draft available for inspection in the office of the County Clerk, and such other places as it may designate during said period. The County Commission shall respond in writing and in a substantive manner to all those providing comments as a result of the hearing required by this subsection.

### **4-2-4 County Commission Action**

After holding such public hearing and receiving comments from the public concerning the draft, the County Commission shall take one of the following actions:

- (a) approve and adopt the same, whereupon it shall become part of, or

- replace, the existing General Plan;
- (b) amend and then approve and adopt the same, as amended, whereupon it shall become part of, or replace, the existing General Plan; or
- (c) reject and abandon the draft, or reject and remand it to the Planning Commission with further instructions.

**4-3 NOTICE OF PUBLIC HEARINGS AND PUBLIC MEETINGS TO CONSIDER GENERAL PLAN OR MODIFICATIONS**

- (a) The County shall provide:
  - (i) 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
  - (ii) notice of each public meeting on the subject.
- (b) Each notice of a public hearing under Subsection 4-3(a)(1) shall be at least ten (10) calendar days before the public hearing and shall be:
  - (i) published in a newspaper of general circulation in the area;
  - (ii) mailed to each affected entity; and
  - (iii) posted:
    - (A) in at least three (3) public locations within the County; or
    - (B) on the County's official website.
- (c) Each notice of a public meeting under Subsection 4-3(1)(b) shall be at least twenty-four (24) hours before the meeting and shall be:
  - (i) submitted to a newspaper of general circulation in the area; and
  - (ii) posted:
    - (A) in at least three (3) public locations within the County; or
    - (B) on the County's official website.

**4-4 ONGOING REVIEW BY PLANNING COMMISSION**

The Planning Commission shall conduct an ongoing review of the General Plan and the matters addressed therein; and shall, from time to time as it shall deem necessary or upon request from the County Commission, report to the County Commission as to:

- (a) the progress, or lack thereof, made in implementing the General Plan;
- (b) developments bearing on the content, direction and/or adequacy of the plan; and
- (c) recommendations for changes in the plan or for new planning initiatives.

**4-5 EFFECT OF GENERAL PLAN**

- (a) Except as provided in Subsection 4-5(b) of this section, the General Plan is an advisory guide for land use decisions.
- (b) After the County Commission has adopted a General Plan, no street, park, or other public way, ground, place, or space, no publicly owned building or structure, and no public utility, whether publicly or privately owned, may be constructed or authorized until and unless it conforms to the current General Plan.

**4-6 EFFECT OF OFFICIAL MAPS**

- (a) An official map adopted by Emery County shall not:
  - (i) require a landowner to dedicate and construct a street as a condition of development approval, except under circumstances provided in Subsection

- 4-6(b)(3); or
  - (ii) require the County to immediately acquire property it has designated for eventual use as a public street.
- (b) This section does not prohibit the County from:
  - (i) recommending that an applicant consider and accommodate the location of the proposed streets in the planning of a development proposal in a manner that is consistent with Section 5-5 of this Ordinance;
  - (ii) acquiring the property through purchase, gift, voluntary dedication, or eminent domain; or
  - (iii) requiring the dedication and improvement of a road if the road is found necessary by the County because of a proposed development and if the dedication and improvement is consistent with Section 5-5 of this Ordinance.

**ARTICLE V  
ADMINISTRATION AND PROCEDURES**

Sections

- 5-1 Common Provisions
- 5-2 Public Hearings and Public Meetings
- 5-3 General Decision-Making Standards
- 5-4 When An Applicant Is Entitled To Approval
- 5-5 Exactions
- 5-6 Vested Rights
- 5-7 Ordinance and Map Amendments
- 5-8 Temporary Land Use Regulations
- 5-9 Administrative Interpretations
- 5-10 Nonconformity Determinations
- 5-11 Nonconformity Determination Standards
- 5-12 Uses on State and Federal Land
- 5-13 Applicability to Local Political Subdivisions, School Districts and Charter Schools
- 5-14 Constitutional Takings

**5-1 COMMON PROVISIONS**

The following provisions shall apply to any land use application required by this Ordinance.

**5-1-1 Approval Required**

No development activity shall be undertaken unless applicable approvals and permits have been obtained as provided in this Ordinance. Failure to obtain such approval may be enforced as provided in Article VII of this Ordinance.

**5-1-2 Application Forms**

A land use application shall be submitted on a form provided by the Zoning Administrator along with the number of copies reasonably required by the Zoning Administrator for a particular type of application.

**5-1-3 County Initiated Applications**

The Planning Commission or County Commission may initiate any action under this Ordinance without an application from a property owner. Notice, hearing and other procedural requirements of this chapter shall apply to an application initiated by the County.

**5-1-4 Development Review Sequence**

No subdivision, site plan, or other development application shall be considered unless:

- (a) the approval which is requested in the application is allowed by the zone where the subject property is located; or,
- (b) where permitted by this Ordinance, the application is submitted simultaneously with a proposed zoning map amendment that would, if approved, allow the proposal.

**5-1-5 Accurate Information**

All documents, plans, reports, studies, and information provided to the County by

an applicant in accordance with the requirements of this Ordinance shall be accurate and complete.

**5-1-6 Determination of Complete Application by Zoning Administrator**

After receipt of an application, the Zoning Administrator in a timely manner shall determine whether the application is complete as provided in this Ordinance for the purposes of subsequent, substantive land use authority review. An application shall be deemed complete when all materials required for the application have been submitted as set forth in this Ordinance. If the application is not complete or fees have not been paid, the Zoning Administrator shall notify the applicant in writing and shall:

- (a) specify the application's deficiencies;
- (b) state what additional items must be supplied; and
- (c) advise the applicant no further action will be taken on the application until deficiencies are corrected.

**5-1-7 Applicant Request for Determination of Complete Application**

- (a) After a reasonable period of time to allow the Zoning Administrator diligently to evaluate whether all objective ordinance-based application criteria have been met, if application fees have been paid, the applicant may in writing request that the Zoning Administrator provide a written determination either that the application is:
  - (i) complete for the purposes of allowing subsequent, substantive land use authority review; or
  - (ii) deficient with respect to a specific, objective, ordinance-based application requirement.
- (b) Within thirty (30) days of receipt of an applicant's request under this section, the Zoning Administrator shall either:
  - (i) mail a written notice to the applicant advising that the application is deficient with respect to a specified, objective, ordinance-based criterion, and stating that the application must be supplemented by specific additional information identified in the notice; or
  - (ii) accept the application as complete for the purposes of further substantive processing by the land use authority.
- (c) If the notice required by Subsection 5-1-7(b)(i) is not timely mailed, the application shall be considered complete for purposes of further substantive land use authority review.
- (d) The applicant may raise and resolve in a single appeal any determination made under this Subsection 5-1-7 to the appeal authority, including an allegation that a reasonable period of time has elapsed as provided in Subsection 5-1-7(a).
  - (i) The appeal authority shall issue a written decision for any appeal requested under this subsection.
  - (ii) The applicant may appeal to district court the decision of the appeal authority made under Subsection 5-1-7(d).
  - (iii) Each appeal under this Subsection 5-1-7(e) shall be made within thirty (30) days of the date of the written decision.

**5-1-8 Fees**

When an application is filed the applicant shall pay to the County any fee associated with such application as may be set by resolution of the County Commission. Any application not accompanied by a required fee shall be returned to the applicant as incomplete.

- (a) Fees shall be non-refundable except as provided in Subsection 5-1-10.
- (b) Fees shall not be required for applications initiated by the County.
- (c) The fee schedule shall address fees for amendments to applications where such amendments increase the level of the permit required. The fee schedule may provide for reduction or waiver of such fees in order to prevent unwarranted duplication of fees.
- (d) The fee schedule shall also fix fees to be paid for annual inspections and/or renewals of permits where required under this Ordinance.
- (e) The County Commission, upon recommendation of the Planning Commission, may waive application fees and/or amendment fees in full or in part, but only under circumstances where imposition of the full fee would be unfair or excessive under the circumstances. Such waivers must be based upon findings of fact and shall state the reasons why the fee should, in fairness to the applicant and to other permittees, be waived or reduced.

#### **5-1-9 Review of Application**

- (a) Each land use authority shall substantively review a complete application and an application considered complete under Subsection 5-1-8, and shall approve or deny each application with reasonable diligence.
- (b) After a reasonable period of time to allow the land use authority to consider an application, the applicant may in writing request that the land use authority take final action within forty-five (45) days from date of service of the written request.
- (c) The land use authority shall take final action, approving or denying the application within forty-five (45) days of the written request.
- (d) If the land use authority denies an application processed under the mandates of Subsection 5-1-9(b), or if the applicant has requested a written decision in the application, the land use authority shall include its reasons for denial in writing, on the record, which may include the official minutes of the meeting in which the decision was rendered.
- (e) If the land use authority fails to comply with Subsection 5-1-9(c), the applicant may appeal this failure to district court within thirty (30) days of the date on which the land use authority should have taken final action under Subsection 5-1-9(c).

#### **5-1-10 Withdrawal of Application**

- (a) If an applicant fails to correct specified deficiencies within thirty (30) days after notification, thereof, the County may deem the application to be withdrawn. If the application is deemed withdrawn, the application and any associated fee shall be returned to the applicant upon request; provided, however, the County may deduct from the application fee the cost of determining completeness of the application.
- (b) Following submission of a complete application, an applicant may

withdraw the application at any time prior to action on the application by a land use or appeal authority. Application fees shall not be refundable if prior to withdrawal:

- (i) staff review of the application has been undertaken; or
- (ii) notice for a public hearing or meeting on the application has been mailed, posted, or published.

**5-1-11 Decision Date**

A decision by a land use or appeal authority regarding a land use application or other matter under provisions of this Ordinance takes effect on the date of the meeting or hearing at which the decision is made.

**5-1-12 Extensions of Time**

Unless otherwise prohibited by this Ordinance, upon written request, and for good cause shown, any land use or appeal authority having authority to grant approval of an application may, without any notice or hearing, grant an extension of any time limit imposed by this Ordinance. The total time granted by any such extension or extensions shall not exceed twice the length of the original time period.

**5-1-13 Procedural Irregularities**

Notwithstanding any provision of this Ordinance which sets forth a procedure for any matter herein, no action, inaction or recommendation regarding the matter which is the subject of the procedure shall be void or invalid or set aside by a court due to any error (including but not limited to any irregularity, informality, neglect or omission) which pertains to a petition, application, notice, finding, record, hearing, report, recommendation or any other procedural matter whatsoever unless:

- (a) the procedure is required by state or federal law; and
- (b) in an examination of the entire circumstances, including the evidence of record, the court is of the opinion that the procedural error complained of was prejudicial to a substantial right of the complainant as shown by the following:
  - (i) had the error not occurred the decision made pursuant to the procedure would have been different, and
  - (ii) because of the error the complainant suffered an injury for which relief must be given.
- (c) The complainant shall have the burden to prove by a preponderance of evidence that an error was prejudicial or that an injury occurred.

**5-1-14 Examination and Copying of Application and Other Documents**

Upon request, and during normal business hours, any person may examine an application and materials submitted in support of or in opposition to an application. Copies of such materials shall be made available at reasonable cost.

**5-2 PUBLIC HEARINGS AND PUBLIC MEETINGS**

Any public hearing or meeting required under this Ordinance, as the case may be, shall be scheduled and held subject to the requirements of this section.

**5-2-1 Scheduling A Public Hearing or Public Meeting**

A land use application requiring consideration at a public hearing or meeting shall

be scheduled within a reasonable time following receipt of a complete application. The amount of time between receipt of a complete application and holding a public hearing or meeting shall be considered in light of:

- (a) the complexity of the application submitted;
- (b) the number of other applications received which require a public hearing or meeting;
- (c) available staff resources; and
- (d) applicable public notice requirements.

**5-2-2 Applicant Notice**

- (a) The Zoning Administrator shall provide to each land use applicant:
  - (i) written notice of the date, time, and place of each public hearing and public meeting where the applicant's application will be considered;
  - (ii) a copy of each staff report regarding the pending application at least three (3) business days before the public hearing or public meeting; and
  - (iii) a copy of the final decision on a pending application within ten (10) days following the decision.
- (b) If the Zoning Administrator fails to comply with the requirements of this subsection, an applicant may waive, in writing, the failure so the application may stay on the public hearing or public meeting agenda and be considered as if the requirements had been met.

**5-2-3 Notice of Public Hearings and Public Meetings to Consider General Plan or Modifications.**

The Zoning Administrator shall give notice public hearings and public meetings to consider the General Plan or modifications as provided in Section 4-3 of this Ordinance.

**5-2-4 Notice of Public Hearings and Public Meetings on Adoption or Modification of Land Use Ordinance**

- (a) The Zoning Administrator shall give:
  - (i) notice of the date, time, and place of the first public hearing to consider the adoption or any modification to this Ordinance; and
  - (ii) notice of each public meeting on the subject.
- (b) Notice of a public hearing shall be:
  - (i) mailed to each affected entity at least ten (10) calendar days before the public hearing;
  - (ii) posted:
    - (A) in at least three (3) public locations within the County; or
    - (B) on the County's official website; and
    - (C) published in a newspaper of general circulation in the area at least ten (10) calendar days before the public hearing; or
    - (D) mailed at least three (3) days before the public hearing to:
      - (I) each property owner whose land is directly affected by the proposed use ordinance change; and
      - (II) each adjacent property owner.
- (c) Notice of a public meeting shall given be at least twenty-four (24) hours

before the meeting and shall be posted:

- (i) in at least three (3) public locations within the County; or
- (ii) on the County's official website.

**5-2-5 Third Party Notice**

- (a) If this Ordinance requires notice to adjacent property owners, the Zoning Administrator shall:
  - (i) mail notice to the record owner of each lot which abuts the subject property or which is directly across a street from the property; or
  - (ii) post notice on the property with a sign of sufficient size, durability, print quality, and location reasonably calculated to give notice to passers-by.
- (b) If the County mails notice to third party property owners under Subsection 5-2-5(a), equivalent notice shall be mailed to property owners within an adjacent jurisdiction.

**5-2-6 Notice for a Proposed Subdivision or Amendment or a Multiple-Unit Residential or Commercial or Industrial Development**

- (a) Except for an exempt subdivision under Subsection 13-2-2 of this Ordinance, for a proposed subdivision or an amendment to a subdivision, the County shall provide notice of the date, time, and place of a public hearing that is:
  - (i) mailed not less than three (3) calendar days before the public hearing and addressed to the record owner of each lot adjacent to that property or which is directly across a street from the property; or
  - (ii) posted not less than three (3) calendar days before the public hearing, on the property proposed for subdivision, in a visible location, with a sign of sufficient size, durability, and print quality that is reasonably calculated to give notice to passers-by.
- (b) The County shall mail notice to each affected entity of a public hearing to consider a preliminary plat describing a multiple-unit residential, commercial, or industrial development.
- (c) The County shall provide notice as required by Subsection 5-2-7 for a subdivision that involves a vacation, alteration, or amendment of a street.

**5-2-7 Hearing and Notice for Proposal to Vacate, Alter, or Amend a Public Street or Right-of-Way**

For any proposal to vacate, alter, or amend a public street or right-of-way, the land use authority shall hold a public hearing and shall give notice of the date, place, and time of the hearing by:

- (a) mailing notice as required in Subsection 5-2-6;
- (b) mailing notice to each affected entity; and
  - (i) publishing notice once a week for four (4) consecutive weeks before the hearing in a newspaper of general circulation in the County in which the land subject to the petition is located; or
  - (ii) if there is no newspaper of general circulation in County, posting the property and posting notice in three (3) public places for four (4) consecutive weeks before the hearing.

#### **5-2-8 Notice Challenge**

If notice given under this section is not challenged under Section 17-27a-801, Utah Code Annotated, within thirty (30) days after the meeting or action for which notice is given, the notice is considered adequate and proper.

#### **5-2-9 Courtesy Notice of Public Hearing or Meeting**

As a courtesy to persons who may be affected by an application, notice of a public hearing or meeting may be given as provided in this subsection. The County shall not be obligated to provide courtesy notice to any person. Failure of any person to receive courtesy notice shall not affect the sufficiency of required notice.

- (a) Courtesy notice, as determined by the Zoning Administrator, may be given for applications which are site specific, including General Plan map amendments, zoning map amendments, conditional use permits, site plans, and variances. The Zoning Administrator may also direct that courtesy notice be given based on the degree of public interest in an application.
- (b) If given, courtesy notice shall consist of the information required in Section 5-2-4.
- (c) When the Zoning Administrator elects to provide courtesy notice, such notice shall be provided in the following manner:
  - (i) The applicant shall provide to the Zoning Administrator stamped envelopes for all property owners within two hundred fifty (250) feet of the boundary of the property which is the subject of the application as shown by the latest assessment rolls of the County Recorder.
  - (ii) The Zoning Administrator shall mail courtesy notice of the public hearing or meeting to property owners at least ten (10) days before the date of the hearing or meeting using the pre-addressed stamped envelopes provided by the applicant.

#### **5-2-10 Public Hearing and Meeting Procedures**

An application shall be considered pursuant to applicable provisions of this Article and under meeting procedures established by the land use authority or appeal authority for the conduct thereof.

#### **5-2-11 Record of Public Hearing or Meeting**

- (a) Written minutes and a digital or tape recording shall be kept of all public hearings or meetings and shall include all of the following:
  - (i) the date, time, and place of the meeting;
  - (ii) the names of members present and absent;
  - (iii) the substance of all matters proposed, discussed, or decided, and a record, by individual members, of votes taken;
  - (iv) the names of all citizens who appeared and the substance in brief of their testimony; and
  - (v) any other information that any member requests be entered in the minutes.
- (b) The minutes, tape recordings, all applications, exhibits, papers, and reports submitted in any proceeding before a land use authority or appeal authority shall constitute the record thereof. The record shall be made available for public examination as provided in Section 5-1-12.

## **5-3 GENERAL DECISION-MAKING STANDARDS**

### **5-3-1 Legislative and Administrative/Quasi-Judicial Distinction**

The decision-making standards set forth in this section are based on the fundamental distinction between legislative and administrative/quasi-judicial proceedings. Legislative proceedings establish public law and policy applicable generally, while administrative/quasi-judicial proceedings apply such law and policy to factually distinct, individual circumstances.

### **5-3-2 Legislative Proceedings**

- (a) The following types of applications are legislative proceedings:
  - (i) General Plan amendments;
  - (ii) zoning map amendments;
  - (iii) zoning text amendments; and
  - (iv) temporary land use regulations.
- (b) Decisions regarding a legislative application shall be based on the "reasonably debatable" standard, as follows:
  - (i) The land use authority shall determine what action, in its sole judgment, will reasonably promote the public interest, implement the General Plan, conserve property value, avoid incompatible development, encourage appropriate land use and development, and promote the general public welfare.
  - (ii) In making such determination, a land use authority member may, among other things, consider:
    - (A) staff reports;
    - (B) testimony presented at a public hearing or meeting;
    - (C) personal knowledge of conditions and activities bearing on the issue at hand; and
    - (D) the effect that a particular proposal may have on existing conditions and activities and upon orderly development of the County.
  - (iii) The land use authority shall state on the record the rationale for its decision.

### **5-3-3 Administrative Proceedings**

- (a) The following types of applications are administrative proceedings:
  - (i) subdivision;
  - (ii) site plan;
  - (iii) conditional use permit;
  - (iv) permitted use review;
  - (v) temporary use permit;
  - (vi) sign permit;
  - (vii) building permit review;
  - (viii) nonconformity determination; and
  - (ix) administrative interpretation.
- (b) Decisions regarding an administrative application shall be based on the "substantial evidence" standard as follows:
  - (i) Any administrative application for which substantial evidence in

the record shows compliance with requirements applicable to the application shall be approved.

- (A) Substantial evidence is that quantity and quality of relevant evidence adequate to convince a reasonable mind to support a conclusion.
  - (B) Conditions may be imposed to conform an application to applicable requirements of this Ordinance.
- (ii) A decision under this subsection shall include at least the following elements:
- (A) a statement of approval, approval with conditions, or disapproval, as the case may be; and
  - (B) a summary of evidence presented which forms the basis for the decision, including specific references to applicable standards set forth in this Ordinance, other provisions of the Emery County Code, or other applicable law.

#### **5-3-4 Quasi-Judicial Proceedings**

- (a) The following types of applications are quasi-judicial proceedings:
  - (i) appeal of an administrative decision; and
  - (ii) a variance request.
- (b) Decisions regarding a quasi-judicial application shall be based on the following standards:
  - (i) for an appeal of an administrative decision, see Section 8-5 of this Ordinance; and
  - (ii) for a variance, see Section 8-7 of this Ordinance.

#### **5-3-5 Fundamental Fairness**

Consideration of any land use application shall be fundamentally fair, which for the purpose of this Ordinance means:

- (a) in any land use proceeding, notice is provided as required by this Ordinance and fair procedure is applied to the proceeding; and
- (b) in a legislative proceeding, a decision by the County Commission advances a legitimate public purpose and could advance the public welfare.

### **5-4 WHEN A LAND USE APPLICANT IS ENTITLED TO APPROVAL**

#### **5-4-1 Pending Ordinance Amendments**

- (a) An applicant is entitled to approval of an administrative land use application if the application conforms to the requirements of the County's land use maps, zoning map, and this Ordinance when a complete application is submitted and all fees have been paid, unless:
  - (i) the land use authority, on the record, finds that a compelling, countervailing public interest would be jeopardized by approving the application; or
  - (ii) before the application is submitted, the County has formally initiated proceedings to amend this Ordinance in a manner that would prohibit approval of the application as submitted. A proposed amendment shall be deemed "pending" when the

amendment proposal first appears on a duly noticed Planning Commission or County Commission agenda.

- (b) If a zoning map or text amendment which may affect an application is pending prior to submission of the application, the applicant shall not be entitled to rely on existing provisions but may be required to comply with newly enacted provisions as set forth in this subsection.
- (c) An application affected by a pending zoning map or text amendment shall be subject to the following requirements:
  - (i) The application shall not be acted upon until six (6) months from the date when the pending amendment was first noticed on a Planning Commission or County Commission agenda unless:
    - (A) the applicant voluntarily agrees to amend the application to conform to the requirements of the pending amendment; or
    - (B) the proposed amendment is sooner enacted or defeated, as the case may be.
  - (ii) If a pending amendment is enacted within one hundred eighty (180) days after first being noticed on a Planning Commission or County Commission agenda, an application filed while the amendment was pending shall conform to the enacted amendment.
  - (iii) If a pending amendment is not enacted within one hundred eighty (180) days after proceedings are initiated and the proceedings have not resulted in an enactment that prohibits approval of the application as submitted, the application shall be processed without regard to the pending amendment.

#### **5-4-2 Imposition of Permit Requirements**

The County may not impose on a holder of an issued land use permit or approved subdivision plat a requirement that is not expressed in:

- (a) the land use permit or subdivision plat documents on which the land use permit or subdivision plat is based, or the written record evidencing approval of the land use permit or subdivision plat; or
- (b) this Ordinance or any other applicable County ordinance.

#### **5-4-3 Certificates of Occupancy**

The County may not withhold issuance of a certificate of occupancy or acceptance of subdivision improvements because an applicant fails to comply with a requirement that is not expressed in:

- (a) the building permit or subdivision plat documents on which the building permit or subdivision plat is based, or the written record evidencing approval of the building permit or subdivision plat; or
- (b) this Ordinance or any other applicable County ordinance.

#### **5-4-4 Compliance with County Ordinances**

The County is bound by the terms and standards of applicable provisions of this Ordinance and shall comply with mandatory provisions of this Ordinance.

#### **5-4-5 Limit on Fee for Review and Approving Building Plans**

- (a) The County may not impose or collect a fee for reviewing or approving the plans for a commercial or residential building that exceeds the lesser of:

- (i) the actual cost of performing the plan review; and
  - (ii) sixty-five (65) percent of the amount the County charges for a building permit fee for that building.
- (b) Subject to Subsection 5-4-5(a), the County may impose and collect only a nominal fee for reviewing and approving identical plans.

**5-4-6 Uses Prohibited Unless Expressly Permitted**

Any use of land which is not expressly permitted within a zone is hereby declared to be expressly prohibited therein, unless such use is allowed pursuant to an administrative interpretation as provided in Section 5-9. Neither the Planning Commission, the Board of Adjustments, nor the Zoning Administrator shall permit a use within a zone which is not expressly permitted by the terms of this Ordinance except as allowed pursuant to an administrative interpretation.

**5-5 EXACTIONS**

**5-5-1 Imposition of an Exaction**

An exaction may be imposed on development proposed in a land use application if:

- (a) an essential link exists between a legitimate governmental interest and each exaction; and
- (b) each exaction is roughly proportionate, both in nature and extent, to the impact of the proposed development.

**5-5-2 Disposition of Surplus Property**

If the County plans to dispose of surplus real property under Section 17-50-312, Utah Code Annotated, that was acquired under Section 5-5-1 and has been owned by the County for less than fifteen (15) years, the County shall first offer to reconvey the property, without receiving additional consideration, to the person who granted the property to the County.

- (a) A person to whom the County offers to reconvey property under this section has ninety (90) days to accept or reject the County's offer.
- (b) If a person to whom the County offers to reconvey property declines the offer, the County may offer the property for sale.
- (c) This subsection does not apply to the disposal of property acquired by exaction by a community development or urban renewal agency.

**5-6 VESTED RIGHTS**

**5-6-1 Termination of Vested Rights**

- (a) If within one (1) year after submission of a complete application the applicant does not take substantial action to pursue approval of the application, the application shall expire and any vested rights thereunder shall terminate.
- (b) An applicant who has obtained vested rights under this Ordinance shall proceed with reasonable diligence to exercise development rights authorized by an approved application. Failure to take substantial action on an approved application prior to the expiration date of such approval, as set forth in this Ordinance, shall terminate vested rights associated with the approval.

**5-6-2 Extent of a Vested Right**

Upon approval of a land use application under this Ordinance, vested rights accrue only to the extent of such approval.

**5-6-3 Applicant Waiver of Vested Rights**

An applicant having vested rights shall continually conform to all conditions of an approved application. An applicant's failure to do so shall constitute the applicant's knowing and willful waiver of the applicant's vested rights under the application.

**5-6-4 Terminating a Vested Right**

A vested right may be terminated if the County Commission finds, on the record, a compelling, countervailing public interest reason to do so.

**5-7 ORDINANCE AND MAP AMENDMENTS**

The County Commission may from time to time amend the text of this Ordinance, including the Zoning Map, but all proposed amendments shall be submitted first to the Planning Commission for its recommendations, which recommendations shall be submitted to the County Commission. The provisions in this section shall not apply to enactment of a temporary zoning regulation.

**5-7-1 Written Petition Required**

Any person seeking an amendment of this Ordinance or the Zoning Map shall submit to the Planning Commission a written petition designating the change desired and the reasons therefore, and shall pay a filing fee in an amount as may be set by resolution of the County Commission.

