Protecting aesthetics through land use restrictions: Regulating hillside development in Park City Utah

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PROTECTING AESTHETICS 
THROUGH LAND USE RESTRICTIONS: 
REGULATING HILLSIDE DEVELOPMENT 
IN PARK CITY, UTAH 

by 
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INTRODUCTION

The mountain town of Park City has spent the last 100 years surviving tremendous swings of repetitive boom and bust cycles. The town achieved original notoriety for the vast amount of silver ore removed from the area mines in the late 1800s and early 1900s. The population of Park City dwindled as the mines slowed down in the 1950s; in the 1960s, the city reverted to a near-ghost town when the mines closed down entirely.

Located only 35 minutes from Salt Lake City (see map below), Park City has found new life over the past two decades as a ski resort and more recently as a budding suburb of Salt Lake. Today, Park City is a booming town with an estimated population of 6,200, enduring persistent development pressures that threaten its environment and economic underpinnings as a resort community. In 1990, recognizing that the commercial and residential developments were targeting
hillsides, ridgelines, and wetlands, Park City Municipal Corporation launched an effort to protect the environmentally and visually sensitive areas of the city from inappropriate development. The resulting Sensitive Lands Ordinance\(^1\) addresses critical areas such as hillsides, ridgelines, wetlands, and streams, as well as visually important areas such as the entry corridors to town and views from prominent vantage points. The ordinance defines sensitive lands, in part, as "Land which functions as a focal point to our visitors and citizens and enhances the aesthetic character of the community."\(^2\)

Park City, in enacting the Sensitive Lands Ordinance, was most concerned about protecting its community aesthetics. "Aesthetics" can be defined within the planning profession as relating to intangible values which do not lend themselves to quantitative assessment. It consists of elements such as historic preservation, protection of cultural sites, architectural design, open space, even sign codes— all of which can significantly affect a community's appearance and character. Park City was particularly interested in maintaining its open space and rural atmosphere; the Sensitive Lands Ordinance is intended to preserve these qualities through land use regulation.

This paper focuses primarily upon hillside protection regulations, as they were most critical in preserving the aesthetic qualities targeted by Park City. The paper

\(^{1}\) The official name of the sensitive lands regulations is Sensitive Area Overlay Zone Regulations. For clarity, this paper will refer to the document by its common name of "Sensitive Lands Ordinance." Park City, UT. Sensitive Area Overlay Zone Regulations, (1992).

will provide an introduction to Park City through a brief review of its history, environment, and demographics. The legal issues of land use regulation for aesthetic purposes, both on a national level and within Utah, will be discussed. The third chapter explores Park City’s reasons for regulating hillside development. Different types of hillside regulations and samples of hillside protection ordinances will be presented in Chapter 4. The paper will outline the process followed by Park City, including research, mapping, drafting, and the public process. The final chapter describes the ordinance provisions themselves.

It is intended that this paper provide a case study and pertinent background information to be used by practicing planners and government officials considering regulations for protecting sensitive lands. Chapters 2 and 4 provide important information on legal issues and methodologies relevant throughout the country. Chapters 5 and 6 furnish a model for process and ordinance provisions which can assist in developing a sensitive lands ordinance. The appendices and bibliography include additional information which may be helpful in researching and designing a sensitive lands ordinance.
CHAPTER 1
PARK CITY BACKGROUND

A. History

In the mid-1800s, the Mormons moved into Utah and settled in the Salt Lake Valley. Searching for an escape from persecution, Mormon leader Brigham Young had guided his people from the Midwest after the death of prophet Joseph Smith. Young prohibited his followers from prospecting in the mountains surrounding Salt Lake City, wishing to avoid the influx of non-Mormons which would follow any discovery of mineral wealth.

In 1862, the United States government, fearful that "the aberrant territory might follow the lead of the South and threaten to secede from the Union,"\(^3\) sent troops to Utah in order to oversee the Mormons. Colonel Patrick E. Conner, in charge of the federal troops, learned of Young’s directive on mining and encouraged his men to venture into the mountains after mineral wealth.\(^4\) In 1868, the first claim was filed near what was to become Park City and, as Brigham Young had feared, the rush was on. Prospectors flooded in and soon were followed by shops, boarding houses, and saloons; sixteen years later, Park City was granted a city charter by the

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\(^4\)Ibid.
state legislature. Park City continued to be dominated by the mining industry until the 1960s. To this day, Park City's predominately non-Mormon population remains an anomaly in Utah and lends the town more liberal tendencies than are found throughout the rest of this conservative state. The United Park City Mines Company remains influential as it owns much of the land surrounding Park City.

Park City Ski Area opened in 1963, heralding a new era in the town. Park City at that time was a quiet town of artisans and skiers with a few remaining miners. Physically, the town consisted primarily of Old Town, made up of small, historic miners' houses. The Old Town area is now listed on the National Register of Historic Places and is governed by an active Historic District Commission.

The first modern building boom in Park City occurred in the late seventies and early eighties, fuelled by the growth of the Park City Ski Area. Moreover, Deer Valley Resort opened in 1981, concurrent with the approval of a massive large-scale master plan which would eventually include construction of as many as 2,400 residential units. Changes in the Federal Tax Code affecting second home ownership and income tax deductions, however, caused a downturn in the building boom in the mid-eighties and for several years growth in Park City was flat. The late eighties saw a resurgence of building starts and development applications, which have only escalated in the first years of this decade. During this time, the bulk of suitably flat property in the city was either built upon or master planned, and development was headed for the hillsides. Robin Corathers attributes such trends nationwide to "the growing scarcity of undeveloped flatter land; technological advances in earth
movement and retention methods; and an increase in the number of people who desire and can afford view properties. These trends have been—and continue to be—a reality in Park City.