**5-7-2 Planning Commission Recommendation**

- (a) After a petition is determined to be complete, the Zoning Administrator shall provide notice as required in Section 5-2-4 of this Ordinance and shall schedule before the Planning Commission a public hearing to consider the petition where parties in interest and citizens shall have an opportunity to be heard.
- (b) The Planning Commission shall review the petition, hold a public hearing, and thereafter submit to the County Commission a recommendation for approval, approval with modifications, or denial of the petition.
- (c) The County Commission 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 5-2-4(c) and holding a public meeting, the County Commission may adopt or reject the proposed ordinance or map either as proposed by the Planning Commission or after making any revision the County Commission considers appropriate.
- (d) The Planning Commission or County Commission, as the case may be, may, for a reasonable period of time, continue consideration of a petition prior to making a final decision regarding the petition.

**5-7-3 Approval Standards**

A decision to amend the zoning map or the text of this Ordinance is a matter within the legislative discretion of the County Commission as described in Section 5-3-2 of this Ordinance.

- (a) Each amendment to this Ordinance shall be made in accordance with the

General Plan.

- (b) It is hereby declared to be public policy that this Ordinance shall not be amended unless it can be shown that changed or changing conditions make the proposed amendment reasonably necessary to the promotion of the purposes of said General Plan or this Ordinance.
- (c) Consideration shall also be given to:
  - (i) compatibility with the overall character of existing development in the vicinity of the subject property;
  - (ii) effect on immediately adjacent property; and
  - (iii) adequacy of facilities and services intended to serve the subject property, including but not limited to roadways, parks and recreation facilities, police and fire protection, schools, storm water drainage systems, water supplies, and waste water and refuse collection.

#### **5-7-4 Appeal of Decision**

Any person adversely affected by a decision of the County Commission to amend the zoning map or the text of this Ordinance may, within thirty (30) days after such decision, appeal to the district court as provided in Section 17-27a-801, Utah Code Annotated.

#### **5-7-5 Effect of Approval**

Approval of a petition to amend the zoning map or provisions of this Ordinance shall not be deemed an approval of a conditional use permit, site plan, or other permit. Approval of such permits shall be obtained in accordance with applicable provisions of this Ordinance.

#### **5-7-6 Effect of Disapproval**

County Commission denial of a petition to amend the zoning map or provisions of this Ordinance shall preclude filing of another petition covering substantially the same subject or property, or any portion thereof, for one (1) year from the date of the denial, except another application may be sooner considered if:

- (a) the Planning Commission determines a substantial change in circumstances has occurred to merit consideration of the petition; or
- (b) the petition is for a change to a different zone.

### **5-8 TEMPORARY LAND USE REGULATIONS**

#### **5-8-1 Authorized**

The County Commission 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 the Commission makes a finding of compelling, countervailing public interest; or the area is unregulated.

- (a) A temporary land use regulation may prohibit or regulate the erection, construction, reconstruction, or alteration of any building or structure or any subdivision approval.
- (b) A temporary land use regulation may not impose an impact fee or other financial requirement on building or development.
- (c) The duration of a temporary land use regulation shall not exceed six (6)

months.

**5-8-2 Highway or Transportation Corridor**

- (a) The County Commission 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 5-8-2(a):
  - (i) may not exceed six months in duration;
  - (ii) may be renewed, if requested by the Utah Transportation Commission created under Section 72-1-301, Utah Code Annotated, for up to two (2) additional six-month periods by ordinance enacted before the expiration of the previous temporary land use regulation; and
  - (iii) notwithstanding Subsection 5-8-2(b)(i) and (ii), is effective only as long as the Environmental Impact Statement or Major Investment Study is in progress.

**5-9 ADMINISTRATIVE INTERPRETATIONS**

**5-9-1 Purpose and Authority**

The provisions of this Ordinance, though detailed and extensive, cannot as a practical matter address every specific situation to which these provisions may be applied. As provided in this section, the Zoning Administrator is authorized to interpret a provision of this Ordinance in light of the general and specific purposes for which it was enacted and as applied to specific circumstances.

**5-9-2 Procedure**

- (a) Any person may request an administrative interpretation as provided in this section.
- (b) A complete application shall be submitted to the Zoning Administrator in a form established by the Administrator along with a filing fee in an amount as may be set by resolution of the County Commission. The application shall include at least the following information:
  - (i) the name, address and telephone number of the applicant and the applicant's agent, if any;
  - (ii) the specific provision or provisions of this Ordinance for which an interpretation is requested;
  - (iii) specific facts of the situation which illustrate the need for an administrative interpretation; and
  - (iv) the interpretation claimed by the applicant to be correct.
  - (v) When a use interpretation is requested the application shall include:
    - (A) a statement explaining why the proposed use should be deemed as included within a use category allowed by the zone applicable to the property; and

- (B) documents, statements, and other evidence demonstrating that the proposed use will conform to all use limitations established by the applicable zone.
- (c) After an application is determined to be complete, the Zoning Administrator shall review the request and make an interpretation in accordance with the standards set forth in Subsection 5-9-5.
- (d) After the Zoning Administrator makes a final decision, the Administrator shall give the applicant written notice of the decision within ten (10) days.
- (e) A record of all administrative interpretations shall be maintained in the office of the Zoning Administrator.

### **5-9-3 Standards for Making Administrative Interpretations**

The following standards shall apply to an administrative interpretation.

- (a) An administrative interpretation shall not add to or change the provisions of this Ordinance.
- (b) Questions about the location of zone boundaries shall be resolved by applying the standards set forth in Section 9-2-2 of this Ordinance.
- (c) An administrative interpretation shall be consistent with:
  - (i) the provisions of this Ordinance; and
  - (ii) any previously rendered interpretations based on similar facts occurring after the effective date of this Ordinance.
- (d) A use interpretation shall be subject to the following additional standards:
  - (i) A use defined in Article II of this Ordinance shall be interpreted as provided therein.
  - (ii) Any use specifically listed as "not allowed" in a table of permitted and conditional uses for a particular zone shall not be allowed in that zone.
  - (iii) No use interpretation shall allow a use in a zone unless evidence is presented demonstrating the use will conform to development standards established for the zone.
  - (iv) No use interpretation shall allow a use in a particular zone unless the use is substantially similar to a use allowed in the zone.
  - (v) If a proposed use is most similar to a conditional use authorized in the zone in which it is proposed to be located, any interpretation allowing such use shall require that the use be approved only as a conditional use pursuant to Articles X and XI of this Ordinance.
  - (vi) No use interpretation shall permit the establishment of any use that would be inconsistent with the statement of purpose of the zone in which it would be located.

### **5-9-4 Appeal of Decision**

Any person adversely affected by an administrative interpretation rendered by the Zoning Administrator may, within ten (10) days, appeal to the Board of Adjustment in accordance with the provisions of Section 8-5 of this Ordinance.

### **5-9-5 Effect of Approval**

An administrative interpretation shall apply only to the land for which the interpretation is given.

- (a) An interpretation finding a use to be a permitted or conditional use in a

particular zone shall be deemed to authorize only that use. An interpretation shall not authorize another allegedly similar use for which a separate use interpretation has not been issued.

- (b) An interpretation finding a particular use to be a permitted or conditional use shall not authorize the establishment of such use nor the development, construction, reconstruction, alteration, or moving of any building or structure, but shall merely authorize the preparation, filing, and processing of applications for any approvals or permits that may be required by this Ordinance or other applicable provisions of the Emery County Code.

## **5-10 NONCONFORMITY DETERMINATIONS**

### **5-10-1 Purpose and Authority**

This section sets forth procedures regarding the existence, expansion, or modification of a nonconforming use or lot, noncomplying structure, or other nonconformity. The Board of Adjustment is authorized to make such determinations as provided in this section.

### **5-10-3 Procedure**

- (a) A property owner, or the owner's agent, may request a determination regarding the existence, expansion or modification of a nonconforming use or lot, noncomplying structure, or other nonconformity affecting the owner's property as provided in this section.
- (b) A complete application shall be submitted to the Zoning Administrator in a form established by the Administrator along with a filing fee in an amount as may be set by resolution of the County Commission. The application shall include at least the following information:
  - (i) the name, address and telephone number of the applicant and the applicant's agent, if any;
  - (ii) the nonconforming use or lot, noncomplying structure, or other nonconformity in question;
  - (iii) a description of the action requested by the applicant; and
  - (iv) grounds for finding the use, structure, lot, or other circumstance is nonconforming, or for allowing expansion or modification of the nonconformity.
- (b) After the application is determined to be complete, the Board of Adjustment shall approve, approve with conditions, or deny the application pursuant to the standards set forth in Section 5-11. Any conditions of approval shall be limited to conditions needed to conform the nonconformity, its expansion or modification to approval standards.
- (c) After the Board of Adjustment makes a final decision, the Zoning Administrator shall give the applicant written notice of the decision within ten (10) days.
- (d) A record of all nonconforming use determinations shall be maintained in the office of the Zoning Administrator.

### **5-10-5 Standard for Decision**

A determination regarding the existence, expansion, or modification of a nonconforming use, structure, lot, or other nonconformity shall be based on

applicable provisions of Section 5-12 of this Ordinance.

**5-10-6 Appeal of Decision**

Any person adversely affected by a final decision of the Board of Adjustment regarding a nonconforming use or lot, noncomplying structure, or other nonconformity may, within ten (10) days after a written decision is issued, appeal to the district court in accordance with the provisions of Section 17-27a-801, Utah Code Annotated.

**5-10-7 Effect of Decision**

An applicant may continue, expand, or modify a nonconforming use or lot, noncomplying structure, or other nonconformity as set forth in an approved application.

**5-10-8 Expiration**

Determinations regarding nonconformities shall not expire but shall run with the land.

**5-11 NONCONFORMITY DETERMINATION STANDARDS**

**5-11-1 Purpose**

The purpose of this section is to establish regulations governing legally established uses, lots, structures, and other circumstances that do not conform to applicable requirements of this Ordinance. The intent of this section is to control expansion of nonconforming conditions while recognizing the interests of property owners.

**5-11-2 Scope**

This provisions of this section shall apply to any use, lot, structure, or other circumstance governed by this Ordinance which was legally established but does not conform to the requirements of this Ordinance. Any nonconforming use or lot, noncomplying structure, or other nonconformity may be continued to the extent it was lawfully created and as provided in this section and Section 5-10. Any use, lot, structure, or other nonconformity not authorized under a previously existing zoning ordinance, or which was illegal under such ordinance, shall remain unauthorized and illegal unless expressly authorized or permitted by the provisions of this Ordinance.

**5-11-3 Change in Nonconforming Status**

- (a) A nonconforming use or lot, noncomplying structure, or other nonconformity may not be changed except in conformance with the provisions of this Ordinance or as authorized by the Board of Adjustment.
  - (i) To the extent any nonconforming use or lot, noncomplying structure, or other nonconformity becomes conforming, it shall not be changed back to the previously existing nonconforming condition.
  - (ii) A nonconforming use of a building or lot shall not be changed to another nonconforming use whatsoever.
- (b) The provisions of this section pertaining to nonconforming uses of land and buildings shall also apply to land and buildings which hereafter become nonconforming due to an amendment in this Ordinance or the zoning map.

#### **5-11-4 Nonconforming Uses**

- (a) A nonconforming use of a complying structure, or noncomplying structure legally existing when such use became prohibited, may be continued. A vacant structure may be occupied by a use for which the structure was designed or intended if so occupied within a period of one (1) year after the use became nonconforming.
- (b) A dwelling which is a nonconforming use may be upgraded or enlarged by replacement with manufactured housing, modular housing, or dwellings of conventional construction, provided such replacement meets all current, applicable building, plumbing, and electrical codes and does not increase the number of dwelling units in place.
  - (i) This provision shall not apply if an existing mobile home or nonconforming structure is not removed or destroyed.
  - (ii) A nonconforming use may not be enlarged by adding new structures or remodeling unless the entire structure is brought into conformance with existing construction codes.
- (c) Except as otherwise allowed by Subsection (b), a nonconforming use within a conforming building may be expanded within the same building if:
  - (i) no structural changes are made to the building;
  - (ii) expansion is required to comply with an order to improve issued by a Health or Safety Official; and
  - (iii) the Board of Adjustment has approved the expansion.
- (d) A nonconforming use of open land may be continued provided such nonconforming use shall not be expanded or extended into any other portion of a conforming building or open land, and no structures, additions, alterations, or enlargements thereto shall be made thereon, except those required or authorized by law.
- (e) A nonconforming use of a lot where the principal use is not enclosed within a building, such as a salvage yard or a motor vehicle sale lot, shall not be expanded except in conformity with the requirements of this Ordinance.

#### **5-11-5 Nonconforming Lots**

- (a) A nonconforming lot may continue to be occupied and used although it may not conform in every respect with the dimensional requirements of this Ordinance, subject to other applicable provisions of this Ordinance.
- (b) Notwithstanding any other provision of this Ordinance, a one-family dwelling may be permitted on a nonconforming lot of record even though such lot fails to meet the area and/or width requirements of the zone in which it is located provided, that all access, setback, yard, sanitation, and other requirements of this Ordinance other than area or width, are met.
- (c) If a nonconforming lot contains a building legally established before the effective date of this Ordinance, then the owner may continue the then-existing use of such building and may expand the building in any way that does not increase the degree of nonconformity. An increase in structure size shall not be deemed to increase the degree of nonconformity of the lot

unless the structure increases any encroachment into a required setback. Remodeling of a building within an existing footprint or expansion in compliance with this subsection shall not require a variance to lot requirements but shall be reviewed by the Zoning Administrator as though the lot conforms to the requirements of this Ordinance.

- (d) An accessory building customarily incidental to a dwelling may be constructed on a nonconforming lot provided:
  - (i) The use of the lot is primarily agricultural or residential; and
  - (ii) The accessory building conforms to all other requirements pertaining to yard setbacks, fire protection, and construction codes.

#### **5-11-6 Noncomplying Structures**

- (a) A noncomplying structure may be continued so long as no additions or enlargements are made thereto and no structural alterations are made therein, except as permitted by this subsection or as may be required by law. If a noncomplying structure is removed from the lot where it was located, each future structure on such lot shall conform to the provisions of this Ordinance.
- (b) A noncomplying structure may be maintained as needed. Repairs and structural alterations may be made to a nonconforming structure within the existing footprint thereof provided the degree of nonconformity is not increased.
- (c) Any expansion or enlargement of a noncomplying structure that increases the degree of nonconformance is prohibited except as provided in this subsection.
  - (i) The initial determination of whether a proposed expansion increases the degree of nonconformity shall be made by the Zoning Administrator.
  - (ii) A structure which is noncomplying as to height, area, or yard requirements may be enlarged upon authorization by the Board of Adjustment provided the board, after notice and a hearing, finds the enlargement to be compatible with adjoining property and not detrimental to the community, as determined by the effect of the enlargement on traffic, value of adjacent and nearby properties, and the availability of adequate public facilities and services.
- (d) If a noncomplying structure is relocated within the County, it shall be placed only in a location where it fully conforms to the requirements of this Ordinance.
- (e) A building which is complying except for sufficient automobile parking, as required by this Ordinance, may be altered or enlarged provided additional automobile parking space is supplied to meet the requirements of this Ordinance for the noncomplying portion of the old structure and the alteration or enlargement.
  - (i) A nonconforming structure and a structure occupied by a nonconforming use damaged by fire, wind, earthquake, or other calamity or act of God or the public enemy may be restored as it existed previously and its use may be continued so long as

restoration is started within one (1) year and is diligently pursued to completion. Such restoration shall not increase the floor space devoted to a nonconforming use over that which existed at the time the building became nonconforming.

- (ii) The County may prohibit the reconstruction or restoration of a noncomplying structure or terminate the nonconforming use of a structure if:
  - (A) the structure is allowed to deteriorate to a condition that the structure is rendered uninhabitable and is not repaired or restored within six (6) 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 (6) months; or
  - (B) the property owner has voluntarily demolished a majority of the noncomplying structure or the building that houses the nonconforming use.
- (f) Nothing in this section shall be construed to permit the continuing use of a structure found to be in violation of any applicable life safety or health code. The right to continue use of a noncomplying structure shall be subject to the life safety requirements of applicable housing, building, health, and other life safety codes.

#### **5-11-7 Other Nonconformities**

- (a) This subsection shall apply to any other circumstance which does not conform to the requirements of this Ordinance not addressed by Subsections 5-11-4, 5-11-5, and 5-11-6.
- (b) Nonconforming development that is consistent with a conditional use permit or a site plan approved before the effective date of this Ordinance shall be deemed to be in conformance with this Ordinance to the extent it is consistent with the prior approval and to the extent such approval imposed conditional that directly address the specific issue involved in a determination of conformity.
- (c) A nonconformity other than one enumerated in Subsections 5-11-4, 5-11-5, and 5-11-6 shall be brought into conformance upon the occurrence of any one of the following:
  - (i) Any increase of more than thirty (30) percent in floor area or fifty (50) percent of the value of the building or premises; or
  - (ii) Any change in use to a more intensive use when a new certificate of occupancy is required.
- (d) Because nonconformities addressed in this subsection involve less investment and are more easily corrected than those addressed in Sections 5-11-4, 5-11-5, and 5-11-6 of this Ordinance, the intent of the County is to not increase such nonconformities and eliminate them as quickly as practicable.

#### **5-11-8 Nonconformity Created by Public Action**

When area or setbacks of a legally created lot are reduced as the result of a

conveyance to a federal, state or local government for a public purpose and the remaining area or setback is at least seventy-five (75) percent of the required minimum in the zone where it is located, the lot shall be deemed to be in compliance with the minimum lot size and setback standards of this Ordinance without any need for a variance.

**5-11-9 Nonconforming School Property**

The 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 of one (1) year.

**5-11-10 Abandonment**

Any nonconforming use, noncomplying structure, or other nonconformity which is abandoned shall not thereafter be reoccupied or used except in a manner that conforms to the requirements of this Ordinance.

- (a) 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 (1) year; or
  - (iii) the primary structure associated with the nonconforming use remains vacant for a period of one (1) year.
- (b) The property owner may rebut a presumption of abandonment under Subsection 5-11-10(a) and shall have the burden of establishing that any claimed abandonment has not in fact occurred. A presumption of abandonment may be rebutted upon evidence presented by the owner showing no intent to abandon the use, structure, or other nonconformity. Such evidence may include proof that during the alleged period of abandonment the owner has done either of the following:
  - (i) maintained the lot and structure, if any, in accordance with the building code; or
  - (ii) has actively and continuously marketed the property for sale or lease.

**5-11-11 Burden of Determination of Nonconforming Status**

The property owner shall have the burden of establishing that a nonconforming use, lot, noncomplying structure, or other nonconformity lawfully exists under this Ordinance.

**5-11-12 Nonconforming Uses Detrimental to Health and Safety**

No provision of this Ordinance shall be construed to allow the continuance of any nonconforming use or structure when it is detrimental to the health, safety, or welfare of the public.

**5-11-13 Extension of Time for Recovery of Investment**

The Zoning Administrator may suspend any requirement that a nonconforming use, noncomplying structure, or other nonconformity come into compliance with the provisions of this Ordinance if the owner of the affected property demonstrates that the amount of investment in the nonconforming use,

noncomplying structure, or other nonconformity has not been recovered or amortized.

- (a) A request for an extension of time needed to recover an investment in an affected property shall be submitted in writing to the Zoning Administrator.
- (b) The following information shall accompany the request:
  - (i) the amount of the owner's investment in the use, structure, or other nonconformity from the time it became nonconforming;
  - (ii) the amount of such investment that has been realized to date and an estimate of the amounts that will be realized on the date the time limit expires; and
  - (iii) evidence of any lease or purchase obligations undertaken in reliance on any previously issued licenses or permits applying to the use, structure, or other nonconformity, including any contingency clauses therein permitting termination of such lease.

#### **5-11-14 Billboards Exempt**

The provisions of this section shall not apply to billboards. Nonconforming billboards shall be terminated in accordance with applicable provisions of Sections 17-27a-510, -511 and -512, Utah Code Annotated. In the event such provisions are repealed, nonconforming billboards shall be subject to the provisions of this Ordinance.

#### **5-11-15 Appeal of Decision**

- (a) Any person adversely affected by a final decision of the Zoning Administrator or other official administering the provisions of this section may appeal to the Board of Adjustment as provided in Section 8-5 of this Ordinance.
- (b) Any person adversely affected by a final decision of the Board of Adjustment administering the provisions of this section may, within thirty (30) days after such decision, appeal to the district court as provided in Section 17-27a-801, Utah Code Annotated.

### **5-12 USES ON STATE AND FEDERAL LAND**

Any person who may obtain State or Federal land by purchase, lease, or other arrangement may use such properties only in accordance with the provisions of this Ordinance.

### **5-13 APPLICABILITY TO LOCAL POLITICAL SUBDIVISIONS, SCHOOL DISTRICTS AND CHARTER SCHOOLS**

#### **5-13-1 Local Political Subdivisions**

Except as provided in Subsection 5-4-1, pursuant to Section 17-27a-305, Utah Code Annotated, the provisions of this Ordinance are applicable to each municipality, local district, special service district, and any other political subdivision of the state when installing, constructing, operating, or otherwise using any area, land, or building situated within the unincorporated portion of the County.

#### **5-13-2 School Districts and Charter Schools**

- (a) Except as provided in Subsection 5-13-2(b), a school district or charter school is subject to the provisions of this Ordinance governing building setback, height, bulk, and massing; off-site parking, curb cuts, traffic circulation, construction staging, and any regulation limiting the location of a school to avoid unreasonable risks to health or safety.
- (b) The only basis upon which the County may deny or withhold approval of a charter school's land use application is:
  - (i) the charter school's failure to comply with a standard imposed under Subsection 5-13-2(a), or
  - (ii) if the County has designated zones for a sexually oriented business, or a business which sells alcohol, a charter school may be prohibited from a location which would otherwise defeat the purpose for the zone unless the charter school provides a waiver.
  - (iii) Nothing in this Subsection 5-13-2(b) is intended to relieve a charter school of an obligation to comply with a requirement of an applicable building or safety code to which it is otherwise obligated to comply.
- (c) Notwithstanding Subsection 5-13-2(a), the County may not:
  - (i) impose requirements for landscaping, fencing, aesthetic considerations, construction methods or materials, additional building inspections, County building codes, building use for educational purposes, or the placement or use of temporary classroom facilities on school property;
  - (ii) except as otherwise provided in this Subsection 5-13-2(c), require a school district or charter school to participate in the cost of any roadway or sidewalk, or a study on the impact of a school on a roadway or sidewalk, that is not reasonably necessary for the safety of school children and not located on or contiguous to school property, unless the roadway or sidewalk is required to connect an otherwise isolated school site to an existing roadway;
  - (iii) require a district or charter school to pay fees not authorized by this section;
  - (iv) provide for inspection of school construction or assess a fee or other charges for inspection, unless the school district or charter school is unable to provide for inspection by an inspector, other than the project architect or contractor, who is qualified under criteria established by the state superintendent;
  - (v) require a school district or charter school to pay any impact fee for an improvement project unless the impact fee is imposed as provided in Title 11, Chapter 36, Impact Fees Act, of the Utah Code Annotated; or
  - (vi) impose regulations upon the location of a project except as necessary to avoid unreasonable risks to health or safety.
- (d) A charter school shall be considered a permitted use in all zoning districts within the County.
- (e) Each land use application for any approval required for a charter school,

including an application for a building permit, shall be processed on a first priority basis.

- (f) Parking requirements for a charter school may not exceed the minimum parking requirements for schools or other institutional public uses throughout the County.

## **5-14 CONSTITUTIONAL TAKINGS**

### **5-14-1 Purpose**

The purpose of this section is to provide advisory guidelines to assist the County in identifying actions that may involve physical taking or exaction of private real property and may have constitutional taking issues.

### **5-14-2 Guidelines**

The following guidelines shall be considered when County action may result in the physical or regulatory taking of private real property. These guidelines shall be used to determine and identify whether a proposed County action raises constitutional taking issues.

- (a) Will County action require a property owner to suffer a permanent physical invasion of the owner's property?
- (b) Will County action completely deprive a property owner of all economically beneficial use of the property?
- (c) Will County action require a property owner to transfer property to the County which does not conform to the provisions of Section 5-5 of this chapter?
- (d) Will County action have a severe impact on the property owner's economic interest?
- (e) Will County action deprive the owner of a fundamental attribute of property ownership?

### **5-14-2 Analysis**

If County action may involve constitutional taking issues, the County Commission, upon request by an affected property owner, shall review the action to determine whether other County action should be taken. In reviewing proposed action, the guidelines set forth in section shall be considered. In addition the County Commission shall consider:

- (a) the effect of County action may have on the use or value of the property involved;
- (b) the likelihood that County action may result in a constitutional taking;
- (c) any alternative action that would fulfill the County's lawful objectives and reduce the risk of a constitutional taking; and
- (d) the cost to the County for payment of compensation if an unconstitutional taking is found.

### **5-14-3 Appeal**

The owner of property whose interest is subject to an alleged taking by the County may request a review by the County Commission by filing a written petition and a statement of grounds supporting the petition in the County Recorder's office. No such petition may be filed following thirty (30) days after a final decision has been rendered regarding the matter which led to the taking

review petition. The County Commission shall review all evidence presented and shall determine the appropriateness of the County's action.

**5-14-4 Guidelines Advisory**

The guidelines set forth in this section are advisory only and shall not be construed to expand or limit the scope of the County's liability for a constitutional taking.

**ARTICLE VI  
SUPPLEMENTARY REGULATIONS TO ZONES**

Sections

- 6-1 Effect of Article
- 6-2 Setbacks Do Not Apply Across Lot Lines
- 6-3 Sale or Lease of Required Space
- 6-4 Easements and Setbacks to Be Unobstructed
- 6-5 Clear View of Intersecting Streets
- 6-6 Prohibited Living Quarters – Exceptions
- 6-7 Nuisances Prohibited
- 6-8 Swimming Pools
- 6-9 Additional Height Allowed for Public Buildings
- 6-10 Setbacks from State and Federal Highways
- 6-11 Fences and Walls
- 6-12 Conservation of Values – Pollution Prevention
- 6-13 Location of Barns
- 6-14 Manufactured Homes
- 6-15 All Uses and Structures to Be Located on a Zoning Law
- 6-16 Exposed Slopes to Be less than the Critical Angle of Repose – Exposed Areas to Be Revegetated – Exception
- 6-17 Signs
- 6-18 Residential Facilities for Persons with Disability and Elderly Persons
- 6-19 Drinking Water Source Protection
- 6-20 Wetlands
- 6-21 Sexually Oriented Businesses

**6-1 EFFECT OF ARTICLE**

The regulations set forth in this Article, apply generally throughout the County unless otherwise provided in the provisions of this Ordinance pertaining to a particular zone. These regulations may be modified in specific cases where such modifications are expressly set forth in conditional use permits issued pursuant to Article XI.

**6-2 SETBACKS DO NOT APPLY ACROSS LOT LINES**

The setbacks required by this Ordinance apply only to buildings on one lot and may not be applied to buildings on adjoining property.

**6-3 SALE OR LEASE OF REQUIRED SPACE**

No part of a lot may be leased or conveyed to a new owner if the effect of such transaction would reduce the dimensions or area of the remaining property below the minimums required for a lot in the zone in which the property is located or cause the setback requirements in such zone to be violated.

**6-4 EASEMENTS AND SETBACKS TO BE UNOBSTRUCTED**

Every part of a required utility easement shall be open to the sky and unobstructed. Required setbacks may contain shrubs, bushes, and trees, subject to restrictions on visual

obstruction, but shall be free of structures.

**6-5 CLEAR VIEW OF INTERSECTING STREETS**

In all zones which require a front setback, no obstruction to view in excess of two (2) feet in height shall be placed or allowed on any corner lot within a triangular area formed by the edges of the intersecting rights-of-way and a line connecting them at points forty-five (45) feet from the corner of the lot at which they intersect. Any sign or billboard shall be located at least one hundred (100) feet from the point of intersection of any two (2) intersecting streets or highways.

**6-6 PROHIBITED LIVING QUARTERS – EXCEPTIONS**

**6-6-1 Illegal Dwellings**

No building, tent, motor vehicle, trailer, or other structure which does not meet current construction codes may be used as a dwelling, except as permitted under Article XI of this Ordinance.

**6-6-2 Mobile Homes Not Allowed, Exception**

A mobile home, as defined in Article 2, may not be set up and used as permanent dwellings, but may be occupied as a temporary dwelling as provided in a conditional use permit issued under Articles X and XI. No mobile home may be used as an accessory building.

**6-7 NUISANCES PROHIBITED**

No yard or other space shall be used for the storage of trash, debris, junk, obsolete vehicles or other material or objects which create a public nuisance; and no land shall be used for such purpose, except as specifically permitted herein. Persons desiring to store old vehicles for parts or restoration must do so in a manner which will not contaminate the soil and which will assure that they are not visible from the nearest road or highway and from dwellings in the neighborhood.

**6-8 SWIMMING POOLS**

Swimming pools not completely enclosed within a building shall comply with the same setbacks as would be required for a building and shall be completely surrounded by a fence or wall having a height of at least five (5) feet with no openings larger than thirty-six (36) square inches, except for gates. Gates shall be self-closing and self-latching and shall be kept locked at all times when there is no responsible adult present.

**6-9 ADDITIONAL HEIGHT ALLOWED FOR PUBLIC BUILDINGS**

Regardless of other regulations within the zone, public buildings and churches may be erected to any height provided the required setback is increased by one (1) foot for every five (5) feet in additional height above the maximum building height otherwise permitted in the zone.

**6-10 SETBACKS FROM STATE AND FEDERAL HIGHWAYS**

All permanent structures on properties abutting upon highways having a State or Federal designation (except limited-access highways), shall be set back at least fifty (50) feet from the nearest highway right-of-way line.

**6-11 FENCES AND WALLS**

No sight-obscuring fence, wall, hedge or bush with a height of more than thirty-six (36) inches shall be placed along a front lot line or along a side lot line within the front setback within forty-five (45) feet from any intersection. The same limitation applies to lots with a driveway entering directly onto a highway with a speed limit greater than 30 miles per hour, unless such highway has at least 10 feet of shoulder.

**6-12 CONSERVATION OF VALUES – POLLUTION PREVENTION**

Any use, whether permitted or conditional, which emits or discharges particulate matter, gasses, fumes, or other pollutants in amounts which exceed the standards prescribed by Department of Environmental Quality, the Utah State Water Quality Board, the Southeastern Utah Health District, or which violates Federal Environmental Laws, may be enjoined by Emery County and any permit issued purporting to allow such use shall be suspended or revoked by the Countywide Planning Commission for so long as is necessary to resolve the problem or to determine the issue through court proceedings or hearings before regulatory agencies.

**6-13 LOCATION OF BARNES**

Barns, corrals, pens, sties, coops, stables or other structures for the keeping of animals shall be located at least one hundred (100) feet from the nearest dwelling.

**6-14 MANUFACTURED HOMES**

**6-14-1 Tax Clearances Required to Move**

No manufactured home or mobile home within Emery County shall be moved from its present location unless a tax clearance has been obtained from the County Assessor showing that all property taxes, including any interest and penalties, have been paid. Before any manufactured home may be set up in Emery County, the owner shall furnish the Zoning Administrator with a tax clearance from the County assessor of the County from which it was moved, or documentary proof that the home is newly constructed and has not been inhabited previously. Such tax clearance shall be displayed in a conspicuous place on the rear of the manufactured home or mobile home so as to be plainly visible while in transit. Transportation in violation of this subsection is a violation of Section 59-2-309, Utah Code Annotated, and is subject to the penalty provisions of that section. In addition, any commercial mover who transports any manufactured home or mobile home without a valid tax clearance is guilty of a class B misdemeanor.

**6-14-2 Conditions for Zoning Clearance**

Manufactured homes are allowed in all situations where dwellings of conventional construction would be allowed under this Ordinance, provided:

- (a) the manufactured home is permanently affixed to the property in accordance with State law and attached to a permanent masonry foundation in accordance with plans providing for vertical loads, uplift, and lateral forces and frost protection in compliance with the applicable building code;
- (b) all appendages, including carports, garages, storage buildings, additions,

or alterations are built in compliance with the building codes for conventional construction;

- (c) the manufactured home complies with all other applicable zoning, building code, and subdivision requirements, including any restrictive covenants, applicable to a single-family residence within that zone or area;
- (d) the manufactured home meets current construction codes for manufactured homes;
- (e) the manufactured home is identified by the manufacturer's data plate bearing the date the unit was manufactured and a HUD label attached to the exterior of the home certifying the home was manufactured to HUD standards;
- (f) the manufactured home is set up by a licensed factory-built housing set-up contractor; and
- (g) an affidavit of affixture of the manufactured home is recorded in the office of the County Recorder.

#### **6-15 ALL USES AND STRUCTURES TO BE LOCATED ON A ZONING LOT**

All uses and structures which are permitted within a zone shall be located on a parcel of land which qualifies as a zoning lot within that zone. No zoning lot shall contain more than the number of dwelling units allowed in such zone.

#### **6-16 EXPOSED SLOPES TO BE LESS THAN THE CRITICAL ANGLE OF REPOSE – EXPOSED AREAS TO BE REVEGETATED – EXCEPTION.**

No cut or fill slope that is created as a part of the constructing of any dwelling or other structure or any street, road, driveway, railroad, water, gas or electric transmission line, or similar travel or access way, whether publicly or privately owned, shall exceed the critical angle of repose except by special permission of the Countywide Planning Commission. Such permission shall not be given unless measures designed and certified by a licensed professional engineer are in place. Developers of any such project shall be responsible for re-establishing vegetative cover and of constructing any necessary erosion prevention works required as a result of the construction. Where terrain leading to the placement site of a transmission tower or similar structure will not permit the installation of such structure without the slopes of construction travel ways exceeding the critical angle of repose the County may require the use of air transport or other methods in lieu of such construction travel ways.

#### **6-17 SIGNS**

##### **6-17-1 Application Requirements**

- (a) Except as provided in Section 6-17-9, the Zoning Administrator is authorized to issue sign permits as provided in this section. A sign permit application shall be considered and processed as provided in this section.
- (b) A complete application shall be submitted to the Zoning Administrator in a form established by the Administrator along with any fee established by the County's schedule of fees. The application shall include at least the following information:
  - (i) the name, address and telephone number of the applicant and the

- applicant's agent, if any;
  - (ii) a statement by the applicant demonstrating how the sign permit request meets the approval standards of this section;
  - (iii) a plot plan showing:
    - (A) applicant's name;
    - (B) site address;
    - (C) property boundaries and dimensions;
    - (D) layout of existing and proposed buildings, parking, landscaping, and utilities; and
    - (E) adjoining property lines and uses within one hundred (100) feet of the subject property;
  - (iv) an elevation drawing showing:
    - (A) type of sign;
    - (B) sign location in relation to nearest property line;
    - (C) sign height; and
    - (D) sign face area.
- (c) After the application is determined to be complete, the zoning administrator shall approve, approve with conditions or deny the application pursuant to the standards set forth in section 10-21-17E below. Any conditions of approval shall be limited to conditions needed to conform the sign permit to approval standards.
  - (i) After making a decision, the Zoning Administrator shall give the applicant written notice of the decision within ten (10) days.
  - (ii) A record of all sign permits shall be maintained in the office of the Zoning Administrator.

**6-17-2 Approval Standards**

- (a) The following standards shall apply to approval of a sign permit.
  - (i) A sign shall conform to applicable provisions of this section.
  - (ii) Each sign shall be inspected by a designated officer of the County immediately after installation. The permittee shall request inspection within five (5) business days after installation.
  - (iii) Building and electrical permits shall be obtained as required by the applicable building code.

**6-17-3 Appeal of Decision**

Any person adversely affected by a decision of the Zoning Administrator regarding a sign permit may appeal to the Board of Adjustment in accordance with the provisions of Chapter 8-5 of this Ordinance.

**6-17-4 Effect of Approval**

Approval of a sign permit shall authorize an applicant to:

- (a) construct the sign as indicated on the permit, if no building and electrical permits are required; and
- (b) if building and electrical permits are required, such permits shall be obtained prior to construction.

**6-17-5 Amendments**

The procedure for amending any sign permit shall be the same as the original procedure set forth in this section.

#### **6-17-6 Revocation**

A sign permit may be revoked as provided in Subsection 7-10-2 of this Ordinance.

#### **6-17-7 Expiration**

A sign permit shall expire and have no further force or effect if the sign authorized by the permit is not installed within one hundred eighty (180) days after approval.

#### **6-17-8 Temporary Signs and Direction Signs**

The following are permitted uses and allowed in all zones, except where limited by restrictive covenants:

- (a) name or address plates not exceeding two hundred twenty-six (226) square inches; in area;
- (b) temporary signs, such as advertising for upcoming events, within ninety (90) days prior thereto and not to exceed thirty-two (32) square feet per side; and
- (c) direction signs erected by governments, churches and civic groups within a highway or road right-of-way designating city limits; welcoming visitors and providing directions to sites of scenic, historical or general interest to travelers, historical sites, promoting civic programs or celebrations, and the like, provided such signs are kept in good repair and comply with state and federal regulations for signs along such highways.

#### **6-17-9 County Promotional Signs**

Billboards or signs promoting Emery County or giving directions to sites of interest may be erected by Emery County with the approval of the Emery County Commission. Billboards and signs may be erected by an incorporated city or town within the County upon the approval of the Planning Commission and the Emery County Commission. All such signs shall be maintained by the city or town or County agency which erected them.

### **6-18 RESIDENTIAL FACILITIES FOR PERSONS WITH DISABILITY AND ELDERLY PERSONS**

#### **6-18-1 Purpose**

The purpose of this section is to comply with Sections 17-27a-515 through 519, Utah Code Annotated, and to avoid discrimination in housing against persons with disabilities pursuant to the Utah Fair Housing Act and the federal Fair Housing Act as interpreted by courts whose decisions are binding in Utah.

#### **6-18-2 Scope**

If any facility, residence, congregate living, or other housing arrangement meets the definition of a residential facility for elderly persons or a residential facility for persons with a disability as set forth in Section 2-5 of this Ordinance, the requirements of this section shall govern the same notwithstanding any conflicting provision of this Ordinance or the Emery County Code. Except as provided herein, the requirements of this section shall not be construed to prohibit or limit other applicable provisions of this Ordinance, the Emery County Code, or other laws.

#### **6-18-3 Permitted Uses**

- (a) Notwithstanding any contrary provision of this Ordinance, a residential facility for elderly persons or for persons with a disability shall be permitted uses in any zone where a dwelling is allowed as a permitted or conditional use subject to the development standards set forth in this section.
- (b) A use permitted by this section is nontransferable and shall terminate if:
  - (i) the facility is devoted to a use other than a residential facility for elderly persons or a residential facility for persons with a disability, or
  - (ii) any license or certification issued by the Utah Department of Health or the Department of Human Services for such facility terminates or is revoked, or
  - (iii) the facility fails to comply with requirements set forth in this section.

#### **6-18-4 Residential Facilities for Elderly Persons**

- (a) A residential facility for elderly persons shall comply with all requirements of Section 17-27a-515 through 518 of the Utah Code, and also the following requirements:
  - (i) the facility shall meet all applicable building codes, safety codes, zoning regulations, the Americans with Disabilities Act, and health ordinance applicable to single-family or similar dwellings; except as may be modified by the provisions of this section;
  - (ii) minimum site development standards shall be the same as those for a dwelling unit in the zone in which the facility is located; and
  - (iii) each facility shall be capable of being used as a residential facility for elderly persons without structural or landscaping alterations that would change the residential character of the structure.
- (b) No facility shall be made available to an individual who has demonstrated, by prior behavior, actions and/or criminal convictions, or as a resident, that he or she:
  - (i) may be determined to be or does constitute a substantial risk or direct threat to the health or safety of other individuals; or
  - (ii) has or may engage in conduct resulting in substantial physical damage to the property of others.
- (c) The use permitted by this section is non-transferable and terminates if the structure is devoted to any use other than as a residential facility for the elderly or if the structure fails to comply with the applicable health, safety, zoning and building codes.
- (d) No residential facility for elderly persons which has more than five (5) elderly persons in residence shall be established or maintained within three-fourths (0.75) mile from a residential facility for elderly persons, residential facility for persons with disabilities, protective housing facility, transitional housing facility, assisted living facility, rehabilitation/treatment facility, or non-residential treatment facility. Such distance shall be measured in a straight line from nearest property line of the existing facility to nearest property line of the proposed facility.

### **6-18-5 Residential Facilities for Persons with a Disability**

- (a) A residential facility for persons with a disability shall conform to the following requirements:
  - (i) the facility shall comply with applicable building, safety and health regulations, the American with Disabilities Act, fire regulations, and all applicable state standards and licensing requirements, and any standards set forth in a contract with a state agency; and
  - (ii) the facility shall comply with provisions of this Ordinance applicable to single-family dwellings for the zone in which it is located, except as may be modified by the provisions of this section; and
  - (iii) the minimum number of parking spaces required shall be the same as the number required for a dwelling with similar occupancy density in the same zone.
- (b) A residential facility for persons with a disability shall be permitted only in agricultural, residential, or commercial zones. The maximum number of occupants in a residential facility for persons with a disability shall be as follows:
  - (i) in an agricultural or residential zone, not more than six (6) residents, not including staff or a family that owns and resides therein; and
  - (ii) in a commercial zone, not more than twelve (12) residents, not including staff or a family that owns and resides therein.
- (c) No facility shall be made available to an individual who has demonstrated, by prior behavior, actions and/or criminal convictions, or as a resident, that he or she:
  - (i) may be determined to be or does constitute a substantial risk or direct threat to the health or safety of other individuals; or
  - (ii) has or may engage in conduct resulting in substantial physical damage to the property of others.
- (d) Prior to occupancy of the facility, the person or entity licensed or certified by the Utah Department of Human Services or the Department of Health to establish and operate the facility shall:
  - (i) provide a certified copy of such license to the County Recorder;
  - (ii) certify, in a sworn affidavit submitted with the application for a business license, compliance with the Americans with Disabilities Act;
  - (iii) certify, in a sworn affidavit submitted with the application for a business license, that no person:
    - (A) will be placed or remain in the facility whose prior or current behavior, actions and/or criminal incidents or convictions;
    - (B) has demonstrated that such person is or may be a substantial risk or direct threat to the health or safety of other individuals, or
    - (C) whose behavior, actions and/or incidents or convictions has

resulted in or may result in substantial physical damage to the property of others.

- (iv) The affidavits required by Subsections 6-18-5(d)(ii) and (iii) shall be supplemented and updated not less than one hundred fifty (150) days nor more than one hundred ninety (190) days from the date of issuance of a business license and at the time of the application for renewal of the business license.
- (e) The use permitted by this section is non-transferable and shall terminate if:
  - (i) a facility is devoted to or used as other than a residential facility for persons with a disability; or
  - (ii) the license or certification issued by the Utah Department of Human Services, Department of Health, or any other applicable agency, terminates or is revoked; or
  - (iii) the facility fails to comply with the conditions set forth in this subsection.
- (f) A residential facility for persons with a disability that is a substance abuse treatment facility located within five hundred (500) feet of a school shall provide, in accordance with rules established by the Utah Department of Human Services under Title 62A, Chapter 2, of the Utah Code (Licensure of Program and Facilities):
  - (i) a security plan satisfactory to local law enforcement authorities;
  - (ii) twenty-four (24) hour supervision for residents; and
  - (iii) other 24-hour security measures.
- (g) No residential facility for persons with a disability which has more than five (5) persons in residence shall be established or maintained within three-fourths (0.75) mile from a residential facility for elderly persons, residential facility for persons with disabilities, protective housing facility, transitional housing facility, assisted living facility, rehabilitation/treatment facility, or non-residential treatment facility. Such distance shall be measured in a straight line from nearest property line of the existing facility to nearest property line of the proposed facility.

#### **6-18-5 Reasonable Accommodation**

None of the provisions of this section shall be interpreted to limit a reasonable accommodation necessary to allow the establishment or occupancy of a residential facility for persons with a disability.

- (a) Any person or entity who wishes to request a reasonable accommodation shall make a written application to the planning commission. Each application shall state the following:
  - (i) the name, mailing address, and phone number of the applicant;
  - (ii) the nature and extent of the applicant's disability;
  - (iii) an exact statement of the ordinance or policy from which the applicant requests a reasonable accommodation;
  - (iv) the applicant's proposed reasonable accommodations;
  - (v) a statement detailing why a reasonable accommodation is necessary.
  - (vi) the property address where the applicant intends to live.

- (b) The Planning Commission shall render a decision on each application for a reasonable accommodation within forty-five (45) days. The decision shall be based on evidence of record demonstrating:
  - (i) the requested accommodation will not undermine or fundamentally alter the legitimate purposes of existing zoning regulations notwithstanding the benefit that the accommodation would provide to a person with a disability;
  - (ii) that, but for the accommodation, one (1) or more persons with a disability likely will be denied an equal opportunity to enjoy housing of their choice; and
  - (iii) that equal results will be achieved as between the person with a disability requesting the accommodation and a non-disabled person.
- (c) If a reasonable accommodation request is denied, the decision may be appealed to the County Commission in the manner provided for appeals of administrative decisions set forth in this Ordinance.
- (d) If a request for a reasonable accommodation is denied, such decision may be appealed to the district court.

**6-18-6 Standards for Protective Housing, Rehabilitation/Treatment Facilities, Transitional Housing, and Assisted Living Facilities**

- (a) Any newly constructed or remodeled protective housing facility, rehabilitation/treatment facility, transitional housing facility, and assisted living facility located in a residential zone, or on property immediately abutting a residential zone, shall comply with the following standards:
  - (i) Setbacks shall be according to the requirements of the residential zone in which the facility is located, or if the facility is in a commercial zone abutting a residential zone the setbacks shall be those of the abutting residential zone.
  - (ii) Parking areas shall be located either in the rear yard area of the lot or behind the main building or garage.
  - (iii) In addition to the maximum height restrictions of the applicable zone, a new building or an additional building shall not exceed one hundred ten (110) percent of the average height of the closest dwellings located on property adjacent to a proposed structure.
  - (iv) In order for new construction to reflect the design and character of the existing neighborhood, the following standards shall be met:
    - (A) the roof design of the structure shall be a pitched roof of the same slope as the most common roof slope of the dwelling units located on the same side of the block where the building is proposed; and
    - (B) exterior materials shall consist of brick, siding, or stucco. Such materials shall be applied in such a manner that is consistent with the predominant use of such materials in the area where the building is located.
- (b) No facility shall be made available to an individual who has demonstrated, by prior behavior, actions and/or criminal convictions, or as a resident,

that he or she:

- (i) may be determined to be or does constitute a substantial risk or direct threat to the health or safety of other individuals; or
  - (ii) has or may engage in conduct resulting in substantial physical damage to the property of others.
- (c) To the extent substantially similar requirements included in this section are also included in a zone where a facility referred to herein may be located, the more restrictive provisions shall apply.

#### **6-18-7 Nonresidential Treatment Facilities**

A non-residential treatment facility shall be allowed only if the facility is a permitted or conditional use in the zone where the facility is located. In addition to the requirements of such zone, each such facility shall conform to the requirements of this section.

- (a) The facility shall comply with building, safety, zoning, and health regulations, the American with Disabilities Act, fire regulations, and applicable State standards and licensing requirements, and any standards set forth in any contract with a state agency.
- (b) The following site development standards and parking standards shall be applicable:
  - (i) Each facility shall be subject to the minimum site development standards applicable to a business in the zone where the facility may be located.
  - (ii) The minimum number of parking spaces required shall be the same as the number required for a commercial building with similar size, occupancy, and density in the same zone.
- (c) Prior to occupancy of the facility, the person or entity licensed or certified by the Utah Department of Human Services or the Department of Health to establish and operate the facility shall:
  - (i) provide a certified copy of such license with the city recorder; and
  - (ii) certify, in a sworn affidavit submitted with application for a business license, compliance with the Americans with Disabilities Act.
- (d) The use permitted by this section is non-transferable and shall terminate if:
  - (i) a facility is devoted to or used as other than a non-residential facility, or
  - (ii) the license or certification issued by the Utah Department of Human Services, Department of Health, or any other applicable agency, terminates or is revoked, or the facility fails to comply with the conditions set forth in this section.
- (e) No non-residential treatment facility shall be established or maintained within one thousand (1,000) feet, measured in a straight line from nearest property line of the existing facility to nearest property line of the proposed facility, from any:
  - (i) residential facility for persons with a disability;
  - (ii) residential facility for elderly persons with more than five (5) elderly persons in a residence; or

- (iii) of the following facilities: protective housing facility, transitional housing facility, assisted living facility, rehabilitation/treatment facility, a non-residential treatment facility, or an elementary school.
- (f) No facility shall be made available to an individual who has demonstrated, by prior behavior, actions and/or criminal convictions, or as a resident, that he or she:
  - (i) may be determined to be or does constitute a substantial risk or direct threat to the health or safety of other individuals; or
  - (ii) has or may engage in conduct resulting in substantial physical damage to the property of others.
- (g) To the extent substantially similar requirements included in this section are also included in a zone where a facility referred to herein may be located, the more restrictive provisions shall apply.

## **6-19 DRINKING WATER SOURCE PROTECTION**

### **6-19-1 Purpose**

The purpose of this section is to reflect recommendations in the Drinking Water Source Protection Rule, R309-600 of the Utah Administrative Code and to assure provision of a safe and sanitary drinking water supply for the County. This is accomplished by establishing drinking water source protection zones surrounding springs and wellheads which are the supply sources for the various water systems inside the County and by regulating land uses and conditions which may be maintained within such zones.

### **6-19-2 Water Source Protection Zones**

There are hereby established drinking water source protection zones as follows:

- (a) Zone One - The area within one hundred (100) feet from a wellhead or spring;
- (b) Zone Two - The area within a two hundred fifty (250) day ground-water travel time to a wellhead or spring, the boundary of an aquifer which supplies water to a ground-water source, or the ground-water divide, whichever is closest.
- (c) Zone Three - The area within a three (3) year ground-water travel time to a wellhead, spring, or margin of a water collection area, the boundary of an aquifer which supplies water to a ground-water source, or the ground-water divide, whichever is closest.
- (d) Zone Four - The area within a fifteen (15) year ground-water travel time to a wellhead or spring, the boundary of an aquifer which supplies water to a ground-water source, or the ground-water divide, whichever is closest.

### **6-19-3 Permitted Uses**

Notwithstanding any other provision of this Ordinance, only the following uses shall be permitted within a drinking water source protection zone:

- (a) any use permitted within the M-1 (Mountain) zone so long as such use conforms to the rules of any agency which regulates such use; and
- (b) any open land use where a building located on the property is incidental and accessory to the primary open land use.

#### **6-19-4 Prohibited Uses**

The following uses or conditions shall prohibited within a drinking water source protection zone, whether or not such use or condition may otherwise be ordinarily included as a part of a use permitted under Subsection 6-19-3.

- (a) Zone One - The location of a potential contamination source as defined herein, unless controlled with design standards.
- (b) Zone Two - The location of a pollution source as defined herein, unless contaminated discharges are controlled with design standards.
- (c) Zones Three and Four - The location of potential contamination sources unless they are controlled through land management strategies.

#### **6-19-5 Zone Determination**

The location of water source protection zones shall be determined by the water agency, special service district, or private company utilizing a wellhead or spring. A map of these zones shall be kept at the County Planning and Zoning office. Subsequent map amendments shall be filed within thirty (30) days of the amendment.

#### **6-19-6 Definitions**

For the purpose of this section, the following definitions shall apply:

- (a) Animal Feeding Operation - A lot or facility where animals have been or will be stabled or confined-and fed or maintained for a total of forty-five (45) days or more in any twelve (12) month period; crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. Two (2) or more animal feeding operations under common ownership are considered to be a single feeding operation if they adjoin each other, if they use a common area, or if they use a common system for waste disposal.
- (b) Animal Unit - A unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.
- (c) Design Standard - A control implemented nearby a potential contamination source to prevent discharges to the ground water.
- (d) Land Management Strategy - Zoning and non-zoning controls including, but not limited to, zoning and subdivision regulations, site plan review, design and operating standards, source prohibitions, purchase of property and development rights, public education programs, ground-water monitoring, household hazardous waste collection programs, water programs, memoranda of understanding, and written agreements.
- (e) Pollution Source and Potential Contamination Source - A point source discharge of contaminants to ground water or potential discharges of liquid forms of "extremely hazardous substances" stored in containers in excess of "applicable threshold planning quantities" as specified in Title III of the Superfund Amendments and Reauthorization Act of 1986. Examples of possible pollution sources include, but are not limited to,

facilities that store liquid forms of extremely hazardous substances, septic tanks, drain fields, class V underground injection wells, landfills, open dumps, land filling of sludge and septage, manure piles, salt piles, pit privies, and concentrated animal feeding operations with more than ten (10) animal units.

- (f) Septic tank/drain-field systems - A system comprised of a septic tank and a drain-field that accepts domestic wastewater from buildings or facilities for subsurface treatment and disposal. By design, septic tank/drain-field system discharges cannot be controlled with design standards.

**6-20 WETLANDS**

The County may not designate or treat any land as wetlands unless the United States Army Corps of Engineers or other agency of the federal government has designated the land as wetlands.

**6-21 SEXUALLY ORIENTED BUSINESSES**

Reserved

## **ARTICLE VII ENFORCEMENT**

### Sections

- 7-1 Scope
- 7-2 Zoning Administrator – Distinguished from Building Official
- 7-3 Powers and Duties of Zoning Administrator
- 7-4 Issuance of Permits
- 7-5 Zoning Clearances
- 7-6 Types of Violations
- 7-7 Responsibility for Violations
- 7-8 Nonconforming Use as Affirmative Defense
- 7-9 Enforcement Procedures
- 7-10 Administrative Remedies
- 7-11 Penalties for Violations
- 7-12 Appeal
- 7-13 Continuation of Enforcement Actions

### **7-1 SCOPE**

The remedies, penalties, procedures, and other matters set forth in this Article shall apply to any violation of the provisions of this Ordinance.

### **7-2 ZONING ADMINISTRATOR – DISTINGUISHED FROM BUILDING OFFICIAL**

The primary administrative and enforcement officer for the provisions of this Ordinance is the Zoning Administrator, who shall be appointed as necessary by the County Commission. The Zoning Administrator is not the County Building Official and has different responsibilities and authority from that office, although both offices may be filled by one (1) person, as the County Commission shall determine.

### **7-3 POWERS AND DUTIES OF ZONING ADMINISTRATOR**

#### **7-3-1 General**

The Zoning Administrator shall perform all of the duties and functions required by this Ordinance, and exercise all of the powers necessary to carry out those duties and functions.

#### **7-3-2 Office and Records**

The Zoning Administrator shall maintain an office, open during business hours, and shall maintain copies of all records and documents relating to actions taken under the authority of this Ordinance.

#### **7-3-3 Cooperation with Planning Commission**

The Zoning Administrator shall make such documents as may be pertinent to particular matters to the Planning Commission, the County Commission, or the Board of Adjustment as the case may be, and shall obtain and keep on file the official minutes of meetings and hearings concerning Zoning matters.

#### **7-3-4 Referral of Matters to Other Agencies**

The Zoning Administrator shall also refer matters to the Health Department, the County Commission, and any other agency as required by this Ordinance.

**7-3-5 Not a Building Official**

The Zoning Administrator, as such, is not authorized to issue building permits.

**7-3-6 Investigating Violations**

The Zoning Administrator is authorized to investigate violations, with or without receiving complaints, of this Ordinance and to recommend enforcement actions to the Planning Commission and the County Attorney. The Zoning Administrator, or the Administrator's designee, is authorized to enter private property during the daytime for the purpose of conducting such investigations, and to call upon the County Sheriff, or deputies thereof, for assistance.

**7-3-7 Right to Appeal on Behalf of County**

The Zoning Administrator may appeal decisions of the Board of Adjustment to the district court.

**7-3-8 Advisor and Assistant to Planning Commission**

The Zoning Administrator also serves as an advisor and assistant to the Planning Commission, informing it of developments which may require its attention, recommending changes to the zoning geographic information system databases relating to zones and this Ordinance.

**7-4 ISSUANCE OF PERMITS**

Every official and employee of the County who is vested with the duty or authority to issue any permit shall conform to the provisions of this Ordinance and shall issue no permit, certificate, or license for a use, building, or purpose in conflict with the provisions of this Ordinance. Any permit, certificate, or license issued in conflict with the provisions of this Ordinance, intentionally or otherwise, or which issued upon a false statement of fact material to the issuance of the permit shall be void.

**7-5 ZONING CLEARANCES**

**7-5-1 Required as Condition to Building Permits**

No building permit shall be granted for construction, remodeling, or moving of any structure without the issuance of a written zoning clearance, signed by the Zoning Administrator, certifying that the proposed construction is allowed under this Ordinance either as a permitted use in the zone, or under the authority of an existing conditional use permit. A denial of a zoning clearance shall be also in writing and signed by the Zoning Administrator and a copy thereof shall be delivered to the County Building Official.

**7-5-2 Applications**

Applications for a zoning clearance shall be made in writing in a form designated by the Zoning Administrator, which may be combined with an application for a building permit in cooperation with the Building Official, and shall be accompanied by a legible sketch, diagram, or plat showing the size and location of the property involved and any existing structures and new structures to be erected and their position in relation to the property lines. An application for a zoning clearance for a subdivision shall be handled in accordance with Article XIII of this Ordinance. An application for a zoning clearance for a project which appears to require a conditional use permit shall be treated as an application for a conditional use permit and handled in accordance with Articles X and XI of this

Ordinance.

## **7-6 TYPES OF VIOLATIONS**

It shall be unlawful for any person, or entity, to violate any provision of this Ordinance, cause the violation of any provision of this Ordinance, or fail or refuse to do some act required under this Ordinance, including any of the acts set forth in this section.

### **7-6-1 Utility Installation Unlawful Without Building Permit**

To install or allow to be installed, any sewer or water service lines, or any gas or electric utility connection to serve the premise which requires a zoning clearance, hereunder, until one has been properly approved and issued by the Zoning Administrator.

### **7-6-2 Transfer or Sale of Land Without Subdivision Approval**

To transfer or sell any land in a subdivision before a subdivision plat or record of survey has been approved and recorded. The description by metes and bounds in an instrument of transfer or other documents used in the process of selling or transferring does not exempt the transaction from being a violation or from the penalties or remedies provided in this Article.

### **7-6-3 Development or Use Without Permit**

To engage in any development, use, construction, remodeling, or other activity of any nature upon the land and improvements thereon subject to the jurisdiction of the County without all of the required permits, approvals, certificates, and other forms of authorization required by this Ordinance or other provision of the Emery County Code in order to conduct or engage in such activity.

### **7-6-4 Development or Use Inconsistent with Permit**

To engage in any development, use, construction, remodeling, or other activity which is contrary to the terms and conditions of any permit, approval, certificate, or other form of authorization required to engage in such activity.

### **7-6-5 Development or Use Inconsistent with Conditions of Approval**

To violate, by act or omission, any lawful term, condition, or qualification placed by the County Commission, planning commission, board of appeals or officer of the County, as applicable, upon a required permit, certificate, or other form of authorization granted by the County Commission, planning commission, board of appeals or other County officer allowing the use, development, or other activity upon land or improvements thereon.

### **7-6-6 Development or Use Inconsistent with This Ordinance**

To erect, construct, reconstruct, remodel, alter, maintain, move, or use any building or structure, or to use any land in violation of this Ordinance.

### **7-6-7 Making Lot or Setback Nonconforming**

To reduce or diminish any lot area so that setbacks or open spaces shall be smaller than prescribed by this Ordinance or any applicable final plat or plan.

### **7-6-8 Increasing Intensity of Use**

To increase the intensity of use of any land or structure, except in accordance with the procedural and substantive requirements of this Ordinance.

### **7-6-9 Removing, Defacing, or Obscuring Notice**

To remove, deface, obscure, or otherwise interfere with any notice required by this Ordinance.

### **7-6-10 Continuing Violation**

To continue any of the above violations, each day a violation occurs after a citation is issued shall constitute a separate offense.

## **7-7 RESPONSIBILITY FOR VIOLATIONS**

It shall be the duty of any architect, contractor, subcontractor, builder, or other person having to do with the establishment of any use of land, or the erecting, altering, changing, or remodeling of any building or structure to ensure a proper permit has been granted before work is begun on any project for which a permit is required. Any such architect, builder, contractor, or other person doing or performing any such work without a permit having been issued shall be deemed guilty of violation of this Ordinance in the same manner and to the same extent that the owner of the premises, or the person for whom the use is established, or for whom such buildings are erected or altered, and shall be subject to the penalties herein prescribed for violation.

## **7-8 NONCONFORMING USE AS AFFIRMATIVE DEFENSE**

It shall be an affirmative defense to the enforcement of the provisions of this Ordinance that the action complained of is a legally nonconforming lot or use, noncomplying structure, or other nonconformity as set forth in Sections 5-10 and 5-11 of this Ordinance. The property owner shall have the burden of establishing that a nonconforming lot, structure, use, or other nonconformity lawfully exists under this Ordinance.

## **7-9 ENFORCEMENT PROCEDURES**

### **7-9-1 Inspection of Buildings, Structures, and Land Uses**

The Zoning Administrator is authorized to inspect all buildings and structures in the course of construction, modification, or repair and to inspect land uses to determine compliance with the provisions of this Ordinance.

### **7-9-2 Interference with Enforcement Personnel**

It shall be unlawful for any person to interfere with lawful enforcement activities.

### **7-9-3 Investigation of Violations**

Whenever an apparent or alleged violation of this Ordinance shall come to the attention of the Zoning Administrator, the Administrator shall investigate the violation.

### **7-9-4 Notice**

In the case of violations not involving continuing construction or development, or any emergency situation, the Zoning Administrator shall give written notice of the nature of the violation to the owner of the land and to any person, known to the County, who is a party to any relevant permit, certificate, or approval. The persons receiving such notice shall have thirty (30) days to correct the violation before further enforcement action.

### **7-9-5 Immediate Enforcement**

(a) If a violation appears to create an immediate danger to public health or safety, the Zoning Administrator may issue a citation to any person responsible for compliance, post a notice in a prominent place on the property stating the nature of the violation, and order that the owner or occupant and other parties on the site cease and desist from the illegal

activity immediately.

- (b) In the case of a violation involving either continuing construction or development, or an emergency situation, as reasonably determined by the Zoning Administrator, the County may use the enforcement powers and remedies available to it under this Article without prior notice. In such case, the Zoning Administrator shall send the notice to the same parties set forth in the subsection 7-9-4 above simultaneously with the beginning of enforcement action.

#### **7-9-6 Other Enforcement**

In other cases, the Zoning Administrator shall attempt to resolve the issue informally with the responsible party, and, if unable to do so, shall refer the matter to the County Attorney for legal action.

### **7-10 ADMINISTRATIVE REMEDIES**

Any violation of the provisions of this Ordinance shall be subject to the enforcement remedies and penalties provided by this Article and by Utah law, including any of the remedies set forth in this section.

#### **7-10-1 Withhold Permits**

The County may deny or withhold any permit, certificate, or other form of authorization pertaining to any land or improvements when an uncorrected violation exists on such land pursuant to this Ordinance or to a condition or qualification of a permit, certificate, approval or other authorization previously granted by the County Commission, Planning Commission, Board of Adjustment, or other County officer. The County may, instead of withholding or denying an authorization, grant such authorization subject to the condition that the violation be corrected. The provisions of this section shall apply regardless of whether the original applicant or current owner is responsible for the violation in question.

#### **7-10-2 Revoke Permits**

A permit may be revoked when the Zoning Administrator determines that actions taken, thereunder, do not conform to plans, specifications, or conditions of the permit; that the same was procured by false representation or was issued by mistake; or that any provision of this Ordinance is being violated.

- (a) Written notice of such revocation shall be served upon the owner, the owner's agent or contractor, or upon any person employed at the site of the building or structure for which such permit was issued, or shall be posted in a prominent location; and, thereafter, no such construction shall proceed.
- (b) Upon revocation of a building or other permit issued by mistake, the owner, or designated representative, shall meet with the zoning administrator to determine the nature of the mistake.
  - (i) When plans are in conflict with an ordinance, resolution, regulation, or other applicable requirement, and when construction has not progressed to a stage where modification of the plans would require substantial alteration of the structures in place, the plans shall be modified to conform with applicable requirements.
  - (ii) When construction has progressed to a stage where compliance

would require substantial alteration of construction in place, the owner shall meet with the Zoning Administrator to negotiate possible changes in the plans which would more nearly conform to applicable requirements.

- (iii) When a mistake has been made calculating the fee for any permit, the proper fee shall be charged and a refund of the fee provided to the applicant.

### **7-10-3 Stop Work**

In accordance with its power to stop work under the building code, the County may stop work, with or without revoking permits, on any building or structure on any land on which exists an uncorrected violation of a provision of this Ordinance or permit or other form of authorization issued the provisions of this Ordinance.

### **7-10-4 Revoke Plan or Other Approvals**

Where a violation of this Ordinance involves failure to comply with approved plans or a condition upon which plan approval was subject, the County may, after notice to the applicant and other known parties in interest (including any holders of building permits affected) and after a hearing:

- (a) revoke the plan or other approval, or
- (b) condition its continuance on strict compliance, the provision of security, or such other conditions as the County may reasonably impose.

### **7-10-5 Remove Signs**

When a sign is illegally located within a public right-of-way, on any County-owned property, or in the case of an emergency or an identified hazard, the Zoning Administrator may, without notice, cause the immediate removal of such sign.

### **7-10-6 Injunctive Relief**

The County may seek an injunction or other equitable relief in the District Court to stop any violation of this Ordinance, or a permit, certificate, or other form of authorization granted hereunder. The County needs only to establish a violation of this Ordinance to obtain an injunction.

### **7-10-7 Remedies Cumulative**

The foregoing remedies shall be cumulative.

## **7-11 PENALTIES FOR VIOLATIONS**

### **7-11-1 Abatement**

Any building or structure set up, erected, constructed, altered, enlarged, converted, moved, or maintained; or any land, building, or premises used contrary to the provisions of this Ordinance is hereby declared to be unlawful and a public nuisance. The County Attorney may commence action or proceedings for the abatement, removal, and enjoinder, thereof, in the manner provided by law. The County Attorney may also take such other steps and may apply to such court as may have jurisdiction to grant such relief as will abate and remove such building or structure, and restrain and enjoin any person, firm, or corporation from setting up, erecting, building, maintaining, or using any building, structure, or property contrary to the provisions of this Ordinance.

### **7-11-2 Misdemeanor**

Any person violating, causing or permitting a violation of the provisions of this Ordinance shall be guilty of a class C misdemeanor. Such person shall be deemed to be guilty of a separate offense for each and every day, after a citation is issued, during which any portion of any violation of this Ordinance is committed, continues, or permitted by such person.

**7-11-3 Civil Action**

Emery County or any person aggrieved or injured by such violation, may in addition, to other remedies provided by law, institute civil proceedings in the District Court to prevent, enjoin, abate, or remove the violation.

**7-11-4 Other Remedies**

The County shall have such other remedies as are and as may be from time to time provided by Utah law or County ordinance for the violation of any provision of this Ordinance.

**7-12 APPEAL**

Any person adversely affected by a decision of the Zoning Administrator or other official enforcing the provisions of this Ordinance may appeal for relief, therefrom, to the Board of Adjustment as provided in this Ordinance; provided, however, that any violation of this Ordinance which is a misdemeanor is not appealable to the Board of Adjustment.

**7-13 CONTINUATION OF ENFORCEMENT ACTIONS**

Nothing in this Ordinance shall prohibit the continuation of previous enforcement actions, undertaken by the County pursuant to previous and valid resolutions, ordinances, and laws.

**ARTICLE VIII  
BOARD OF ADJUSTMENT**

Sections

- 8-1 Authority and Purpose
- 8-2 Appointment – Term – Vacancies
- 8-3 Organization – Procedures – Voting Limitations
- 8-4 Powers and Duties
- 8-5 Appeals of Administrative Decisions
- 8-6 Panel of Experts for Appeals of Geologic Hazard Decisions
- 8-7 Variances
- 8-8 Other Matters

**8-1 AUTHORITY AND PURPOSE**

The Emery County Board of Adjustment is hereby charged with the duties, and granted the powers, provided in this Article, unless otherwise provided by law, for the purposes of providing just and fair treatment in the administration of the provisions of this Ordinance and assuring that substantial justice is done.

**8-2 APPOINTMENT – TERM – VACANCIES**

**8-2-1 Members**

The Board of Adjustment shall consist of five (5) regular members, together with two (2) alternate members. Each member or alternate shall be appointed for a term of three (3) years.

**8-2-2 Removal**

A member of the Board of Adjustment may be removed by the County Commission for cause if written charges are filed with the County Commission. The member in question shall be entitled to a public hearing upon request.

**8-2-3 Vacancies**

In the event of a vacancy on the Board of Adjustment, other than one caused by the normal expiration of a member's term, a replacement member shall be appointed by the County Commission to serve the unexpired term of the member or alternate whose office is vacant.

**8-2-4 Alternates**

At the request of the Chair, one (1) or both of the alternate members shall sit in the place of any regular member who may be temporarily unable to act owing to absence from the County, illness, conflict of interest in a case before the Board, or other good cause.

**8-3 ORGANIZATION – PROCEDURES – VOTING LIMITATIONS**

**8-3-1 Chair – Term**

The Board of Adjustment shall elect a Chair from among its own members, whose term shall be one (1) year.

**8-3-2 Meetings**

Meetings of the Board of Adjustment shall be held at the call of the Chair and at such other times as are required by this Ordinance or otherwise permitted by its

by-laws; provided, however, that meetings upon matters set forth in Section 8-4, below, shall be called and held within the time limits required hereby. Meetings for other matters, such as adopting or amending by-laws, are not subject to deadlines and may be held at any time.

### **8-3-3 By-laws**

The Board of Adjustment may adopt such by-laws as it may deem expedient for the conduct of its business, provided that the same do not conflict with this Ordinance or with state statute. It may also create and fill other offices as it may determine with the consent of the County Commission. The following provisions may not be changed by the by-laws, unless otherwise provided by state law:

- (a) the Chair shall conduct all meetings and shall, upon request by an interested party or upon the Chair's own motion, administer oaths and issue subpoenas to compel the attendance of witnesses;
- (b) parties to any appeal or application have the right to be present, in person or through an agent or attorney, at their appeal hearings;
- (c) all meetings of the Board of Adjustment shall comply with the requirements of Title 52, Chapter 4, Utah Code Annotated, (Open and Public Meetings);
- (d) the Board shall keep minutes of its proceedings, showing members and alternate members present at each meeting, and recording the vote, or abstention, of each such person upon every question, and all such records are public;
- (e) no official action may be taken unless, at least three (3) members or alternate members are present and participate therein; and
- (f) in order to reverse any order, requirement, decision, or determination of any administrative official, board or agency as to which the Board of Adjustment has appellate jurisdiction, or to grant any variance, the concurring vote of not less than three (3) of those members or alternate members participating is required.

### **8-3-4 Conflict of Interest**

No member or alternate member shall hear or vote on any matter in which the member, or anyone related to the member by blood or marriage, has a direct financial interest, nor in which such member has a conflict of interest as defined in state laws relating thereto. Persons related to a member do not include relations more remote than first cousins.

## **8-4 POWERS AND DUTIES**

### **8-4-1 In General**

- (a) The Board of Adjustment:
  - (i) shall act in a quasi-judicial manner;
  - (ii) shall serve as the final arbiter of issues involving the interpretation or application of this Ordinance; and
  - (iii) may not entertain an appeal of a matter in which the Board of Adjustment, or any participating member, had first acted as a land use authority.
- (b) The Zoning Administrator shall:

- (i) notify each member of the Board of Adjustment of any meeting or hearing of the Board; and
- (ii) provide each Board member with the same information and access to County resources as any other member.
- (c) The Board of Adjustment shall:
  - (i) convene only if a quorum of its members is present; and
  - (ii) act only upon the vote of a majority of its convened members, unless a provision of this Ordinance requires a greater number of votes to act upon a particular application.

**8-4-2 Appeals from Actions of Zoning Administrator/Planning Commission**

The Board of Adjustment shall hear and decide appeals from decisions applying this Ordinance made by the Zoning Administrator or the Planning Commission in accordance with Section 8-5 of this Article.

**8-4-3 Variances**

The Board of Adjustment may grant or deny variances of zoning regulations in accordance with Section 8-7 of this Article;

**8-4-4 Nonconforming Uses**

The Board of Adjustment shall hear and decide claims regarding the existence, expansion, or modification of a nonconforming use, noncomplying structure, or other nonconformity in accordance with Sections 5-10 and 5-11 of this Ordinance.

**8-4-5 Boundary Issues**

The Board of Adjustment shall hear and decide issues concerning the interpretation of the zoning maps and disputed questions of lot lines, zone boundary lines, or such similar questions as may arise in the administration of this Ordinance in accordance with Section 8-8 of this Article.

**8-5 APPEALS OF ADMINISTRATIVE DECISIONS**

**8-5-1 Exhaustion of Remedies**

As a condition precedent to judicial review, each adversely affected person shall timely and specifically challenge a land use authority's decision, in accordance with this section. An adversely affected person shall not be required to pursue duplicate or successive appeals before the Board of Adjustment or a separate appeal authority as a condition of the adversely affected person's duty to exhaust administrative remedies.

**8-5-2 Initiation of Appeal**

A land use applicant, a board or officer of the County, or any person adversely affected by a decision administering or interpreting a provision of this Ordinance may appeal to the Board of Adjustment by alleging there is an error in any order, requirement, decision, or determination made by a land use authority in administering or interpreting this Ordinance.

- (1) A complete application for an appeal shall be filed within fifteen (15) days of the decision which is appealed.
- (2) The applicant shall present every theory of relief the applicant may raise in district court.

**8-5-3 Not the Same as Variance Power**

Only those decisions in which a land use authority has applied a land use ordinance to a particular application, person, or parcel may be appealed to the Board of Adjustment. A person may not appeal, and the Board of Adjustment may not consider, any amendment to this Ordinance.

- (a) An appeal may not be used to waive or modify the terms or requirements of this Ordinance.
- (b) In reviewing decisions on appeal under this section, the Board of Adjustment shall apply this Ordinance and shall not vary or nullify its terms or requirements. Such appellate power, unlike the power to grant variances, is limited to affirming or reversing the action being appealed.

#### **8-5-4 Appeal Process**

An appeal of an administrative decision shall be considered and processed as provided in this subsection.

- (a) A complete application shall be submitted to the Zoning Administrator in a form established by the Administrator along with any fee established by the County's schedule of fees. The application shall be in writing and shall include at least the following information:
  - (i) the name, address and telephone number of the applicant and the applicant's agent, if any;
  - (ii) the decision being appealed;
  - (iii) grounds for the appeal; and
  - (iv) a description of the action claimed by the applicant to be incorrect.
- (b) After an application is determined to be complete, the Zoning Administrator shall schedule a public hearing before the Board of Adjustment as provided in Section 5-2 of this Ordinance. Prior to the hearing the Zoning Administrator shall transmit to the Board of Adjustment all papers constituting the record of the action which is appealed.
- (c) The Board of Adjustment shall consider the appeal at the public hearing and thereafter shall affirm or reverse the decision appealed from. Each decision on appeal shall be transmitted to the official, board, or agency whose original decision was appealed for action in accord with the ruling of the Board. If the original decision is upheld, the matter shall proceed as before the appeal. If the matter is reversed, the Board's decision shall so state and direct the original officer or body to take action consistent with the Board's ruling.
- (d) After the Board of Adjustment makes a final decision, the Zoning Administrator shall give the applicant written notice of the decision within ten (10) days.
- (e) A record of all appeals shall be maintained in the office of the Zoning Administrator.

#### **8-5-5 Hearing Procedures**

During an appeal hearing, the Chair shall preside and conduct according to the following rules of due process, and such others as the Board may adopt in its by-laws:

- (a) Every hearing shall be conducted by the Chair in an orderly manner and

statements made limited to matters which are relevant to the issues of the Appeal.

- (b) Speakers, statements and exhibits (documentary evidence) shall be noted in the minutes.
- (c) Following the taking of statements and evidence, Board members present shall confer and consult the Ordinance and may request clarifications from, but shall not be interrupted or disturbed by, others present. Any person, not a member of the Board, who is out of order may be excluded from the hearing. The hearing may move into executive session if voted by majority of board members.
- (d) The Chair shall give each member an opportunity to be heard and ask questions, but shall control the length of discussion. At the end of discussion, the Chair shall propose, or call for proposals of, findings of fact, and rulings on the matter in question. Unless a finding or ruling shall receive three (3) votes, it shall not be adopted and the decision being reviewed shall be affirmed.
- (e) The hearing may be adjourned until a later time or continued to another date, at the discretion of the Board, to allow additional evidence to be adduced or for other good cause. However, during such adjournment or continuance, none of the members sitting on the matter shall discuss it among themselves or with any of the parties.
- (f) If, during the hearing, it becomes apparent that any member participating, therein, has a conflict which precludes such member from hearing the matter, the hearing shall be adjourned or continued as necessary to assure that the matter is heard and decided by an impartial panel.
- (g) The Board may request legal advice from the County Attorney on any matter before it, but is not bound thereby.

#### **8-5-6 Decision Standards**

- (a) The applicant shall have the burden of proving that an error has been made.
- (b) The Board of Adjustment shall give no deference to the reasonableness of the decision being appealed but shall consider and determine the correctness of:
  - (i) facts upon which the decision or action appealed from is based;
  - (ii) the procedure followed in reaching such decision or action; and
  - (iii) the interpretation of this Ordinance as applied in the decision being appealed.
- (c) Because the provisions of this Ordinance are in derogation of a property owner's common-law right to unrestricted use of property, any provision of this Ordinance found to be ambiguous shall be construed in favor of the property owner.

#### **8-5-7 Judicial Appeal**

Any person adversely affected by a final decision of the Board of Adjustment regarding an appeal of an administrative decision may, within thirty (30) days after such decision, appeal to the district court as provided in Section 17-27a-801 of the Utah Code Annotated, as amended.

## **8-6 PANEL OF EXPERTS FOR APPEALS OF GEOLOGIC HAZARD DECISIONS**

### **8-6-1 Panel of Experts**

An applicant who has appealed a decision of the land use authority administering or interpreting any County geologic hazard ordinance may request the County to assemble a panel of qualified experts to serve as the appeal authority for purposes of determining the technical aspects of the appeal.

### **8-6-2 Procedures**

- (a) If an applicant makes a request under this section, the County shall assemble the panel described in Subsection 8-6-1 consisting of the following, unless otherwise agreed by the applicant and County:
  - (i) one (1) expert designated by the County;
  - (ii) one (1) expert designated by the applicant; and
  - (iii) one (1) expert chosen jointly by the County's designated expert and the applicant's designated expert.
- (b) A member of the panel assembled by the County under Subsection 8-6-2(a) may not be associated with the application that is the subject of the appeal.
- (c) The applicant shall pay:
  - (i) one half (1/2) of the cost of the panel; and
  - (ii) the County's published appeal fee.

## **8-7 VARIANCES**

### **8-7-1 Application**

Any person or entity owning, leasing, or holding a beneficial interest in any land within the unincorporated territory of the County may apply to the Board of Adjustment for a variance to the particular requirements of this Ordinance or of the applicable zone, such as size and lot width, frontage, setback, building size and height, or other similar regulations.

### **8-7-2 Distinguished from Appeals**

Requests for variances are not appeals and shall be considered according to the rules in this Section 8-7. Variances are not waivers from the requirements of this Ordinance nor shall they be used to change zoning policies reflected in this Ordinance and the Emery County General Plan, or to depart so far from such standards and requirements as to work a nullification thereof.

### **8-7-3 Variance Process**

An application for a variance shall be considered and processed as provided in this subsection.

- (a) A complete application shall be submitted to the Zoning Administrator in a form established by the Administrator along with any fee established by the County's schedule of fees. The application shall be in writing and shall include at least the following information:
  - (i) the name, address and telephone number of the applicant;
  - (ii) a map or plat of the property in question, in sufficient detail to identify its size, streets or roads adjacent thereto, geographical features or any other information relevant to the matter;

- (iii) the zone in which the property is situated;
  - (iv) the requirement or requirements in this Ordinance for which the variance is sought, the extent of such variance, and any proposed conditions of its granting; and
  - (v) an explanation of how the application satisfies the variance standards set forth in Section 8-7-4.
- (b) After an application is determined to be complete, the Zoning Administrator shall schedule a public hearing before the Board of Adjustment as provided in Sections 5-1 and 5-2 of this Ordinance.
  - (c) The Board of Adjustment shall hold a public hearing and thereafter shall approve, approve with conditions, or deny the application pursuant to the standards set forth in Section 8-7-4.
  - (d) After the Board of Adjustment makes a final decision, the Zoning Administrator shall give the applicant written notice of the decision within ten (10) days. The written decision shall state the:
    - (i) information required in the application;
    - (ii) findings of fact and conclusions of law addressing each of the factors set forth in Section 8-7-4(b); and
    - (iii) if a variance is granted:
      - (A) the regulation or standard affected and the extent to which the same is varied; and
      - (B) any conditions attached to the granting of the variance.
  - (e) A record of all variances shall be maintained in the office of the Zoning Administrator.

#### **8-7-4 Legal Grounds for Granting**

The following rules shall govern the Board of Adjustment in determining whether or not to grant a variance:

- (a) the determination shall be supported by factual findings which are entered in the minutes;
- (b) a variance may be granted only when all of the following apply:
  - (i) literal enforcement of the Ordinance provision in question would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of this Ordinance, but only if:
    - (A) the hardship arises from conditions located on or associated with the property for which the variance is sought;
    - (B) the hardship comes from circumstances peculiar to the property and not from conditions that are general to the neighborhood; and
    - (C) the hardship is not:
      - (I) self-imposed, meaning the hardship was not created by an action or decision of the applicant or a previous owner of the property; or
      - (II) economic, meaning the hardship is based on the cost to the applicant of complying with the Ordinance provision in question;

- (ii) there are special circumstances attached to the property that do not generally apply to other properties in the same zone, but only if such circumstances relate to the claimed unreasonable hardship under Section 8-7-4(b)(i)(A) and deprive the property of privileges enjoyed by other properties in the same zone;
- (iii) an adjustment of the regulation is essential to the enjoyment of a substantial property right possessed by other properties in the same zone;
- (iv) the variance will not substantially depart from the General Plan and will not be contrary to the public interest; and
- (v) the spirit of this Ordinance is observed and substantial justice done.

**8-7-5 Burden of Proof**

An applicant for a variance shall bear the burden of proving that all of the conditions justifying a variance have been met, meaning that, unless all of the facts supporting the granting of a variance are proven by a preponderance of the evidence, no variance may be granted.

**8-7-6 Run with the Land**

Variations run with the land which means that they pass to new owners along with title to the land.

**8-7-7 "Use Variations" Illegal**

No variance may be granted which purports to allow any activity or business which is otherwise prohibited within the zone where the subject property is located. Whether designated as a "use variance" or any other name, such rulings by the Board of Adjustment are not true variations and are void.

**8-7-8 Contents of Decisions**

In granting a variance, the Board of Adjustment shall state the specific regulation or requirement involved and the extent to which it is adjusted. The Board of Adjustment 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.

**8-7-9 Rulings Restricted to Specifics of Case**

Every decision of the Board of Adjustment is limited to the specific property, facts, and circumstances of the case before it, and no decision of the Board of Adjustment shall establish a precedent or bind the Board to grant a similar variance in other cases. A variance more restrictive than that requested by an applicant may be authorized when the record supports the applicant's right to some relief but not to the extent requested.

**8-7-10 Judicial Appeal**

Any person adversely affected by a final decision of the Board of Adjustment regarding a variance may, within thirty (30) days after such decision, appeal to the district court as provided in section 17-27a-801 of the Utah Code Annotated, as amended.

**8-7-11 Effect of Approval**

A variance shall not authorize the establishment of any use nor the development,

construction, reconstruction, alteration, or moving of any building or structure, but shall merely authorize the preparation, filing, and processing of applications for any approvals or permits that may be required by this Ordinance or other applicable provisions of the Emery County Code subject to the variance granted.

## **8-8 OTHER MATTERS**

### **8-8-1 Determination of Nonconforming Use and Zone Boundary Issues**

Questions regarding the interpretation of zoning maps and zone boundary lines may be considered at the request of any affected property owner or occupant or of any official, board or agency of the County, whether or not a determination has been made by another officer, board, or agency. Such matters shall be determined by the Board of Adjustment based upon the evidence presented, without deference to the findings or rulings of other County agencies, and the rulings of the Board of Adjustment shall control thereafter.

### **8-8-2 Procedure – Application for Review**

Applications for a determination of such matters shall be in writing and shall include:

- (a) the name, address and telephone number of the applicant, the owners and occupants of the property in question and all neighboring land owners and occupants;
- (b) a description of the question to be determined;
- (c) the legal description of any property involved;
- (d) the provision of this Ordinance, map or plat, including zoning maps, from which the question arises;
- (e) a statement whether any certified survey of the property or lines in question is known to the applicant; and
- (f) any other maps, surveys, documents, or source of information which will assist the Board in determining the questions presented.

### **8-8-3 Notice of Inquiry and Issues**

The Board shall send notice to all landowners and occupants of properties affected by the question and inquire as to the existence of any certified surveys, court decrees, or other information bearing on the question, and setting a date for the hearing within twenty-one (21) days following the date of the notice.

### **8-8-4 Findings Binding**

The Board's findings shall be stated in the minutes and shall be binding upon the County and the property involved, and a certified copy of its ruling may be ordered by the Board to be incorporated into the zoning map or recorded in the office of the County Recorder.

### **8-8-5 Judicial Appeal**

Any person adversely affected by a final decision of the Board of Adjustment regarding a matter described in this Section 8-8 may, within thirty (30) days after such decision, appeal to the district court as provided in Section 17-27a-801 of the Utah Code Annotated, as amended.

### **8-8-6 Effect of Approval**

A decision by the Board of Adjustment regarding the existence of a nonconforming use, noncomplying structure, or other nonconformity shall

authorize the applicant to continue, expand, or modify such nonconforming use, noncomplying structure, or other nonconformity as determined by the Board. A decision interpreting the zoning map or zoning boundary lines shall conclusively resolve the zoning of the subject property and the location of the zone boundaries.

**ARTICLE IX  
ZONES AND REGULATIONS WITHIN ZONES**

Sections

- 9-1 Zones and Zoning Clearances
- 9-2 Zone Records – Boundaries
- 9-3 A-1 (Agricultural) Zone
- 9-4 MG&R-1 (Mining, Grazing & Recreation) Zone
- 9-5 M-1 (Mountain) Zone
- 9-6 I-1 (Industrial) Zone
- Table 9-1

**9-1 ZONES AND ZONING CLEARANCES**

**9-1-1 Zones Enumerated**

In order to carry out the purposes of this Ordinance the unincorporated territory of Emery County, Utah, is hereby divided into zones, as follows:

- (a) A-1 (Agricultural) Zone
- (b) MG&R - 1 (Mining, Grazing & Recreation) Zone
- (c) M-1 (Mountain) Zone
- (d) I-1 (Industrial) Zone

**9-1-2 Zoning Clearance Prerequisite for Building Permit**

Prior to building any new structure or materially changing the use of any property in any zone, a zoning clearance must be obtained from the Zoning Administrator's office. The purpose of a zoning clearance is to certify that a proposed structure and/or use have been determined to be authorized under this Ordinance. If the project is a conditional use in the zone, the zoning clearance further certifies that a valid conditional use permit has been granted and is on file with said office. A zoning clearance is not a building permit. Building permits may be required by State law, separately from the zoning clearance required by this Ordinance and are concerned with construction standards which are separate and distinct from the subject matter of this Ordinance.

**9-2 ZONE RECORDS – BOUNDARIES**

**9-2-1 Use of Information Technology GIS**

The location and boundaries of each of said zones are to be ascertained by reference to records and software contained in GIS computer programs and files in the Emery County Information Technology Department and used to produce maps representing such records. Said records shall be maintained under the direction of the Planning Commission. A printed map produced from the most current of said records shall be available for inspection in the Planning and Zoning office during business hours. All databases, layers, notations, and other data used to locate zones and boundaries and print maps thereof are hereby incorporated herein as a part of this Ordinance.

**9-2-2 Rules for Resolving Boundary Issues**

Where uncertainty exists with respect to the boundaries of zones, and there is no definitive record of actions by the County Commission or the Planning

Commission, the following rules shall apply:

- (a) Where the indicated boundaries of a zone approximately coincide with roads, streets or land survey lines, the center of such roads or streets and such land survey lines shall be construed to be the zone boundaries.
- (b) Where the indicated boundaries approximately coincide with canals, natural streams, or watercourses, the center of said canal, natural stream, or watercourse shall be construed to be the zone boundaries.

### **9-2-3 Zone Boundaries**

In establishing zone boundaries, the Planning Commission shall endeavor to follow property boundaries or refer to monuments, existing geographical features and landmarks in order to facilitate location of the zone boundary lines.

## **9-3 A-1 AGRICULTURAL ZONE**

### **9-3-1 Legislative Intent**

The A-1 Agricultural zone is intended as a district in which the primary use of the land is agriculture, as defined in Article II. This zone is characterized by farms and ranches and single family dwellings as authorized herein. This zone is also intended to allow, as conditional uses, certain non-agricultural structures and/or activities as provided herein.

### **9-3-2 Objectives**

The objectives of the A-1 Agricultural zone are to:

- (a) protect and encourage arable land within Emery County and protect agriculture, which is an important part of the heritage of Emery County and the basis of the rural lifestyle prized by residents of Emery County;
- (b) contain the costs of government services such as police protection, fire fighting, ambulance services, school bus service, utilities, road building and maintenance, etc., by limiting residential development in areas where such services can be provided without undue expense;
- (c) assure orderly and efficient growth in appropriate areas and prevent residential sprawl;
- (d) minimize conflicts between agriculture and residential development; and
- (e) protect and enhance the economic role of agriculture in the County.

### **9-3-3 Permitted and Conditional Uses**

Permitted and conditional uses allowed within the zone are indicated by Table 9-1 at the end of this Article which shall be updated from time to time to reflect changes passed by the County Commission. The uses indicated in said Table 9-1 are further defined and subject to the regulations set forth in Articles X and XI of this Ordinance.

### **9-3-4 Point System**

To qualify as a zoning lot for purposes of zoning clearance for a residence in the A-1 Agricultural zone, a proposed parcel shall receive a total score of one thousand (1,000) points or more, based on the following criteria:

- (a) Proximity to incorporated communities (measured in distance traveled on existing roads from property entrance):
  - One (1) mile or less: 250 points
  - More than one (1) mile and two and one-half (2.5) miles or less:

- 200 points
- More than two and one-half (2.5) miles and five (5) miles or less: 150 points
- More than five (5) miles: 50 points
- (b) Road access and proximity of proposed building site to City, County or State roadway over owner built lane or driveway:
  - Two hundred fifty (250) feet or less: 250 points
  - More than Two hundred fifty (250) feet and five hundred (500) feet or less: 200 points
  - More than five hundred (500) feet and one thousand (1,000) feet or less: 150 points
  - More than one thousand (1,000) feet: 50 points

A road encroachment permit from the Emery County Road Department is required for any private access to county roads. Similar authorization may be required for state highways. Neither Emery County nor any agency providing police, ambulance or firefighting services shall under any circumstances be responsible for inability to deliver such services due to impassable private lanes or driveways.
- (c) Lot size:
  - 5 points per acre up to a maximum of two hundred (200) points
  - Minimum: 50 points for ten (10) acres
  - Maximum: 200 points for forty (40) acres
- (d) Culinary water service:
  - Documented culinary service from a public water system monitored in compliance with the Utah Safe Drinking Water Act: 200 points
  - Underground spring or well approved by the Utah State Engineer for domestic use: 100 points
  - Cisterns with access to water treated to safe drinking water standards (See Section 9-3-10): 100 points
- (e) Electric service:
  - Documented connection to public electric grid: 200 points
- (f) Sewage disposal:
  - Documented connection to public sewer system or other disposal system approved pursuant to state law: 200 points
- (g) Size of dwelling (as determined for purposes of a building permit):
  - 2500 square feet or greater: 100 points
  - 1500 to 2500 square feet: 50 points
  - Less than 1500 square feet: 25 points
- (h) This point system is established for purposes of zoning clearance only. It does not affect building permit requirements, which deal with construction codes and requirements. A zoning clearance pursuant to this section is required in addition to a building permit where a building permit is required by State law.

**9-3-5 Minimum Lot Size**

The minimum size for a lot in the A-1 Agricultural zone shall be as follows:

- Dwellings: 10 acres with a minimum of 1000 points under Subsection 9-3-4  
Churches: 3 acres

### **9-3-6 Frontage**

Each zoning lot shall comply with the frontage requirements as follows:

#### **Use Requirements**

One family dwelling - Twenty (20) feet of frontage upon a designated County road **OR**

Shall have direct and uninterrupted access to a County road over a private travel easement which complies with the following conditions:

- (a) the designated easement is fifty (50) feet or more in width from a designated County road;
- (b) said easement is evidenced by a recorded deed establishing an express easement running with the property served thereby; and
- (c) a document, acceptable to the County, executed by the owner of such property declaring that the travel way is a private roadway and absolving the County from any responsibility for any maintenance upon the easement or roadway unless and until such time as it has been formally deeded and accepted by the County.

### **9-3-7 Setbacks**

All buildings shall be set back from the property lines as follows:

- (a) Front setback - All buildings shall be set back at least fifty-five (55) feet from the center of any public road or thirty (30) feet from the right-of-way line, whichever is the greater distance, except that all buildings situated adjacent to State or Federally designated highways, except non access highways, shall be set back at least fifty (50) feet from the right-of-way line.
- (b) Side setback - All dwellings shall be set back at least ten (10) feet from a side lot line, except that no side setback shall be required for accessory buildings, barns, coops, and sheds which are located over one hundred (100) feet from the nearest dwelling. On corner lots, the required setback from the side property line which abuts on the street shall be the same as the front setback. Feed lots for over 100 animals must be at least 1/4 mile from the nearest dwelling or municipal boundary or Federal highway.
- (c) Rear setback - All dwellings shall be set back from the rear property line at least ten (10) feet, except that no rear setback shall be required for accessory buildings, barns, coops, and sheds, which are located over one hundred (100) feet from the nearest dwelling.

### **9-3-8 Height Requirements**

There are no minimum height requirements for buildings in the A-1 zone.

### **9-3-9 Size of Dwelling**

See Section 9-3-4

### **9-3-10 Special Provisions**

- (a) All dwellings and other buildings intended for human occupancy not connected to a provider of water treated to Utah safe drinking water standards may be constructed using a private tank or cistern provided

that:

- (i) connection to a provider of water treated to Utah safe drinking water standards is not feasible; and
  - (ii) the design of such tank or cistern has been approved by the County Building Official.
- (b) All dwellings and other buildings intended for human occupancy shall be served by either a municipal sewage collection and treatment system or by individual septic system constructed as required by Utah State law.

#### **9-3-11 Supplementary Regulations**

Uses within the A-1 Agricultural zone shall comply with supplementary regulations to zones set forth in Article VI of this Ordinance.

### **9-4 MINING, GRAZING & RECREATION (MG&R-1) ZONE**

#### **9-4-1 Declaration of Legislative Intent**

The MG&R-1 Mining, Grazing and Recreation zone generally covers the dry mountain and desert areas of the County. Because of the limitations imposed by climate, topography, soil capability, inadequate water supply, and the presence of economically significant mineral deposits, this area has historically been utilized as a place for the grazing of livestock on the open range and as the location of numerous mining and mineral exploration sites. The peculiar characteristics and conditions present in this area make the land most appropriately suited for a continuation of these uses. However, because of the relatively fragile balance of nature in the area, all permitted activities must be carried out in a manner consistent with the limitations of the environment.

#### **9-4-2 Objectives**

- (a) The objectives of the M&G-1 Mining and Grazing zone are to:
- (i) take advantage of and to more fully implement the basic purposes for planning and zoning as set forth in Section 17-27, Utah State Code;
  - (ii) promote the conservation of water, land, mineral, and other resources;
  - (iii) prevent the degradation of the natural and social environment;
  - (iv) foster agriculture, mining, and industry within the state; and
  - (v) provide a location for certain types of agricultural, industrial, and other uses which, because of certain characteristics of operation such as odor, noise, etc., are not compatible with urban development.
- (b) In order to accomplish the above stated objectives, those uses which are reasonably necessary to the use of the land for agricultural, mining, and certain types of industrial operations shall be encouraged, provided that adequate guarantees for the protection of the area have been incorporated. Conversely, residential, commercial, and similar urban type uses which are inconsistent with the continued use of the area for the above stated purposes are not permitted in this zone. The specific regulations necessary for the accomplishment of the purposes as outlined above are hereinafter set forth.

### **9-4-3 Permitted Uses and Conditional Uses**

Permitted and conditional uses allowed within the zone are indicated by Table 9-1 at the end of this Article which shall be updated from time to time to reflect changes passed by the County Commission. The uses indicated in said Table 9-1 are further defined and subject to the regulations set forth in Articles X and XI of this Ordinance.

### **9-4-4 Area Requirements**

There shall be no minimum area requirements in the MG&R-1, Mining, Grazing and Recreation zone except as may be required under other provisions of this Ordinance.

### **9-4-5 Width Requirements**

There shall be no minimum width requirements in the MG&R-1, Mining, Grazing and Recreation zone except as may be required under other provisions of this Ordinance.

### **9-4-6 Location Requirements**

All buildings shall be set back at least sixty (60) feet from the center line of a County road or thirty (30) feet from the front line, whichever is greater, except as required in Section 6-13.

### **9-4-7 Size and Height Requirements**

There are no size and height requirements in the MG&R-1 Mining, Grazing and Recreation zone.

### **9-4-8 Special Requirements**

- (a) The yards around buildings shall be kept free of debris, refuse, weeds, and other flammable material which may constitute a fire hazard.
- (b) No building used for human habitation shall be constructed nor shall any permit be issued, therefore, until sewage disposal facilities have been approved in accordance with minimum health standards as established by the State and/or local health authority.
- (c) All dwellings, individual mobile homes, caretaker dwellings and other structures intended for human occupancy shall be served by an approved water system. However, such dwellings and structures may be constructed using an individual water storage facility provided that:
  - (i) the proposed use or building is permitted within the zone and if the use is for a dwelling, the dwelling qualifies as a caretaker dwelling;
  - (ii) connection to an approved water system is not feasible; and
  - (iii) the design of the proposed water storage facility has been approved by the local health authority in accordance with County and State standards.

### **9-4-9 Supplementary Regulations**

Uses within the MG&R-1, Mining, Grazing, and Recreation zone shall comply with supplementary regulations to zones set forth in Article VI of this Ordinance.

## **9-5 M-1 MOUNTAIN ZONE**

### **9-5-1 Declaration of Legislative Intent**

The M-1 Mountain zone includes the watershed for the communities on the west side of the County. It is characterized by forested areas of the Manti Plateau,

together with canyons, riparian and valley floors. It contains numerous reservoirs, streams and areas of snow pack, as well as forested areas and steep slopes. Public concerns in this zone are prevention of forest fires and the health of forests, which in turn affect the water supplies to communities in and out of Emery County. Forestry methods which may result in erosion, silting of streams, loss of habitat for fish and wildlife, degradation of scenic vistas and other environmental damage are major concerns in this zone. Because of these concerns, and other limitations imposed by topography, climate, soil conditions, and other natural features, use of the land within this zone has been restricted to uses which can be regulated to protect the watershed, wildlife habitat and the scenic values in the area, while allowing sustainable uses, such as livestock grazing, recreational camping, fishing, hunting, etc. and timber harvesting. Mining activity, which is a major part of the County's economy, is allowed as a conditional use with careful planning and permitting. The area contains some private land which may be used for cabins, providing they can be made compatible with the protection of the watershed and meet the requirements set forth herein.

#### **9-5-2 Objectives**

The objectives of the M-1 Mountain zone are as to:

- (a) implement the planning and zoning powers set forth in Sections 17-27- 5 and 17-27-13 of the Utah State Code, this Ordinance generally and the Emery County General Plan;
- (b) protect and conserve the water supply, vegetation, soils, wildlife, and other natural resources within the watershed;
- (c) prevent erosion, flooding, forest fires, and the waste or destruction of resources and scenic values;
- (d) protect reasonable access rights of the public for recreation, sustainable use, grazing, hunting, fire fighting and forest management;
- (e) supplement and coordinate land management decisions of other governmental agencies with jurisdictions in the areas;
- (f) protect the condition of forests and habitat, existing trails, roads, signs and structures and campgrounds, as well as natural and man-made lakes and streams, and the natural beauty of the area; and
- (g) limit or prohibit uses and practices which create hazardous conditions or unreasonably degrade or damage the quality of the environment in this zone.

#### **9-5-3 Permitted Uses and Conditional Uses**

Permitted and conditional uses allowed within the zone are indicated by Table 9-1 at the end of this Article which shall be updated from time to time to reflect changes passed by the County Commission. The uses indicated in said Table 9-1 are further defined and subject to the regulations set forth in Articles X and XI of this Ordinance. Regulations governing planned unit developments in this zone are set forth in the Article XIII of this Ordinance.

#### **9-5-4 Area Requirements**

No dwelling shall be constructed on a lot smaller than eighty (80) acres, unless the lot is part of an approved mountain subdivision.

#### **9-5-5 Special Requirements**

- (a) All dwellings and structures shall be set back at least one hundred (100) feet from the nearest public road or highway.
- (b) Any disturbed natural ground surface which is not built upon or paved, shall be restored or reclaimed to its natural state in a manner which will prevent erosion and growth of noxious weeds.
- (c) Every dwelling shall have a sewage disposal and/or treatment system meeting the requirements of State law.

**9-5-6 Supplementary Regulations**

Uses within the M-1 Mountain zone shall comply with supplementary regulations to zones set forth in Article VI of this Ordinance.

**9-6 I-1 INDUSTRIAL ZONE**

**9-6-1 Declaration of Legislative Intent**

The I-1 Industrial zone has been established for the purpose of providing places where manufacturing, processing, warehousing, and fabrication of goods and material can be carried on with minimum conflict or deleterious effect upon surrounding properties. It is also intended in this zone to promote the economic well-being of the people and to broaden the tax base. This zone is characterized by a mixture of industrial, manufacturing and processing establishments with intermittent open land that is served by streets, power, water and other utilities and facilities or where such facilities can be readily provided. The specific regulations necessary for the accomplishment of the purposes of the zone are hereinafter set forth.

**9-6-2 Permitted Uses and Conditional Uses**

Permitted and conditional uses allowed within the zone are indicated by Table 9-1 at the end of this Article which shall be updated from time to time to reflect changes passed by the County Commission. The uses indicated in said Table 9-1 are further defined and subject to the regulations set forth in Articles X and XI of this Ordinance.

**9-6-3 Area Requirements**

There are no minimum area requirements in the I-1 Industrial zone except that an area sufficient to accommodate location requirements, off-street parking, loading and unloading, and vehicular access shall be provided and maintained.

**9-6-4 Width Requirements**

There are no width requirements in the I-1 Industrial zone.

**9-6-5 Location Requirements**

All buildings shall be set back at least sixty (60) feet from the center of any public road or thirty (30) feet from the right-of-way line, whichever is the greater distance, except as required in Section 6-13.

**9-6-7 Height and Size Requirements**

There are no height and size requirements in the I-1 Industrial zone.

**9-6-8 Special Provisions**

- (a) The yards around buildings shall be kept free of debris, refuse, weeds, and other flammable material which may constitute a fire hazard.
- (b) No building used for human habitation shall be constructed nor shall any permit be issued therefore, until sewage disposal facilities have been

approved in accordance with minimum health standards as established by the State and/or local health authority.

- (c) All dwellings, individual mobile homes, caretaker dwellings and other structures intended for human occupancy shall be served by an approved water system. However, such dwellings and structures may be constructed using an individual water storage facility provided:
  - (i) the proposed use or building is permitted within the zone and that, if the use is for a dwelling, said dwelling shall qualify as a caretaker dwelling;
  - (ii) connection to an approved water system is not feasible; and
  - (iii) the design of the proposed water storage facility has been approved by the local health authority in accordance with County and State standards.

**9-6-9 Supplementary Regulations**

Uses within the I-1 Industrial zone shall comply with supplementary regulations to zones set forth in Article VI of this Ordinance.

**Table 9-1**

(P=Permitted Use; L1=Level 1 Conditional Use permit required; L2=Level 2 Conditional Use; L3=Level 3 Conditional Use; N=Not Allowed)

<b>Description of Use</b>	<b>A-1</b>	<b>MG&amp;R-1</b>	<b>M-1</b>	<b>1-1</b>
Farms and ranches, except animal by-products plants and concentrated animal feeding operations (CAFOs)	P	P	P	P
Minor utility transmission lines and projects	P	P	P	P
Reservoirs with a potential capacity under 20 acre feet of water	P	P	P	P
Public agency parks	P	P	P	P
Single-family dwellings	L1	LI	L1	N
Residential facilities for elderly	L1	L1	LI	N
Residential facilities for persons with a disability	L1	LI	L1	N
Home occupations	L1	LI	L1	L2
Forest and plant nurseries and greenhouses	Li	L1	L1	L1
Fish hatcheries and the raising of fish	L1	L1	L1	L1
Country clubs, golf courses, skeet and trap shooting clubs	L2	L2	L2	L2
Gas and oil wells	L1	L1	Li	LI
Commercial storage units	L2	L2	L2	L2
Sand and gravel pits	L1	L1	L1	L1
Hunting preserves and associated accessory storage building	L2	L2	L2	L2
Rifle, shotgun, archery shooting ranges	L2	L2	L2	N
Minor mine developments	L2	L2	L2	L2
Heavy industry	L3	L3	L3	L2
Seismograph sites	L2	L2	L2	L2
Water reservoirs with a capacity over 20 acre feet	L2	L2	L2	L2
Schools	L2	L2	L2	N

Churches	L2	L2	L2	N
<b>Description of Use</b>	<b>A-1</b>	<b>MG&amp;R-1</b>	<b>M-1</b>	<b>1-1</b>
Public parks and playgrounds	L2	L2	L2	L2
Fur farms	L2	L2	L2	N
Kennels	L2	L2	L2	L2
Riding academies and clubs	L2	L2	L2	
Minor mine developments	L2	L2	L2	L2
On-premise occupations	L2	L2	L2	L2
Temporary uses (See Section 11-3-3)	L2	L2	L2	L2
Moved buildings	L2	L2	L2	L2
Significant sand or gravel operations	L2	L2	L2	L2
Emery County promotional signs	L2	L2	L2	L2
Oil and gas operations	L2	L2	L2	L2
Travel related commercial projects	L2	L2	L2	L2
Automobile and motorcycle race tracks and race courses	L2	L2	N	L2
Campground and picnic facilities	L2	L2	L2	N
Airports and airstrips	L3	L3	L3	L3
Major utility transmission lines	L3	L3	L3	L3
Railroads	L3	L3	L3	L3
Water treatment facilities and transmission lines	L3	L3	L3	L3
Dump yards, land fills, and salvage yards	L3	L3	N	L3
Solid waste disposal landfill	L3	L3	N	L3

**ARTICLE X**  
**CONDITIONAL USE PERMITS**

Sections

- 10-1 General Provisions
- 10-2 Permit Types
- 10-3 Standards for Decision Making
- 10-4 Procedures
- 10-5 Content of Permits – Conditions

**10-1 GENERAL PROVISIONS**

**10-1-1 Building Permits Distinguished**

Building permits and occupancy permits are not conditional use permits and cannot be issued by the Planning Commission, the Board of Adjustment, or the County Commission.

**10-1-2 Variances Distinguished**

Variances may be granted only by the Board of Adjustment and are not conditional use permits. The Board of Adjustment is not authorized to issue conditional use permits.

**10-1-3 Purposes**

- (a) A conditional use permit authorizes 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.
- (b) The purpose of this Article is to establish standards, rules, and procedures for granting or denying conditional use permits and for identifying and addressing issues which may arise in the permitting process.

**10-2 PERMIT TYPES**

**10-2-1 Level 1 Permits**

- (a) Level 1 conditional use permits may be granted by the Zoning Administrator upon findings that are required herein.
- (b) Level 1 permits are intended for uses having limited impact on surrounding land uses, where all issues are resolved by the required conditions set forth herein for such use.
- (c) If the Zoning Administrator determines that an application for a Level 1 conditional use permit presents novel or unusual land use planning issues or involves concerns which fall within Subsection 10-2-2(b) or 10-2-3(b) the Zoning Administrator may refer such application to the Planning Commission for review as a Level 2 permit or Level 3 permit, as the case may be.
- (d) Appeals may be made to the Planning Commission of any decision made by the Zoning Administrator by any aggrieved person or by an officer, employee, board, or agency of the County affected by such action. Appeals shall be made in writing with the Secretary of the Planning Commission within ten (10) days after the decision is made. The Planning

Commission may affirm, modify, or overrule the decision of the Zoning Administrator.

#### **10-2-2 Level 2 Permits**

- (a) Level 2 conditional use permits may be granted by the Planning Commission in accordance with the procedures and standards set forth herein.
- (b) Level 2 permits are intended to apply to uses which impact a particular neighborhood, zone, or vicinity and which present issues specific to the use and location involved and call for conditions fashioned to address such issues for the particular location and surroundings. Uses on public lands which, in the judgment of the Planning Commission chair, are small in scope and are routinely permitted by State or Federal agencies without extraordinary procedures, hearings, or impact studies, and which do not substantially impact the County as a whole, may be treated as Level 2 permitted uses, provided notice thereof is provided to the County Commission.
- (c) If the Planning Commission determines that an application for a Level 2 conditional use permit presents land use and planning issues set forth in Subsection 10-2-3(b) herein, it may refer such application, together with its finding and recommendations, to the County Commission for review as a Level 3 permit.
- (d) Appeals may be made to the County Commission of any decision made by the Planning Commission by any aggrieved person or by an officer, employee, board or agency of the County affected by such action. Appeals shall be made in writing with the Secretary of the County Commission within ten (10) days after the decision is made. The County Commission may affirm, modify, or overrule the decision of the Planning Commission.

#### **10-2-3 Level 3 Permits**

- (a) Level 3 conditional use permits may be granted by the County Commission in accordance with the procedures and standards set forth herein.
- (b) Level 3 permits are intended to apply to uses having County-wide impact and uses which present issues specific to the use and location involved. Such permits are also intended for situations where the interests and powers of other governmental and/or quasi-governmental entities require extraordinary coordination or resolution of conflicts with the County's interests in regulating the proposed use.
- (c) Appeals may be made to the district court of any decision made by the County Commission by any aggrieved person or by an officer, employee, board or agency of the County affected by such action.

### **10-3 STANDARDS FOR DECISION MAKING**

#### **10-3-1 Role of the Granting Land Use Authority**

The granting land use authority under this Article exercise administrative, i.e. executive, powers. Such powers shall not be exercised arbitrarily or capriciously but only in accordance with the procedures and standards set forth in this Article

and Section 5-3-3 of this Ordinance.

### **10-3-2 General Procedures**

In reviewing and acting upon an application for a conditional use permit under this Article, the granting land use authority shall proceed in the following order:

- (a) determine the nature of the proposed use;
- (b) adopt any special procedures which may be necessary to a full and fair understanding of the matter before it;
- (c) hear and review evidence; and
- (d) make findings and issue a decision.

### **10-3-3 Criteria for Decisions**

A conditional use shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards. If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the conditional use may be denied.

- (a) In reviewing and acting upon applications for conditional use permits, the granting land use authority shall substantially conform to the standards set forth in this Subsection 10-3-3, which define the manner in which the review process shall be conducted and the goals thereof. The purpose of minutes and findings required in this Article is to document that these criteria have been substantially met.
- (b) Uniform principles and conditions shall be applied in granting or denying permits for uses and locations which are similar in nature.
- (c) The policies stated in the Emery County General Plan, this Ordinance, and the purposes and goals of the applicable zone shall be observed, and conditions imposed shall be reasonably formulated to mitigate or eliminate conflicts with said plan and purposes.
- (d) The concerns of owners and occupants of other properties near a proposed conditional use shall be considered, as well as the impact of such use upon cities and towns, schools and school districts, and other governmental and quasi-governmental entities based upon substantial evidence in the record. Reasonable efforts shall be made to identify such parties and to invite their comments on the matter. Public comment shall be considered as only one (1) of a variety of factors in the decision making process.
- (e) The granting land use authority shall consider and address the potential for the proposed use to become or create a nuisance.
- (f) Limits and conditions shall be reasonably fashioned to mitigate or eliminate undesirable effects of proposed uses and render the use compatible with the existing uses in the vicinity. Such limits and conditions may include, but are not limited to, setbacks and height limitations, special construction standards, fencing, paint colors, and security in the form of bonds or other sureties acceptable to the County to cover the cost of removing offensive structures and conditions and restoring the land to its former condition, should the applicant violate the

- terms of the permit or fail to carry out its obligations under the permit.
- (g) The granting land use authority shall consider the costs, or other burdens, which may be incurred by the County or other local governmental and quasi-governmental entities, in monitoring and enforcing compliance with conditions imposed and in providing public services to the property in question, and may deny a permit where such burdens are, in the opinion of the granting land use authority, excessive.

## **10-4 PROCEDURES**

### **10-4-1 Fees and Costs**

- (a) No application shall be processed without payment in advance of an application fee as set forth in Section 5-1-8 of this Ordinance.
- (b) The payment of the application fee shall not prevent the County from requiring reimbursement for such other costs as may be incurred during the review process, provided such additional costs are reasonably required and actually incurred by Emery County in its review of the particular application. Such costs may include, but are not limited to, the fees of independent consultants and experts, the costs of special reports and studies, transportation costs, etc. Failure to pay such costs is grounds for denial of the application, provided, however, that they shall not be incurred and may not be imposed without prior disclosure to the applicant.

### **10-4-2 Application**

- (a) Every application for a conditional use permit shall be filed in the Office of the Zoning Administrator and shall include the following information, as a minimum:
  - (i) a legal description of the property for which the permit is sought, a copy of the recorded plat showing the property, and a vicinity drawing or plan showing roads and other landmarks which will aid in identifying the property;
  - (ii) a minimum of five (5) copies (or as required) of an area plot plan of the site showing existing and proposed buildings, railroads, easements, common drives, open space, trails, water courses or other important features within or adjacent to the property;
  - (iii) proof of ownership or other legal right entitling the applicant to conduct the proposed use on the property;
  - (iv) the name, address and telephone number of the applicant and the owners or occupants of the property, and any authorized representatives of such persons;
  - (v) the names and addresses of all persons owning and/or occupying property contiguous to the property in question; and
  - (vi) a description of the proposed use including proposed excavation, construction, paving, fill, buildings, equipment, activities on the property, number of persons employed, and such other information as may assist the Zoning Administrator or other land use authority in reviewing the application.
- (b) The Planning Commission may specify additional information to be

- included in an application.
- (c) The Zoning Administrator shall examine the application to determine:
    - (i) if the application is complete as provided in Section 5-1-6 of this Ordinance;
    - (ii) if the proposed use qualifies as a conditional use under this Ordinance, and if so, what type of permit is required; and
    - (iii) the amount of the application fee according to the current fee schedule.
  - (d) Following such examination, the Zoning Administrator shall give notice to the applicant of the following, as applicable:
    - (i) if the application is incomplete, what information is necessary to complete it as set forth in Section 5-1-6 of this Ordinance;
    - (ii) if the proposed use is a permitted use within the zone, the fact that no conditional use permit is required;
    - (iii) if the proposed use is neither a conditional use nor a permitted use under this Ordinance, the fact that the use is prohibited; or
    - (iv) if the proposed use is a conditional use hereunder, the type of permit and the amount of the application fee required.
  - (e) Upon the submission of a completed application, a determination that the proposed use qualifies as a conditional use, and payment of the required fees, the Zoning Administrator shall, within thirty (30) days, take further action as set forth herein.

#### **10-4-3 Zoning Administrator Review**

- (a) If the proposed use is designated herein as requiring a Level 1 conditional use permit and presents no issues justifying referral to the Planning Commission, the Zoning Administrator shall make written findings according to the criteria set forth herein for the particular use involved and shall grant or deny the permit in accordance with such findings.
- (b) If the Zoning Administrator determines that the proposed use requires a Level 2 or 3 conditional use permit, or that it should be referred in accordance with Section 10-2 hereof, the Zoning Administrator shall submit the application and supporting materials to the Chair of the Planning Commission for further action.

#### **10-4-4 Preliminary (Planning Staff) Review**

- (a) The Chair of the Planning Commission shall review each application forwarded by the Zoning Administrator and may call and convene a meeting of the planning staff for a preliminary review as provided herein. In cases where the application does not appear to present technical issues requiring staff input, the Chair may waive staff review and pass the matter directly to the Planning Commission for further action.
- (b) The planning staff meeting shall be conducted by the Chair and shall include, unless excused by the Chair, the Zoning Administrator, the Chair, the County's engineering consultant, the County Road Superintendent, legal counsel, and such other persons as may be invited by the Chair. Applicants may attend such meeting, but are not required to do so. However, failure of an applicant to attend a planning staff meeting which

the applicant has been requested to attend shall be grounds for adjourning the meeting to a later date.

- (c) The purpose of the planning staff meeting is to assist both the applicant and the Planning Commission as follows:
  - (i) by identifying technical issues which may arise in connection with the proposed use and recommending matters which should be addressed by the land use authority;
  - (ii) by identifying and marshaling relevant data, or advising the granting land use authority of what data it should seek;
  - (iii) by recommending procedures which may be appropriate to the proposed use, in order to tailor the process to meet the particular requirements of the proposal; and
  - (iv) by identifying other agencies or experts which may have interests in the proposed use, or which may provide relevant information regarding the same.
- (d) Planning staff review is intended to be flexible and to facilitate communication among all affected parties and entities. Although such review should be completed without unwarranted delay, it may be continued or adjourned for production of required information, as the Chair shall deem expedient.
- (e) Upon completion of its review, the planning staff shall prepare its recommendations regarding the proposed conditional use permit in written form, setting forth scheduling and procedural plans according to the complexity and size of the project or proposed use. Planning staff may ask that additional information be gathered and considered before the application go before the entire Planning Commission for consideration.
- (f) The application shall be forwarded to the Planning Commission together with the findings and recommendations from the planning staff review. The planning staff is not, however, empowered to grant or deny a conditional use permit.

#### **10-4-5 Planning Commission Review**

- (a) The Planning Commission shall consider the application and the recommendations of the planning staff in open session and shall first determine the procedural requirements for a proper review. Such consideration may be completed in one meeting or may be rescheduled, adjourned or tabled as the Planning Commission shall deem expedient to complete its review. If the proposed use is large and complex, or involves other public entities, the Planning Commission may adopt or recommend a procedural plan for the project.
- (b) A procedural plan may divide consideration of the project into stages and specify particular elements to be approved as a prerequisite to others. A procedural plan may include, but shall not be limited to, critical path analysis and scheduling, public hearings, submission of additional plans and drawings as deemed necessary, economic, engineering and environmental studies, etc. It may require reports on specific elements and issues from the planning staff, other county officials or employment of

expert consultants for advice on particular elements or stages of the project. It may also provide for responses to the application from any person or public entity affected by the proposed use.

- (c) Before the Planning Commission concludes its review, the applicant shall be permitted to address the Commission and answer questions concerning the matter, and to submit amendments to the application addressing concerns and issues which may arise, and to suggest solutions to problems identified in the proceedings.
- (d) No findings shall be made, and no permit issued, until the Planning Commission is satisfied that it has sufficient information upon which to base its actions. Once satisfied, the Planning Commission shall adopt findings meeting the required findings and required conditions set forth for the use in question. Copies of the findings shall be kept in the applicant's file and delivered to the applicant as provided in Section 5-2-2 of this Ordinance.
- (e) If the application is for a Level 2 conditional use permit or has been referred by the Zoning Administrator under Subsection 10-2 as appropriate for such a permit, the Planning Commission shall take one (1) of the following actions, based upon its findings in the matter:
  - (i) approve the conditional use;
  - (ii) disapprove the conditional use;
  - (iii) approve the conditional use subject to modification; or
  - (iv) where considered necessary, act to table for further consideration.
- (f) If the application is for a Level 3 conditional use permit, the Planning Commission shall conduct a review in accordance with this subsection and shall report its findings and recommendations to the County Commission.

#### **10-4-6 County Commission Review**

- (a) Applications for Level 3 conditional use permits which have been reviewed and recommended by the Planning Commission, and others referred by it, shall be brought before the next regularly scheduled meeting of the County Commission or such other time as the County Commission shall determine.
- (b) Before acting on the application, the County Commission shall first determine the procedural requirements for a proper review of the matter, which shall include a public hearing on the matter if none has been held previously. If the Planning Commission has adopted or recommended a procedural plan for the matter, such plan may be amended by the County Commission but shall be substantially followed.
- (c) The County Commission shall review and consider the report and recommendations of the Planning Commission in open session. The Chair of the Planning Commission or the Chair's designee shall be present during such discussion to answer questions concerning the report, and the applicant shall be given an opportunity to comment on the report and to confer with the County Commissioners.
- (d) The County Commission shall not be bound by the findings and recommendations of the Planning Commission, but it shall address each of

them and explain on the record its reasons for any variation from such findings and recommendations.

- (e) If issues arise before the County Commission which were not addressed in the report of the Planning Commission, the application may be remanded for a supplemental report limited to such issues only.
- (f) No findings shall be made, and no action taken, until the County Commission is satisfied that it has sufficient information upon which to base its actions and has made written findings, copies of which shall be delivered to the applicant as provided in Section 5-2-2 of this Ordinance.
- (g) Following the adoption of its findings regarding the matter or a particular stage of the project, as the case may be, the County Commission shall take one (1) of the following actions:
  - (i) approve the conditional use;
  - (ii) disapprove the conditional use;
  - (iii) approve the conditional use subject to modification; or
  - (iv) where considered necessary, act to table for further consideration.

#### **10-4-7 Appeal of Decision**

Within thirty (30) days after a final decision by the land use authority regarding a conditional use permit, an adversely affected person may, depending on the permit type, appeal to the appropriate appeal authority or the district court as set forth in Sections 10-2-1(d) 10-2-2(d), or 10-2-3(c) of this Ordinance, as the case may be.

#### **10-4-8 Effect of Approval**

A conditional use permit shall not relieve an applicant from obtaining any other authorization, permit, or license required under this Ordinance or any other provision of the Emery County Code.

#### **10-4-9 Transfer of Permit**

A conditional use permit may be transferred so long as:

- (a) the use conducted thereunder conforms to the terms of the permit;
- (b) the County is advised in writing prior to the transfer; and
- (c) the transferee agrees to be bound by the terms and conditions of the permit.

#### **10-4-10 Amendment**

The procedure for amending any conditional use permit shall be the same as the original procedure set forth in this Article.

#### **10-4-11 Revocation**

- (a) A conditional use permit may be revoked as provided in Sections 7-10-2 and 7-10-4 of this Ordinance. In addition to the grounds for revocation set forth in such sections, any of the following shall be grounds for revocation:
  - (i) the use for which a permit was granted has ceased for one (1) year or more;
  - (ii) the holder or user of a permit has failed to comply with the conditions of approval or any County, State, or Federal law governing the conduct of the use;
  - (iii) the holder or user of the permit has failed to construct or maintain

- the site as required by an approved permit or plan; and
    - (iv) the operation of the use or the character of the site has been found to be a nuisance or a public nuisance by a court of competent jurisdiction in any civil or criminal proceeding.
  - (b) No conditional use permit shall be revoked against the wishes of the holder or user of the permit without first giving such person an opportunity to appear before the County Commission and show cause as to why the permit should not be amended or revoked. Revocation of a conditional use permit shall not limit the County's ability to initiate or complete other legal proceedings against the holder or user of the permit.

#### **10-4-12 Expiration**

Except as otherwise set forth in this Ordinance, an approved conditional use permit shall expire and have no further force or effect if the building, activity, construction, or occupancy authorized by the permit is not commenced within one (1) year after approval.

### **10-5 CONTENT OF PERMITS – CONDITIONS**

#### **10-5-1 Required Contents**

Every conditional use permit issued pursuant to this Article shall be in writing with duplicate originals, and shall contain the date granted, a description of the property affected; the zone in which it is situated; the name, address and telephone number of the applicant; together with the following, where applicable:

- (a) a statement of the provisions in this Ordinance which authorize the conditional use permit;
- (b) a statement of compliance, setting forth the granting land use authority and the procedures followed in granting the permit;
- (c) a statement setting forth the required findings for such permit and confirming that each has been supported by reliable substantial evidence;
- (d) a statement of the conditions under which the conditional use will operate, including any conditions which are specifically required by this Ordinance and such other conditions, if any, added by the granting land use authority in accordance with this Ordinance;
- (e) if the permit is required to be renewed by the provisions of this Ordinance, the expiration date of the permit; and
- (f) if the permit is for a stage in the construction of a large or complex project, it shall so state and identify the master project.

#### **10-5-2 Signatures and Seal**

Every permit issued shall contain the signatures of the Zoning Administrator, the Chair of the Planning Commission, and, if applicable, the signature of the Chair of the County Commission with the seal of Emery County affixed; and the following statement, followed by the date of issuance and the signature of the Applicant or its legally authorized agent, and a notarized acknowledgment thereof:

*The applicant hereby acknowledges receipt of this conditional use permit and affirms that the facts herein stated are true. The applicant further agrees that it operate the conditional use permitted hereby at all times in*

*compliance with the conditions set forth herein and in accordance with the laws of the United States of America, the State of Utah and of the County of Emery. The applicant admits jurisdiction of the Seventh District Court of the State of Utah for purposes of enforcement of and litigation concerning this permit. If this permit expires or is revoked by the granting land use authority, the applicant agrees to cease operations immediately until this permit is reinstated or a new permit granted. The applicant understands that failure to comply with the conditions set forth herein may result in legal action being taken to enjoin its operations hereunder, and, if necessary, to require the restoration of such property to its condition prior to the issuance hereof. This permit and the conditions stated herein run with the land and are enforceable against all purchasers, tenants, lessees, transferees, or successors in interest to the subject property.*

**ARTICLE XI**  
**AUTHORIZED CONDITIONAL USES**

Sections

- 11-1 General Requirements and Conditions
- 11-2 Level 1 Conditional Uses
- 11-3 Level 2 Conditional Uses
- 11-4 Level 3 Conditional Uses

**11-1 GENERAL REQUIREMENTS AND CONDITIONS**

The following findings are prerequisites for every conditional use permit herein, in addition to those required herein for the particular use involved:

- (a) the use is allowed as a conditional use within the zone where it is proposed; and
- (b) taking into account the requirements and conditions of the permit, the use is consistent with the policies and goals set forth in the Emery County General Plan and the zone in which it is proposed.

**11-2 LEVEL 1 CONDITIONAL USES**

The following land uses may be granted Level 1 conditional use permits when approved pursuant to the procedures and standards in this Article:

**11-2-1 Gas and Oil Wells**

- (a) Definition:  
Any operation utilizing equipment which advances a bore hole into strata for the purpose of discovery, development, and/or production of oil or gas.
- (b) Required Information:  
In addition to the information required herein for all permit applications, the applicant shall submit information necessary to demonstrate compliance with the following conditions:
  - (i) copies of the Application for Permit to Drill or equivalent document filed with the primary permitting agency, and all supplemental public documents filed by the applicant with such agency;
  - (ii) plans for dealing with releases of hazardous materials in connection with the drilling or operation of the well have been prepared, furnished to the local fire, police and civil defense authorities and that equipment required by such plans is on the site (may be satisfied by a plan covering all similar activities of the applicant within the County);
  - (iii) the applicant has obtained a Road Encroachment Permit from the Emery County Road Superintendent for the roads to be used by it or its agents in the drilling and operation of the well;
  - (iv) if the location is on private land, the driller has the legal right to the minerals below such land and the right to enter upon it in order to drill and operate the well;
  - (v) supplemental information and reports have been furnished as necessary to keep local officials and agencies current as to the



- the ground floor area of the dwelling will be devoted to the home business, and
- (B) any garage, detached or attached, carport or accessory structure will be used in a manner that does not detract from its original purpose;
- (vi) signs will be limited to one (1) unlit sign not exceeding two hundred twenty-six (226) square inches in area and subject to all requirements listed in Section 6-17 of this Ordinance;
- (vii) the applicant will obtain and maintain a current business license to operate within the County;
- (viii) there will be no separate entrance for the home business; and
- (ix) the home business will not materially alter the outward appearance of the dwelling or result in other activities likely to disturb established permitted uses in the vicinity or depreciate surrounding property values.
- (c) Required Findings:  
The Zoning Administrator shall approve said application if the Administrator finds compliance with all above listed conditions and all other requirements specified in this Ordinance. The Planning Commission may impose any other conditions necessary to achieve compliance with any applicable provision of this Ordinance or the Emery County Code.
- (d) Duration:  
The permit shall remain in force for so long as the business operates in compliance with the aforesaid conditions and maintains a current business license from the County.

### **11-3 LEVEL 2 CONDITIONAL USES**

The following land uses may be granted Level 2 conditional use permits when approved pursuant to the procedures and standards in this Article.

#### **11-3-1 On-Premise Occupations (Business)**

- (a) Definition:  
An occupation for compensation on a lot and/or within additional accessory buildings in addition to a one-family dwelling situated on the same lot.
- (b) Required Information:  
In addition to the information required herein for all permit applications, the applicant shall submit information necessary to demonstrate compliance with the following conditions:
  - (i) the number of non-family members proposed to be employed in the proposed business;
  - (ii) the physical appearance, traffic and other activities in connection with the on-premises occupation do not conflict with the existing character of the neighborhood or the intent of the zone in which the on-premises occupation is operated and does not depreciate surrounding property values;
  - (iii) the effect the proposed business may reasonably be expected to

have upon the volume and flow patterns of traffic in the neighborhood and its effect upon the character of the neighborhood as a whole does not alter the residential character of the neighborhood; including:

- (A) the need or proposed use of commercial vehicles by the proposed business,
  - (B) the frequency of deliveries,
  - (C) the type of delivery vehicles which may be reasonably expected to come to the premises, and
  - (D) the amount of customer traffic expected to be generated;
- (iv) signs located on the same lot as the on-premise occupation do not exceed two (2) in number and four (4) feet by eight (8) feet or thirty-two (32) square feet in area, subject to applicable requirements set forth in Section 6-17 of this Ordinance;
  - (v) road access approval has been obtained from the appropriate State and/or County road authorities;
  - (vi) the business does not involve the operation of a salvage yard or junk yard, operation of more than two (2) semi-trucks, operation of an animal rendering or by-products business, or any use requiring a Level 3 conditional use permit under other provisions of this Ordinance;
  - (vii) the owner of the business personally resides on the premises and will continue to do so;
  - (viii) the business has obtained and will maintain a current business license to operate within the County; and
  - (ix) the business will maintain liability and casualty insurance to protect members of the public who come onto its premises.
- (c) Required Findings:

The Planning Commission shall approve said application if it finds compliance with all above listed conditions and all other requirements specified in this Ordinance. The Planning Commission may impose any other conditions necessary to achieve compliance with any applicable provision of this Ordinance or the Emery County Code.
  - (d) Duration:

The permit shall remain in force for so long as the business operates in compliance with the aforesaid conditions and maintains a current business license from Emery County.

### **11-3-2 Campground and Picnic Facilities**

- (a) Definitions:
  - (i) Campground: An area of land on which accommodations for temporary occupation are located or may be placed not to exceed one (1) month. This includes, but is not limited to, tents and recreational vehicles.
  - (ii) Picnic Facility: An area of land used for temporary day use picnicking and gatherings.
- (b) Required Information:

In addition to the information required herein for all permit applications, the applicant shall submit information necessary to demonstrate compliance with the following conditions:

- (i) a site plan of the campground or picnic facility and a program of management, showing the location of all significant natural features, the location of all roads and travel ways, the location size and purpose of all structures, all areas to be used for camping, picnicking and trailer or camper parking, and indicating the maximum number of persons to be accommodated on the site, is consistent with the requirements and standards of this and all other applicable provisions of this Ordinance;
  - (ii) the site contains adequate acreage to accommodate proposed site plan and proposed density of the facility as reasonably determined by the Planning Commission;
  - (iii) any accessory commercial structure granted as part of the permit directly relate to the operation of the facility and is required as a necessary part of the operation;
  - (iv) the campground or campsite facility has guaranteed access by deeded easement, or the equivalent, via a right-of-way adequate to handle anticipated traffic volume;
  - (v) adequate water rights, water supply and distribution systems, and sewage disposal systems are provided which meet Federal, State and local health, and County standards;
  - (vi) solid waste collection facilities and a program of disposal are provided which meet Federal, State and local health and County standards;
  - (vii) the design and operation of the facility will be consistent with the intent of the zone and will not significantly decrease the quality of the area through the imposition of large volumes of traffic, inappropriate density, or produce levels of odor, noise, glare, light, or similar conditions which are not compatible with the character of the area; and
  - (viii) signs located on the same lot as the facility do not exceed two (2) in number and four (4) feet by eight (8) feet or thirty-two (32) square feet in area, subject to applicable requirements set forth in Section 6-17 of this Ordinance.
- (c) Required Findings:
- (i) The Planning Commission shall consider the proposed density of the facility and its potential impact on the surrounding land uses and impact on the character of the area.
  - (ii) The Planning Commission shall approve said application if it finds compliance with all above listed conditions and all other requirements specified in this Ordinance. The Planning Commission may impose any other conditions necessary to achieve compliance with any applicable provision of this Ordinance or the Emery County Code.

- (d) **Duration:**  
The permit shall remain in force for so long as the business operates in compliance with the aforesaid conditions and maintains a current business license from Emery County.

### **11-3-3 Temporary Uses**

- (a) **Definition:**  
A dwelling or structure placed on a lot or tract of land for a period not to exceed one (1) year which is non-permanent in nature.
- (b) **Required Information:**  
In addition to the information required herein for all permit applications, the applicant shall submit information necessary to demonstrate compliance with the following conditions:
  - (i) the temporary use is:
    - (A) a construction camp, arterial storage and structural assembly area, earth product barrow pit, or asphalt batch plant included as an ancillary part of an approved major construction project; or
    - (B) an additional use not allowed as a permitted, conditional, or accessory use where located and which is established for a limited time with the intent to discontinue the use upon expiration of the time authorized by temporary use permit;
  - (ii) the location of the subject property;
  - (iii) sufficient additional information to determine the adequacy of sanitary facilities, parking needs, access roads, drainage protection, and similar impacts; and
  - (iv) a program for protection and restoration of areas, systems, or facilities affected by the temporary use.
- (c) **Required Findings:**  
The Planning Commission shall approve said application if it finds:
  - (i) the proposed use will not create unsafe or hazardous conditions or nuisances in the area;
  - (ii) the applicant has provided adequately, at the applicant's own expense, for the restoration of the site to its original condition, including clean-up and replacement of facilities as may be necessary; and
  - (iii) compliance with all above listed conditions and all other requirements specified in this Ordinance. The Planning Commission may impose any other conditions necessary to achieve compliance with any applicable provision of this Ordinance or the Emery County Code.
- (d) **Duration:**  
The conditional use permit shall expire at the end of the time period stated in the permit and shall not exceed a maximum of one (1) year. However, the Planning Commission may grant up to four (4) consecutive three (3) month permit extensions, if the use so requires as determined by the Planning Commission.

#### **11-3-4 Oil and Gas Operation**

(a) Definition:

Any structure, facility, or activity which is constructed on or disturbs land in association with oil and gas drilling, production, or waste water treatment and disposal, including but not necessarily limited to gathering and collector systems, compressors, wells, tanks, tank batteries, pits, access roads for ingress and egress, and pipelines.

(b) Required Information:

In addition to the information required herein for all permit applications, the applicant shall submit information necessary to demonstrate compliance with the following conditions:

- (i) provide copies of applicable permitting documentation filed with the primary permitting agency and all supplemental public documents filed by the applicant with such agency;
- (ii) maps and descriptions of the entire operation show the location of all physical structures and roadways (above and below the surface);
- (iii) plans for dealing with releases of hazardous materials in connection with the drilling or operation of the well have been prepared, furnished to and approved by local fire, police and civil defense authorities and that equipment required by such plans is on the site (may be satisfied by a plan covering all similar activities of the applicant within the County);
- (iv) the applicant has obtained a Road Encroachment Permit from the Emery County Road Superintendent for the roads to be used by it or its agents in the drilling and operation of the well;
- (v) if the location is on private land, that the driller has the legal right to the minerals below such land and the right to enter upon it in order to drill and operate the well; and
- (vi) supplemental information and reports have been furnished as necessary to keep local officials and agencies current as to the matters addressed in the original application.

(c) Required Findings:

The Planning Commission shall approve said application if it finds compliance with all above listed conditions and all other requirements specified in this Ordinance. The Planning Commission may impose any other conditions necessary to achieve compliance with any applicable provision of this Ordinance or the Emery County Code.

(d) Duration:

The permit shall remain in force for so long as the operation continues to operate in compliance with the aforesaid conditions and maintains all state and federal licensing requirements.

#### **11-3-5 Travel Related Commercial Projects**

(a) Definition:

Projects containing one (1) or a combination of gasoline service stations, restaurants, convenience grocery stores, motels, souvenir shops, recreation

campgrounds vehicle courts, and related recreation uses.

(b) Required Information:

In addition to the information required herein for all permit applications, the applicant shall submit information necessary to demonstrate compliance with the following conditions, including a proposed site plan consisting of one (1) or more maps or documents showing:

- (i) the location of all proposed buildings or structures on the site, with full dimensions and distances;
- (ii) the location of all parking spaces, driveways and points of vehicular ingress and egress;
- (iii) the location of all proposed landscaped areas and a general description of the proposed landscape treatment;
- (iv) the location of solid waste receptacles and a description of proposed procedures for the disposal of solid waste materials;
- (v) approval of all applicable culinary water supply and sewage disposal systems as evidenced by letters or other documents from the health department and State Engineer, as applicable; and
- (vi) evidence of satisfaction of all safety and environmental impact requirements (e.g., highway access permits, wetlands protection, abandoned gas tank, etc.), as applicable.

(c) Required Findings:

The Planning Commission shall approve said application if it finds compliance with all above listed conditions and all other requirements specified in this Ordinance. The Planning Commission may impose any other conditions necessary to achieve compliance with any applicable provision of this Ordinance or the Emery County Code.

(d) Duration:

The permit shall remain in force for so long as the applicant remains in compliance with the aforesaid conditions and requirements.

**11-3-6 Significant Sand and Gravel Operation**

(a) Definition:

A sand or gravel pit which:

- (i) is situated on a parcel of land located one thousand (1,000) feet or less from an existing city boundary;
- (ii) occupies or anticipates occupying an area of five (5) acres or more; or
- (iii) utilizes reciprocating screens, crushers, washers, dryers, or similar equipment for the processing of the extracted material.

(b) Required Information:

In addition to the information required herein for all permit applications, the applicant shall submit information necessary to demonstrate compliance with the following conditions, including:

- (i) a proposed site plan consisting of one (1) or more maps or documents showing:
  - (A) the location of all proposed buildings or structures on the site, with full dimensions and distances;

- (B) the location of all parking spaces, driveways and points of vehicular ingress and egress; and
- (C) evidence of satisfaction of all safety and environmental impact requirements (e.g., highway access permits, wetlands protection, etc.), as applicable;
- (ii) a transportation plan indicating the amount of proposed traffic and impact on the existing county road network; and
- (iii) if required by the Planning Commission, a noise and/or dust study to determine the impact of the operation on surrounding land uses.
- (c) **Required Findings**  
The Planning Commission shall approve said application if it finds compliance with all above listed conditions and all other requirements specified in this Ordinance. The Planning Commission may impose any other conditions necessary to achieve compliance with any applicable provision of this Ordinance or the Emery County Code.
- (d) **Duration:**  
The permit shall remain in force for so long as the applicant remains in compliance with the aforesaid conditions and requirements. If the operation ceases for a period of over six (6) months the Zoning Administrator shall be notified prior to the reopening of the facility to determine whether a new conditional use permit is required.

**11-3-7 Commercial Timber Harvest:**

- (a) **Required Information:**  
In addition to the information required herein for all permit applications, the applicant shall submit information necessary to demonstrate compliance with the following conditions:
  - (i) the following information, which shall be kept current:
    - (A) the name, address, telephone number, and contact person of the property owner (hereinafter the "Owner");
    - (B) the name, address, telephone number, and contact person of the person or company who will conduct the proposed harvesting operation (hereinafter the "Operator");
    - (C) the name, address, telephone number, and contact person of the person or company preparing the harvest plan; and
  - (ii) the total area to be harvested, the expected volume or yield of the proposed harvesting, and the anticipated length of operations.
- (b) **Required Findings:**  
The Planning Commission shall approve said application if it finds:
  - (i) the area to be harvested is greater than twenty (20) acres in area and that it has not been carved out of a larger tract in order to avoid these regulations;
  - (ii) a harvest plan (hereinafter the "Harvest Plan") conforms with the Utah Silviculture Forest Water Quality Guidelines which has been:
    - (A) prepared and submitted to the County Planning Department by the applicant; and
    - (B) reviewed and approved by the Division of Forestry, Fire

and State Lands of the Utah Department of Natural Resources, or such other person or agency as may be designated and approved by the Planning Commission (hereinafter the "Monitor");

- (iii) the Owner and the Operator, if not the same person or entity, have entered into an agreement with Emery County and with the Monitor to inspect and assure compliance with said Harvest Plan;
  - (iv) the Operator has provided security acceptable to Emery County required in this Ordinance in an amount sufficient to assure the payment to the landowner of all agreed stumpage fees, monitoring fees, and to cover clean up and reclamation of the site if not completed by the applicant at the end of operations; and
  - (v) compliance with all above listed conditions and all other requirements specified in this Ordinance. The Planning Commission may impose any other conditions necessary to achieve compliance with any applicable provision of this Ordinance or the Emery County Code.
- (c) Duration:  
The permit shall remain in force for so long as operations continue, including clean up and reclamation of the site.

#### **11-4 LEVEL 3 CONDITIONAL USES**

The following land uses may be granted Level 3 conditional use permits when approved pursuant to the procedures and standards in this Article.

##### **11-4-1 Airports**

- (a) Definitions:
- (i) Airport: A tract of land or water that is maintained for the landing and takeoff of aircraft and for the receiving and discharging passengers and cargo and that usually has facilities for the shelter, supply and repair of planes.
  - (ii) Airport Approach Zone: An area at each end of an airport land strip or take-off strip, broadening from a width of one thousand (1,000) feet at the end of the strip to a width of four thousand (4,000) feet at a distance of seven thousand five hundred (7,500) feet from the end of such strip, its center line being a continuation of the center line of the strip.
  - (iii) Airport Transition Zone - A triangular area adjacent to each side of an airport approach zone located with reference thereto as follows: One (1) corner of said transition zone shall be identical with the corner of the approach zone nearest to the landing strip; a second corner shall be located at the end of a line, said line extending from the end of the landing strip to a point one thousand five hundred fifty (1,550) feet from the center line of said landing strip and at right angles thereto; a third corner shall be located at a point along said approach zone boundary line, which point is seven thousand five hundred (7,500) feet distance from the first corner above

mentioned.

(iv) **Airport Turning Zone:** A circular area surrounding an airport encompassing all of the land lying within a radius of two (2) miles distance from the landing strip of an airport, except that area covered by the airport, the transition zones, and the approach zones.

(b) **Required Information:**

In addition to the information required herein for all permit applications, the applicant shall submit information necessary to demonstrate compliance with the following conditions:

- (i) in any airport approach zone, no building or structure shall be erected which is more than one (1) foot in height for each fifty (50) feet said building or structure is distant from the end of the landing or take-off strip;
- (ii) in any airport transition zone, no building or structure shall be erected which is more than one (1) foot in height for each seven (7) feet said building or structure is distant from the inside airport approach zone boundary; and
- (iii) in any airport turning zone, no building or structure shall be erected to a height greater than one hundred fifty (150) feet.

(c) **Required Findings:**

The County Commission shall approve said application if it finds compliance with all above listed conditions and all other requirements specified in this Ordinance. The County Commission may impose any other conditions necessary to achieve compliance with any applicable provision of this Ordinance or the Emery County Code.

(d) **Duration:**

The permit shall remain in force for so long as the applicant remains in compliance with the aforesaid conditions and requirements.

#### **11-4-2 Major Underground and Surface Mine Developments**

(a) **Definition:**

Those activities conducted on the surface of the land for the development or extraction of mineral deposits from their natural occurrence together with the appurtenant on-site support buildings, structures, and areas for the following:

- (i) coal mines regardless of size or surface area utilized;
  - (ii) uranium mines disturbing a surface area of one (1) acre or larger; and
  - (iii) any other mining operation disturbing or proposing to disturb a surface area of one (1) acre or more or from which five hundred (500) tons or more of material are proposed to be removed during twelve (12) consecutive months.
- (iv) The provisions of this Section 11-4-2 shall apply to the opening or reactivation of a mine portal or other site which comes within the definition of a major underground or surface mine development; the significant expansion of an existing mine development as

defined in Article II of this Ordinance; or the establishment or reactivation of a significant sand or gravel operation as defined in Article II of this Ordinance.

(v) The provisions of this section shall be in addition to those imposed by the State under the provisions of Title 40, Chapter 8, Utah Code Annotated, (Utah Mined Land Reclamation Act), Title 40, Chapter 10, Utah Code Annotated, (Coal Mining and Reclamation), or other laws of similar import.

(b) Required Information:

In addition to the information required herein for all permit applications, the applicant shall submit information necessary to demonstrate compliance with the following conditions, including a plan of the proposed mine development area showing:

- (i) the portal or pit area;
- (ii) the location of all existing and proposed structures;
- (iii) existing and proposed storage and disposal areas;
- (iv) all natural drainage channels;
- (v) a program for the maintenance of water quality and for the restoration and reclamation of the site;
- (vi) location of fee title and leased lands proposed to be served by the portals; and
- (vii) an environmental impact statement which identifies and evaluates the significant impacts upon the social, economic, and natural environment of the County.

(c) Required Findings:

The County Commission shall approve said application if it finds:

- (i) within one (1) year following termination of activity, the site will be reclaimed in accordance with the approved plan as guaranteed by a performance bond provided in compliance with Article XII of this Ordinance; and
- (ii) compliance with all above listed conditions and all other requirements specified in this Ordinance. The Planning Commission may impose any other conditions necessary to achieve compliance with any applicable provision of this Ordinance or the Emery County Code.

(d) Duration:

The permit shall remain in force for so long as the applicant remains in compliance with the aforesaid conditions and requirements.

### **11-4-3 Industrial Projects**

(a) Definition:

All land and structures occupied by a manufacturing, processing, fabrication or similar industrial activity which requires a site area of more than two (2) acres and/or which, because of the nature of the activity, emits fumes, smoke, noise, vibration, dust, glare or odor in amounts which are discernable beyond the limits of the site. The provisions of this section shall be applicable to:

- (i) structures and facilities for the manufacturing, processing, fabrication, and warehousing of goods and materials (except those complying as permitted uses under the I-1 Industrial zone);
  - (ii) automobile wrecking and salvage yards;
  - (iii) areas for the loading, storage, and processing of earth products;
  - (iv) electric generating plants and ancillary facilities;
  - (v) truck terminals;
  - (vi) major utility transmission facilities; and
  - (vii) livestock and commodity auctions.
- (b) Required Information:  
In addition to the information required herein for all permit applications, the applicant shall submit information necessary to demonstrate compliance with the following conditions, including: a site plan of the proposed industrial development showing, where applicable:
- (i) a description of all activities to be performed in the project;
  - (ii) the location of existing and proposed structures and their intended use;
  - (iii) the location of all driveways, parking areas, fences, walls and any proposed landscaped areas;
  - (iv) the location of any outside storage areas;
  - (v) provisions for culinary water and sewage disposal;
  - (vi) the location of all natural drainage channels and other significant natural features;
  - (vii) if required by the County Commission, an environmental impact statement which identifies and evaluates the significant impacts upon the social, economic, and natural environment of the County;
  - (viii) all buildings used for human occupancy will be served by a recognized central culinary water supply system and by a sewage disposal system approved in accordance with minimum health standards as established by the State and /or local health authority;
  - (ix) adequate vehicular access to an existing County road, including access ways located and designed to promote safety and convenience; and
  - (x) If required by the County Commission, submission of a performance guarantee as set forth in Article XII of this Ordinance when, in the County Commission's opinion, such a guarantee is necessary to insure the construction of an essential improvement of the performance of an essential activity. The amount of such guarantee shall be as determined by the County Commission.
- (c) Required Findings:  
The County Commission shall approve said application if it finds:
- (i) within one (1) year following termination of activity, the site will be reclaimed in accordance with the approved plan as guaranteed by a performance bond as set forth in Article XII of this Ordinance; and
  - (ii) compliance with all above listed conditions and all other

requirements specified in this Ordinance. The County Commission may impose any other conditions necessary to achieve compliance with any applicable provision of this Ordinance or the Emery County Code.

- (d) Duration:  
The permit shall remain in force for so long as the applicant remains in compliance with the aforesaid conditions and requirements.

#### **11-4-4 Major Utility Transmission or Railroad Projects**

- (a) Definition:  
A construction project involving the construction and operation of one (1) or more of the following:
- (i) electric power transmission lines having a capacity of more than sixty-nine (69) kilovolts together with any appurtenant substation and/or similar ancillary facilities;
  - (ii) gas and oil transmission lines having a design pressure of six hundred (600) P.S.I. or more, or a pipe diameter of eight (8) inches or more together with any appurtenant pump stations and/or similar ancillary facilities;
  - (iii) water transmission pipelines having a pipe diameter of eight (8) inches or more together with any appurtenant pump stations and/or similar ancillary facilities;
  - (iv) conveyor belts, slurry lines, and related facilities (permanent installation only); or
  - (v) railroad tracks and appurtenant ancillary facilities.
- (b) Required Information:  
In addition to the information required herein for all permit applications, the applicant shall submit information necessary to demonstrate compliance with the following conditions, including a plan of the proposed transmission project showing:
- (i) location and width of rights-of-way;
  - (ii) proposed location of all lines and related structures;
  - (iii) summary of all proposed clearings, access roads, road construction activity or similar activity; and
  - (iv) other data reasonably required by the County; and
  - (v) an environmental impact statement which identifies and evaluates the significant impacts upon the social, economic, and natural environment of the County.
- (c) Required Findings:  
The County Commission shall approve said application if it finds:
- (i) not less than seventy-five (75) percent of the proposed alignment will be located within established public road rights-of-way;
  - (ii) a performance bond, as set forth in Article XII of this Ordinance, has been provided to insure installation of the project in accordance with the final plan; and
  - (iii) compliance with the above listed conditions and all other requirements specified in this Ordinance. The County

Commission may impose any other conditions necessary to achieve compliance with any applicable provision of this Ordinance or the Emery County Code.

- (d) The County Surveyor shall add the project to the Official Map of the County if one exists in the area of the said line, after the project receives final approval from the County Commission.
- (e) Duration:  
The permit shall remain in force for so long as the applicant remains in compliance with the aforesaid conditions and requirements.

**11-4-5 Planned Seasonal Home Developments (Mountain Home Development**

- (a) Definition:  
A subdivision or development in which the roads, travel easements, water lines, and open spaces are not dedicated to the public, but are retained as private facilities, and in which the dwellings or lots are designed to be occupied only during the months of April, May, June, July, August, September, and October.
- (b) Required Information:  
In addition to the information required herein for all permit applications, the applicant shall submit the following documentation:
  - (i) articles of incorporation for the property owners association;
  - (ii) by-laws of homeowners association;
  - (iii) statement of covenants, conditions, restrictions and management policies;
  - (iv) open space agreement;
  - (v) statement of health authority regarding water and sewage systems;
  - (vi) conveyance of water rights to the property owners association;
  - (vii) a plot plan indicating the following:
    - (A) residential accessory structures;
    - (B) common areas and recreation facilities for the use and enjoyment of the members of the development; and
    - (C) fences and walls.
- (c) Development Standards:
  - (i) Density  
The maximum number of dwelling units within a seasonal home development shall be in accordance with the following schedule as determined by the County Commission upon a detailed slope analysis of the area proposed for development.

<u>Percent of Slope</u>	<u>Density</u>
0-20%	1 lot per 20 acres
20-35%	1 lot per 30 acres
35 and above	1 lot per 50 acres

- (ii) Design Criteria and Improvement Requirements  
All dwelling sites shall be located within a designated development cluster. Each cluster shall contain not less than five (5) separate

building lots or sites (except for developments having fewer than five (5) building sites or lots for the entire development).

- (iii) **Size of Dwelling Sites**  
Each lot or dwelling site within a cluster shall not be less than twenty thousand (20,000) square feet nor more than two and one half (2.5) acres.
- (iv) **Steep Slopes to Remain in Natural State**  
All land surface having a slope of thirty (30) percent or greater shall remain in its natural state.
- (v) **Each Building Site to have Buildable Area**  
Each lot or dwelling site shall contain a buildable area of not less than twenty thousand (20,000) square feet.
- (vi) **Street System**
  - (A) **Vehicular Access** - Each lot or building site shall front on and have access to a County road or private vehicular travelway. A road or travelway shall conform to County standards and shall provide for adequate vehicular circulation within the development.
  - (B) **Grade of Roads and Travelways** - No street or roadway shall have a grade of more than twelve (12) percent, except the County Commission may approve grades up to fifteen (15) percent for short stretches of roadway where the twelve (12) percent standard would result in extra earthwork and circuitous routes.
- (vii) **Cut and Fill Slopes**  
No street or roadway shall be constructed in a location or in such a manner which produces a slope face which exceeds the critical angle of repose; provided that the County Commission may approve a roadway producing such a slope face where in its opinion:
  - (A) a roadway is necessary to the development, and the proposed road follows the most appropriate alignment;
  - (B) the roadway and slope will not produce an undue hazard on the environment or adjacent properties; and
  - (C) all practical measures to reduce the slope angle or prevent the soil from moving under the force of gravity until the vegetative material becomes re-established will be employed to stabilize the slope.
- (viii) **Water Supply and Water Rights**
  - (A) Each dwelling within the development shall be served by an approved water system. Plans for said system shall be submitted to the State Health Department through the County health authority and approved as evidenced by a letter of feasibility from said State agency.
  - (B) Title to the water rights for domestic purposes in the amount necessary to meet the requirements of the letter of

feasibility shall be held by the property owners association.

- (ix) Sewage Disposal  
The planned seasonal home development shall be served by a central sewage disposal system or by individual waste water disposal systems which have been approved by the County health authority as evidenced by a written statement therefrom. Where individual disposal systems are to be used, evidence of the suitability of each dwelling site within the cluster to accommodate said individual system shall be submitted at the time of application, and no development shall be approved which contains one (1) or more dwelling sites for which said individual systems are determined to be unsuitable.
  - (x) Open Space  
All land not included within building sites or used for travelways or developed common facilities shall be designated as natural open space for the common use of the occupants of the development.
  - (xi) Open Space Preservation Agreement  
As assurance that the designated area will remain as open space, the applicant shall execute an open space preservation agreement with the County, in which the applicant agrees for the applicant and the applicant's successors and assigns to refrain from excavating, making additional roadways, installing additional utilities, constructing dwellings or other structures on the designated areas without prior approval of the County through an amendment to the plan.
  - (xii) Flood Plan  
All flood plain areas and floodways, if any, shall be included as part of the common open space.
  - (xiii) Required Findings:  
The County Commission shall approve said application if it finds compliance with the above listed conditions and all other requirements specified in this Ordinance. The County Commission may impose any other conditions necessary to achieve compliance with any applicable provision of this Ordinance or the Emery County Code.
- (d) Duration:  
The permit shall remain in force for so long as the applicant remains in compliance with the aforesaid conditions and requirements.

**ARTICLE XII**  
**PERFORMANCE GUARANTEES**

Sections

- 12-1 Application
- 12-2 Type and Amount of Guarantee
- 12-3 Duration of Guarantee
- 12-4 Acceptance or Rejection of Work
- 12-5 Final Disposition and Release
- 12-6 Default
- 12-7 Partial Release Permitted

**12-1 APPLICATION**

Wherever a performance guarantee is required under the terms of this Ordinance, said guarantee shall be submitted in conformance with this Article.

**12-2 TYPE AND AMOUNT OF GUARANTEE**

The performance guarantee shall be one (1) of the following:

- (a) a deposit of cash in a separate escrow account in an amount not less than one hundred twenty-five (125) percent of the estimated cost of performing the work for which the guarantee is requested as determined by the County. Said account shall be established in such a manner that any release, therefrom, shall require the advanced written consent of the County. Any interest derived from the account shall be the property of the applicant;
- (b) a performance bond in an amount not less than one hundred twenty-five (125) percent of the estimated cost of performing the work for which the guarantee is required, as established by the County; or
- (c) clear title to property having a present market value, as established by an independent appraisal, of not less than two hundred (200) percent of the estimated cost of performing the work for which the guarantee is required, as determined by the County.

**12-3 DURATION OF GUARANTEE**

**12-3-1 General Rule**

Except as otherwise set forth in Subsection 12-3(b), the duration of a performance guarantee shall be for the applicable period of time specified by the County for each particular type of development or activity. Said period shall begin on the final approval date of a land use application under this Ordinance.

**12-3-2 Time Limitation**

- (a) The land use authority may allow a land use applicant to proceed with subdivision plat recording or development activity before completing improvements required as a condition precedent to subdivision plat recording or development activity if the land use applicant provides a performance guarantee as required in this Article.
- (b) A performance guarantee shall not exceed:
  - (i) one (1) year after final acceptance of the improvement or warranty

- work; or
- (ii) two (2) years after final acceptance of the improvement or warranty work, if the County:
  - (A) determines for good cause that a lesser period would be inadequate to protect the public health, safety, and welfare; and
  - (B) has substantial evidence of:
    - (I) prior poor performance of the applicant;
    - (II) unstable soil conditions within the subdivision or development area; or
    - (III) extreme fluctuations in climatic conditions that would render impracticable the discovery of substandard or defective performance within a one (1) year period.

## **12-4 ACCEPTANCE OR REJECTION OF WORK**

### **12-4-1 County Diligence**

With reasonable diligence, the County shall determine whether the installation of required subdivision improvements or the performance of warranty work meets the County's adopted standards for final acceptance of the required improvements.

### **12-4-2 Applicant Request for County Acceptance or Rejection of Improvements**

- (a) An applicant may in writing request the County Commission to accept or reject the applicant's installation of required subdivision improvements or performance of warranty work.
- (b) The County Commission shall accept or reject subdivision improvements within fifteen (15) days after receiving an applicant's written request under Subsection 12-4-2(a) or as soon as practicable after that fifteen (15) day period if inspection of the subdivision improvements is impeded by winter weather conditions.
- (c) The County Commission shall accept or reject the performance of warranty work within forty-five (45) days after receiving an applicant's written request under Subsection 12-4-2(b) or as soon as practicable after that forty-five (45) day period if inspection of the warranty work is impeded by winter weather conditions.

### **12-4-3 Reasons for Rejection**

If the County Commission determines that installation of required subdivision improvements or the performance of warranty work does not meet the County's adopted standards, the County Commission shall comprehensively and with specificity list the reasons for its determination.

## **12-5 FINAL DISPOSITION AND RELEASE**

At the completion of the work, or not less than ten (10) days prior to the release date of the bond or other assurance, the applicant shall submit to the County Engineer one (1) copy of a Certificate of Compliance. Following receipt of the certificate the County Engineer shall make a preliminary inspection and shall submit a report to the chairman of

the County Commission setting forth the conditions such facilities. If the condition of said improvements or activities for which the guarantee is required is found to be satisfactory, and all liens are paid, the chairman shall authorize release of the guarantee. If the condition of material or workmanship shows unusual depreciation or does not comply with the acceptable standards of durability or if any outstanding liens are not paid, or the terms of the guarantee have not been satisfied, the matter shall be referred to the County Commission, and in accordance with the provisions of Section 12-5, the Commission may declare the applicant in default.

**12-6 DEFAULT**

When, in the opinion of the County Commission, an applicant fails or neglects to satisfactorily install the required improvements or make required corrections, or to pay all liens in connection with said improvements, or otherwise fails in carrying out the activity for which a bond was required, the Commission may, after a public hearing with due notice on the matter, declare the performance guarantee forfeited and thereafter may install or cause the required improvements to be installed using the proceeds from the guarantee to defray the costs.

**12-7 PARTIAL RELEASE PERMITTED**

Where the guarantee is required to insure the timely installation of improvements, the County may authorize a partial release(s) of the performance guarantee in accordance with the following schedule:

Percent of Work Complete	Percent of Total Guarantee Amount Eligible for Release
25	25
50	45
75	70
100 (upon satisfactory inspection)	100

## **ARTICLE XIII SUBDIVISIONS**

### Sections

- 13-1 Intent and Purpose
- 13-2 Subdivision Plans and Plats Required – Exceptions
- 13-3 Procedure for Approval of a Subdivision
- 13-4 Design and Documentation Requirements
- 13-5 Project Evaluation Guidelines
- 13-6 Improvement Requirements
- 13-7 Minor Subdivision
- 13-8 Procedure for Approval of a Minor Subdivision
- 13-9 General Requirements
- 13-10 Enforcement

### **13-1 INTENT AND PURPOSE**

#### **13-1-1 Intent**

It is the intent of the County Commission through the adoption of this Article to more fully avail itself of the power granted under 17-27a-601 et. Seq. UCA, relating to the subdivision of land and to do so in a manner which will best promote the health, safety, morals, convenience, order, prosperity, and general welfare of the present and future inhabitants of the County including among other things, efficiency and economy in the process of development, lessening congestion in the streets, securing economy in government expenditures, and protection of both urban and non-urban developments. Furthermore, nothing in this Article shall conflict purposes listed in 17-27a-102 UCA.

#### **13-1-2 Purpose**

The purposes in adopting this Article shall be:

- (a) to facilitate the orderly development of the County;
- (b) to implement the County's Major Street Plan;
- (c) to facilitate the development of a safe and efficient street system;
- (d) to facilitate the orderly transfer of the ownership of building sites in a manner consistent with state law;
- (e) to facilitate the provision of adequate water, sewer, drainage, utilities, fire protection, and other services to developing areas of the County; and
- (f) to establish the rights, duties, and responsibilities of subdivision applicants with respect to the development of land within the County.

### **13-2 SUBDIVISION PLANS AND PLATS REQUIRED – EXCEPTIONS**

#### **13-2-1 Subdivision Plats Required – To be Recorded**

No person shall subdivide any tract of land within the unincorporated portion of the County; nor shall any person sell, exchange, purchase, or otherwise convey or make an agreement to sell, exchange, purchase, or otherwise convey, a parcel of land which is part of a larger tract, if such sale or agreement would have the effect of creating a subdivision as defined by this Ordinance, unless and until a final plat, prepared in accordance with the provisions of this Ordinance shall have been

first approved by the Planning Commission and County Commission and recorded in the office of the County Recorder.

### **13-2-2 Exemption From Subdivision Plat Filing Requirement**

Any owner or agent of any owner of real property who seeks to partition subdivide land without recording a plat by virtue of the exemption for agricultural, commercial, manufacturing, and industrial land, shall first acquire a waiver on forms furnished and signed by the Zoning Administrator. The Zoning Administrator shall approve said waiver upon satisfactory completion of the application form by the applicant, including, in the case of agricultural land, the recording of satisfactory deed covenants precluding residential or other non-agricultural use of the land until the recording of a properly approved subdivision plat.

- (a) Any sale or other transfer of a parcel of land which has been subdivided into two (2) or more parcels without the owner or agent of the owner first having obtained a waiver from the Zoning Administrator or having recorded an approved subdivision plat, shall be considered prima facie evidence of the illegal subdivision of land and a violation of Section 13-2 of this Article, and any lot so created shall not qualify as a zoning lot as defined by this Ordinance. Qualification under these provisions shall not constitute a waiver of other requirements, including, but not limited to health, zoning, and building permit requirements.
- (b) Notwithstanding the forgoing provisions of this section, in accordance with Section 17-27a-605 et. seq. Utah Code Annotated, a minor subdivision as described in Section 13-7 of this Article, of less than five (5) lots may be approved without a plat provided the subdivision:
  - (i) is not traversed by the mapped lines of a proposed street as shown in the General Plan and does not require the dedication of any land for street or other public purposes;
  - (ii) has been approved by the culinary water authority and the sanitary sewer authority;
  - (iii) is located in a zoned area;
  - (iv) conforms to all applicable land use ordinances or has properly received a variance from the requirements of an otherwise conflicting and applicable land use ordinance, and
  - (v) the land use authority certifies in writing that the County has provided notice thereof as required by this Ordinance.

## **13-3 PROCEDURE FOR APPROVAL OF A SUBDIVISION**

### **13-3-1 Pre-Submission Conference**

Any person wishing to subdivide land within the County shall secure from the Zoning Administrator information pertaining to the requirements for subdivisions and the County's plan of streets, parks, drainage, zoning, and other General Plan requirements affecting the land to be subdivided.

### **13-3-2 Prepare Concept Plan**

The applicant shall then prepare a concept plan and shall submit three (3) copies of the same to the Planning Commission no less than seven (7) days prior to the

next regularly scheduled Planning Commission meeting. Said plan shall be prepared in accordance with County standards. When an applicant owns or controls more land than the applicant proposes to submit for preliminary approval, the Planning Commission may require that a concept plan for the larger area be submitted. Said plan shall indicate the portion proposed to be submitted initially for preliminary approval and the portion to be held for future submission.

**13-3-3 Obtain Planning Commission Approval of Concept Plan**

- (a) The Planning Commission shall review the concept plan and shall act to:
  - (i) approve the plan;
  - (ii) disapprove the plan;
  - (iii) approve the plan subject to modification; or
  - (iv) where considered necessary or desirable, act to table further consideration of the plan for a determined amount of time.
- (b) Approval of a concept plan shall not be construed to constitute approval of the subdivision but shall be deemed as an expression of acceptance of the basic concept and feasibility of the proposed subdivision which the applicant may use as a guide in the preparation of a preliminary plan.

**13-3-4 Prepare Preliminary Plan and Improvement Drawings**

- (a) Upon approval of a concept plan by the Planning Commission, the applicant shall prepare a preliminary plan of the subdivision and shall submit three (3) copies of the same to the Planning Commission not less than seven (7) days prior to the next regularly scheduled Planning Commission meeting. Said plan shall contain:
  - (i) a preliminary layout plan;
  - (ii) preliminary drawings showing the location and type of proposed public improvements, and, as applicable, evidence of suitability of the soil for septic tank purposes;
  - (iii) copies of proposed documents, when applicable;
  - (iv) evidence of payment of preliminary review fee;
  - (v) evidence of ability to satisfy water requirements; and
  - (vi) any other material or information required by the Planning Commission.
- (b) All plans, documents and other data shall be prepared in accordance with County standards. Failure to submit all required material prepared in accordance with said standards shall be grounds for denial.

**13-3-5 Obtain Planning Commission Approval of Preliminary Plan**

- (a) The Planning Commission shall review the preliminary plan and shall act to:
  - (i) approve the plan;
  - (ii) disapprove the plan;
  - (iii) approve the plan subject to modification; or
  - (iv) where considered by the Planning Commission to be necessary or desirable, act to table further consideration of the plan for a determined amount of time.
- (b) Approval or denial of the plan shall be based upon compliance with the General Plan and upon a finding of conformance with the submission

requirements set forth in Section 13-6 of this Article.

- (c) The action of the Planning Commission shall be written on the face of two (2) copies of the plan, one (1) of which shall be retained in the files of the Planning Commission, and one (1) of which shall be returned to the applicant. If the plan is disapproved, the Planning Commission shall express its reasons therefore to the applicant.
- (d) Upon approval of the preliminary plan, the Planning Commission shall be committed to grant approval of the final plat, subject to full compliance with any conditions attached, unless, in the opinion of the Planning Commission, preliminary approval was given based on inaccurate or incomplete representations or changes have occurred in conditions relating to the property, not known or present at the time approval was given, which would result in a violation of applicable provisions of this Article, if the project were carried out as initially approved.
- (e) Approval of the preliminary plan shall remain valid for a period of one (1) year. Said approval may be extended or reaffirmed by the Planning Commission, for a period not to exceed one (1) year, upon receipt of a written request from the applicant.

**13-3-6 Prepare and Submit Final Plat, Engineering Drawings, and Documents to Planning Commission.**

Upon approval of the preliminary plan by the Planning Commission, the applicant shall prepare the final, plat, final engineering drawings, and documents and shall submit copies of the same to the Planning Commission not less than seven (7) days prior to the next regularly scheduled Planning Commission meeting said plats, drawings, and documents shall include:

- (a) the original mylar and three (3) prints of the final plat;
- (b) final engineering drawings;
- (c) documents indicating full compliance with the water and sewer requirements for each lot;
- (d) an itemized estimate of the cost of constructing all required improvements, prepared by or under the direction of the County Surveyor, which shall be used as the basis for setting the amount of the performance guarantee;
- (e) final copies of performance guarantee documents;
- (f) a title report, covering the property within the plat area, to identify all interests in the property which may have an effect on the title, and to establish that the land proposed for subdivision is free of boundary conflicts, to ensure lot purchasers will have clear and marketable title;
- (g) final copies of all other required documentation, when applicable; and
- (h) evidence of payment of final plat checking and recording fees.

**13-3-7 Planning Commission Takes Action on Final Plat**

- (a) The Planning Commission shall review the final plat, final engineering drawings, and other required submissions, and shall act to:
  - (i) approve the plan;
  - (ii) disapprove the plan;
  - (iii) approve the plan subject to modifications; or
  - (iv) where considered necessary or proper by the Planning

Commission, act to table further consideration of the plan for a determined amount of time.

- (b) If disapproved, the Planning Commission shall state its reasons therefore to the applicant.
- (c) Upon approval by the Planning Commission, said Commission shall sign the plat and shall forward the plat to the County Commission with the recommendations that the plat be approved and the proposed dedications accepted.

**13-3-8 Applicant Posts Performance Guarantee**

Upon approval by the Planning Commission, the applicant shall post a bond or other financial assurance guaranteeing construction of the required improvements. Said performance guarantee shall be in conformance with the provisions of Article XII of this Ordinance.

**13-3-9 County Commission Takes Action on Final Plat**

Upon receipt of the final plat, bearing all required signatures, and also submission of evidence of posting of the performance guarantee, the County Commission shall consider the plat and performance guarantee and shall act to approve or disapprove the plat or approve it with modification.

- (a) If disapproved, the County Commission shall state its reasons therefore to the applicant.
- (b) If modifications are required such modifications shall first be referred to and accepted by the Planning Commission.
- (c) If approved, the plat shall be signed by the Commission and returned to the Zoning Administrator for recording. The signature of the County Commission on the final plat shall constitute final approval.

**13-3-10 Final Plat Recorded in Office of County Recorder**

Upon receipt of the executed final plat and the receipt of all outstanding submissions and fees, the applicant shall submit said plat for recording in the office of the County Recorder. The applicant's failure to submit the plat within three (3) months following approval shall render the plat voidable.

**13-4 DESIGN AND DOCUMENTATION REQUIREMENTS**

The layout and design of all subdivisions and the content of required submissions shall be in accordance with the following and also with the minimum County standards and specification as provided under Section 13-6 of this Article provided, in the event of conflict the more stringent shall prevail.

**13-4-1 General Design – Access**

- (a) The overall design shall provide good vehicular access and circulation.
- (b) Each lot shall abut upon and have access to a designated County road in conformance with the frontage requirements for the zone in which the subdivision is located.
- (c) The design shall recognize and accommodate significant environmental conditions including but not limited to drainage channels, flood plain area, canals, wetland, and adverse soil.
- (d) Each lot within the subdivision shall contain a buildable area which is sufficient in size to accommodate the dwelling or other main building and

also all attendant facilities (e.g., septic tank filter field). The buildable area shall not be situated within a designated flood channel or a recognized flood hazard area.

#### **13-4-2 Conformity With Zone Requirements**

Each lot in the subdivision shall conform to the requirements of the zone in which the subdivision is located.

#### **13-4-3 Culinary Water**

Satisfactory evidence of an adequate supply of culinary water for each lot shall be submitted with each application for approval of a subdivision as follows:

- (a) For subdivision utilizing central system:
  - (i) written evidence from a recognized water supply agency indicating:
    - (A) the agency agrees and has the ability to supply the residential culinary water to the development;
    - (B) the applicant has satisfied all requirements of said agency relating to conveyance of water rights, payment of fees, etc. and
    - (C) each lot has been granted a permanent, non-revocable water connection; and
  - (ii) evidence satisfactory to the County that the transmission lines, storage reservoirs, and other system elements have adequate pressure and capacity to meet culinary water needs of the project at levels not less than specified by the State Health Department.
- (b) For individual well or spring system:
  - (i) approval from the State Engineer, authorizing the use of water from the proposed source for domestic purposes; and
  - (ii) written evidence to the effect that water from well sources or spring is available in adequate quantities and conforms to minimum quality standards for culinary use as evidenced by a written statement from the health authority.

#### **13-4-4 Domestic Sewage Disposal Requirements**

Each lot shall be served by a central sewage disposal system or by an individual waste water disposal system which have been approved by the local health authority as evidenced by a written statement therefrom.

- (a) When individual disposal systems are to be used, the statement from the health authority shall indicate that tests were conducted on each lot and that each lot meets minimum standards for an individual waste disposal system.
- (b) No final plat shall be approved which contains one (1) or more dwelling sites for which an individual system is determined to be unsuitable.

#### **13-4-5 Roads**

- (a) Residential (minor) roads within the subdivision shall have a right-of-way width of not less than sixty (60) feet.
- (b) Collector and arterial roads shall have a right-of-way width of not less than eighty (80) feet or as set forth on the Major Street Plan whichever is greater.

- (c) All roads shall be designed to provide for safe and convenient access to adjacent property and for snow removal and the disposition of surface water. The layout and improvement of all roads shall be in accordance with the applicable cross-section and construction standards of the County.

### **13-5 PROJECT EVALUATION GUIDELINES**

- (a) In conducting its review of the proposed subdivision the Planning Commission and County Commission shall be guided by the following evaluation criteria:
  - (i) the plans and documents submitted are sufficiently detailed to permit a proper consideration of the project and do they conform to County standards as to content;
  - (ii) the proposed development conforms in all respects to the design standards for subdivision;
  - (iii) there are no conditions present which would render part or all of the lots unsuitable for housing purposes;
  - (iv) the proposed arrangement of lots and roads will produce convenient access and circulation under all weather conditions and not result in the imposition of an undue financial burden upon the County; and
  - (v) the subdivision, if developed, be consistent with the purpose and intent of this Article as stated in Section 13-1.
- (b) The Planning Commission may require changes in the plan in order to more fully accomplish the objectives of the zone in which the subdivision is located and this Article, including, but not limited to, the redesign of the road system, provision for extension of the road system into adjacent properties, the relocation of lot boundary lines, and increases in water line size above the minimum requirement.

### **13-6 IMPROVEMENT REQUIREMENTS**

The applicant shall be responsible for installation of all required improvements. Said improvements shall meet minimum County standards and specifications and shall be completed within one (1) year from the date of final approval of the subdivision, except that upon a showing of good and sufficient cause, the County Commission may grant an extension of the time limit not to exceed six (6) months. Financial assurances guaranteeing the construction of all required improvements shall be required as a condition of approval. Said assurances shall be in accordance with the provisions of Article XII of this Ordinance.

#### **13-6-1 Streets and Roads**

All streets and roads shall be improved in conformance with the applicable cross-section and construction standards as adopted by the County Commission.

#### **13-6-2 Culinary Water**

- (a) Subdivisions utilizing a central water system:
  - (i) Both "offsite" and onsite water mains of not less than six (6) inches in diameter shall be installed in such a way that each lot may be served therefrom.
  - (ii) Water service laterals shall be installed from main line to the outer edge of any road proposed to be dedicated to the County. Said lateral shall include the installation of a meter box and meter setter.

- (iii) The water flowing to said system shall be from a source and through lines which are sufficient in size to provide a volume of flow and level of pressure adequate to meet State Health standards.
- (iv) The quality of materials and procedures of construction shall conform to County standards.
- (v) The applicant shall provide documentation of culinary service connection(s) from a public water system monitored in compliance with the Utah Safe Drinking Water Act.
- (b) Subdivisions utilizing individual wells:
  - (i) Construction of wells shall be required as a condition for granting of a building permit.
  - (ii) The applicant shall provide documentation of approval from Utah Division of Drinking Water and Division of Water Rights.

### **13-6-3 Sewers**

- (a) Subdivisions utilizing central collection and disposal systems:
  - (i) All systems and facilities shall conform to State Health standards.
  - (ii) The applicant shall provide documentation of connection to public sewer system or other disposal system approved pursuant to state law.
- (b) Subdivisions utilizing individual waste water disposal systems:
  - (i) Construction of disposal system shall be required as a condition for the granting of a building permit.
  - (ii) The applicant shall provide documentation of approval of septic system or other approved waste disposal system from the Utah Department of Health.

### **13-6-4 Permanent Survey Monuments**

No less than two (2) permanent survey monuments shall be installed in each subdivision. The location of the monuments shall be shown on the final plat. Also, all corners on the subdivision and all lot corners in the subdivision shall be marked.

### **13-6-5 Electric**

Electric power shall be available to each lot. All lines and appurtenant facilities shall be located underground, except when the applicant can show that the placement underground is not physically feasible.

### **13-6-6 Telephone Lines**

Telephone lines shall be available to each lot. All lines and appurtenant facilities shall be located underground, except when the applicant can show that the placement underground is not physically feasible.

### **13-6-7 Street Signs**

Street signs shall be installed at all locations indicated on the preliminary plan. The location and design of said signs shall conform to minimum County standards.

### **13-6-8 Storm Drains and Facilities**

Pipes and other facilities for the disposal of storm water shall be installed where required by the County. The location, size, and design of said facilities shall be in accordance with the County's storm water disposal plans and standards or as

directed by the County Surveyor.

## **13-7 MINOR SUBDIVISION**

### **13-7-1 Purpose**

Notwithstanding Section 13-3, the following requirements are enacted and enforced to allow the development of minor subdivisions in the unincorporated portions of the County. The intent of a minor subdivision is to allow individual lots and small subdivisions to be processed in a timely fashion while ensuring the needs of the public at large are met.

### **13-7-2 Minimum Requirements**

A minor subdivision shall meet the following minimum requirements in order to be considered a minor subdivision:

- (a) Minor subdivisions shall be allowed only within the A-1 zone in the County.
- (b) Not more than five (5) lots may be created.
- (c) Each lot shall contain at least two (2) acres.
- (d) Meets and bounds are acceptable legal descriptions for minor subdivisions, so long as they have been provided by a certified surveyor and a record of survey is filed in accordance with Subsection 17-27a-605(2)(6), Utah Code Annotated; however, plats and plat maps are acceptable and preferred.
- (e) The subdivision does not result in remnant land (land that can not be developed due to size, set backs, etc.) that did not previously exist.
- (f) The subdivision does not require addition of infrastructure above and beyond that which is available generally in the surrounding properties, e.g., curb, gutter, sidewalk shall only be required if the adjoining properties have those amenities at the time of application.
- (g) The applicant may present a subdivision development plan that, upon approval by the land use authority, allows for staged development. Lots may be developed individually, in groups, or all at once so long as the plan and the accompanying schedule is met.
- (h) Each lot shall have the required frontage on an improved public street, county road, or public highway as set forth in this Ordinance.
- (i) Each lot shall meet all other applicable requirements (e.g., setbacks, construction standards, etc.) set forth in this Ordinance.
- (j) While "gravel roads" are an acceptable construction medium for the surface of streets and roads, all streets and roads shall be improved in conformance with the applicable cross-section and construction standards as adopted by the County Commission. Residential (minor) roads constructed within the subdivision shall have a right-of-way width of not less than sixty (60) feet. Streets and roads are defined as such if the roadway serves three (3) or more lots in a subdivision.
- (k) The minimum width of a driveway shall be twelve (12) feet. The maximum grade of a driveway shall not exceed ten (10) percent. Twelve (12) percent grades may be allowed for up to but not to exceed two hundred fifty (250) lineal feet. Any driveway longer than three hundred

(300) feet shall have either a designated "turn around" area large enough for a forty (40) foot emergency vehicle to make a complete turn, or shall have twenty four (24) foot wide passing areas, at least sixty (60) feet in length every five hundred (500) feet. A driveway is defined as such if it serves two (2) or less lots within a subdivision.

#### **13-7-3 Granting Authority**

The land use authority for a minor subdivision is the Zoning Administrator or the Administrator's designee. Notwithstanding this rule, the Zoning Administrator or designee may forward any application on to the Planning Commission for approval by a majority vote of Commission members.

#### **13-7-4 Appeal Authority**

The appeal authority for a minor subdivision is the Planning Commission. If the minor subdivision was approved by the Planning Commission because the Zoning Administrator forwarded the application pursuant to Section 13-7-3 of this Ordinance, the County Commission shall serve as the appeal authority.

### **13-8 PROCEDURE FOR APPROVAL OF A MINOR SUBDIVISION**

#### **13-8-1 Prepare Concept Plan**

- (a) The applicant shall prepare a concept plan and shall submit two (2) copies of the same to the Zoning Administrator. Said plan shall include;
  - (i) a subdivision development plan which includes a description of the proposed use including proposed excavation, construction, time lines and such other information as may assist the Zoning Administrator or other land use authority in reviewing the application;
  - (ii) proof of ownership or other legal right entitling the applicant to conduct the proposed use on the property;
  - (iii) a surveyed, legal description of the property for which the subdivision approval is sought, and/or a copy of the recorded plat showing the property, and a vicinity drawing or plan showing roads and other landmarks which will aid in identifying the property;
  - (iv) a drawing including the location of structures in relation to property lines, roads, water utilities, electrical utilities, and wastewater facilities (including location of a septic field and alternative);
  - (v) a letter from a culinary water system operator verifying water connection ownership for each individual lot in the subdivision;
  - (vi) an encroachment permit or letter from the County or Utah Department of Transportation granting access to the property on the associated roadway; and
  - (vii) a letter of approval from the department of health approving a septic system and providing appropriate design for proposed structures.
- (b) When an applicant owns or controls more land than the applicant proposes to submit for preliminary approval, the Zoning Administrator may require

that a concept plan for the larger area be submitted. Said plan shall indicate the portion proposed to be submitted initially for preliminary approval and the portion to be held for future submission.

### **13-8-2 Initial Zoning Administrator Review**

- (a) The Zoning Administrator shall examine the application to determine:
  - (i) if the application is complete as provided in Section 5-1-6 of this Ordinance;
  - (ii) if the proposed use qualifies as a minor subdivision under this Ordinance; and
  - (iii) the amount of the application fee according to the current fee schedule.
- (b) Following such examination, the Zoning Administrator shall give notice to the applicant of the following, as applicable:
  - (i) if the application is incomplete, what information is necessary to complete it as provided in Section 5-1-6 of this Ordinance; and
  - (ii) whether the proposed use meets the basic requirements for a minor subdivision.
- (c) Upon submission of a completed application, a determination that the proposed use qualifies as a minor subdivision, and payment of the required fees, the Zoning Administrator shall, within ten (10) days, respond to the applicant that the application is administratively complete.

### **13-8-3 Zoning Administrator Approval Process**

- (a) No findings shall be made, and no permit issued, until the Zoning Administrator is satisfied that sufficient information has been provided upon which to base a decision. The applicant shall be permitted to address or communicate with the Zoning Administrator and answer questions concerning the matter, and to submit amendments to the application addressing concerns and issues which may arise, and to suggest solutions to problems identified in the proceedings.
- (b) Upon completion of the review, the Zoning Administrator shall take one of the following actions, based upon the findings in the matter:
  - (i) approve the minor subdivision;
  - (ii) disapprove the minor subdivision;
  - (iii) approve the minor subdivision subject to modification; or
  - (iv) where considered necessary, forward to the Planning Commission for further consideration.
- (c) Upon approval, building permits shall be purchased and construction shall begin within one hundred eighty (180) days or approval of the minor subdivision shall expire.

## **13-9 GENERAL REQUIREMENTS**

### **13-9-1 Standards and Specifications**

The Planning Commission shall prepare standards and specifications for the content of subdivision plans and for the layout, design, and construction of subdivisions and required improvements. Said standards and specifications shall be adopted by resolution of the County Commission. All such requirements shall be considered the minimum

standards which must be met and shall apply to all subdivisions.

#### **13-9-2 Amended Plats**

No change shall be made in a plat which has received final approval unless and until approval for said change has been given by both the Planning Commission and County Commission. Any change in a subdivision for which a final plat has been recorded shall first require that the plat be vacated in accordance with the applicable provisions of the Section 17-27a-608, Utah Code Annotated, and a new plat of the territory approved and filed in accordance with the procedures and requirements of this Article.

#### **13-9-3 Work To Be Done By Engineer Or Surveyor**

All engineering work shall be done by, or under direction of, a professional engineer registered in the State of Utah. All land survey work shall be done by, or under the direction of, a Land Surveyor registered in the State of Utah.

#### **13-9-4 Variances**

- (a) A variance to the strict application of the minimum standards and specifications set forth in Section 13-7-2 of this Article may be authorized by the County Commission after recommendation from the Planning Commission. Such variance shall be granted only upon a finding that, because of topographic or other unique physical condition, the standard appealed from:
  - (i) is unnecessary for the proper development of the subdivision and will not be required in the future;
  - (ii) would cause an unreasonable hardship if adhered to; and
  - (iii) may be granted without destroying the intent of the standard or this Ordinance.
- (b) Any variance so authorized shall be stated on the final subdivision plat.

#### **13-9-5 Review Fees**

All costs for processing of subdivision proposals and the administration of this Ordinance shall be borne by the applicant. The County Commission may by resolution establish fees for the purpose and provide for the assessment and collection thereof.

### **13-10 ENFORCEMENT**

- (a) No officer of the County shall grant any permit or license for the construction or use of any building or land within a subdivision unless and until said subdivision has been approved and recorded in accordance with the requirements of this Ordinance.
- (b) Whoever, being the owner or agent of the owner of any land located in a subdivision within the County, transfers or sells such land without have received approval in accordance with the provisions of this Ordinance, shall be guilty of a misdemeanor for each lot so transferred or sold and the description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties. In addition, the County may enjoin such transfer or sale or agreement by action for injunction or may recover the said penalty by civil action.
- (c) The Zoning Administrator may take any enforcement action authorized by Article

VII of this Ordinance.

- (d) The County may, in addition to other remedies provided by law, institute injunctions, mandamus, abatement, or other appropriate action or proceeding to prevent, enjoin, abate or remove any unlawful building, use or act.