B. Environment

The Park City limits enclose an area with a range in elevation from 6,800 to 8,500 feet (refer to the area map on page 56). The town and resorts benefit from persistently blue skies and a warmer climate than most mountain resorts. The town has an average annual precipitation of less than 22 inches, mostly in the form of snow: the resort records an average annual snowfall of 300 inches.

The slopes about town are usually gentler than 15% adjacent to meadow areas and 40% or more on the hillsides in the southern half of the city. According to a Utah Geological and Mineral Survey, the steeper areas are "underlain by hard bedrock (limestone, sandstone, quartzite, and igneous intrusives)...[and] are the most stable in the study area." These areas are also traversed by faults and fractures. The more moderate hillsides are typically "underlain by soft bedrock (shale, mudstone, siltstone, poorly cemented sandstone, volcanic breccia, and tuff)." While not as stable as slopes underlain by hard bedrock, these slopes exhibit fewer failures.

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7 Ibid.
because of the absence of steep slopes with these soil types. Finally, the most unstable slopes are found near the intersections of hillsides and meadows. Slopes in these areas are typically "comprised of unconsolidated material (alluvium, colluvium, or residual soil)."

Vegetation varies widely between the north- and south-facing slopes. Northern exposures are quite heavily forested, primarily with stands of aspen and lodgepole pine but also with big-tooth mountain maple, gambel oak, douglas fir, and other conifers. Southern exposures are much drier and support gambel oak, sagebrush, and grasses.

The Old Town of Park City occupies a narrow valley, but most newer development has taken place in the meadows beyond, which often were wetlands marked by springs and flowing streams. Many of the meadows were drained and/or filled in the seventies and residential construction has continued unabated since then. The two largest drained and developed meadows are Lower Deer Valley (formerly known as Frog Valley) and Park Meadows. Park City has few wetlands left, although developments in many low-lying areas continue to experience problems related to shallow ground water.

C. Historic Hillside Uses and Abuses

The legacy of Park City is hillside development. The valley in which Old Town is located is so narrow and steep-sided that the miners excavated building pads
from the hillsides to construct their 600 to 1,000 square-foot homes. Old Town roads to this day are steep and narrow, and parking in the area is a major problem. However, Old Town is successful, and the essence of this success is not just in its history, but in its clustering of density in the lower portion of the valley. The large-scale visual impacts of Old Town development are minor.

Mine buildings and works were the primary structures built above the residences in town. Significant hillside excavation was necessary to create benches on which to locate the buildings and machinery. Often the mines were located over shallow bedrock and the associated benches remain unvegetated even today. Tramways and railways were built to transport ore from the mines to the mills, and tailings left over from processing were deposited adjacent to the mills and smaller mines. The tramway towers and scar-like tailings piles remain today as conspicuous reminders of Park City's history.

The most prominent contemporary example of hillside and ridgeline development is the Aerie Subdivision. The Aerie sits high above the town atop a prominent hill and its visual impacts are significant. A result of a legal settlement of the mid-1980s, the Aerie subdivision includes approximately 100 lots, most of which have spectacular views of the city. Unfortunately, the city has equally spectacular views of the Aerie homes. The Aerie, while the most prominent of modern hillside development, is not alone. Other subdivisions are built up the hillsides immediately surrounding Park Meadows and Lower Deer Valley, and recent applications to the city planning office signal the continued march of development up the hillsides.
D. Demographics

Park City's demographics have changed quite drastically over the past fifteen years. Historically, Park City was a working class town: original residents were miners or service workers supporting the miners. Those who struck it rich often built large homes in Salt Lake City where the winters are milder. Even through the early seventies, the working class tradition continued and new homes were typically modest. From 1980 to 1990, the population of the town grew by more than 50%, from approximately 2,800 to 4,500 year-round residents. The growth has been accompanied by significant demographic changes: Park City has increasingly become a resort of second homes for the wealthy from all over the nation; a virtual suburb of Salt Lake for those who wish to escape from summer heat and winter smog; and a refuge for technocrats who can work where they like, connected to the world through facsimile machines and modems. In early 1994, a new resident of Park City publicly called for making the community "an exclusive enclave of the rich and privileged."\(^{10}\)

Second homes constitute approximately 60% of the residences within the city, favorably affecting the tax base. However, this percentage is decreasing as more year-round residents move in. The overall influx of wealthy residents has driven home prices ever higher; affordable housing is now a major problem and many of the city's retailers and service workers live elsewhere. The morning and evening rush hours include heavy traffic travelling both east and west: many residents of Park City commute to their white collar jobs in Salt Lake and many service workers commute

from the lower-cost communities in the Salt Lake and Heber Valleys. Main Street groceries and hardware stores have been replaced by trendy and expensive boutiques and restaurants that target wealthy visitors and new residents rather than long-time locals.

E. Political Climate

These demographic changes translate into a highly charged political climate. Those who recently moved to Park City fear that the lifestyle for which they came is disintegrating. Others worry that their lifestyle is endangered as housing becomes more difficult to find and the cost of living soars. Some long-time Park City residents are not as distressed by the changes; they have seen the ups and downs of the local economy and consider this just another boom cycle.

Planning Commission and City Council activities are avidly covered by the local press and meetings are typically well-attended by the public. The fear of lost "community," lost views, or lost property values spurs many residents to become "nimbys" (those who would say, "Not In My Backyard") and many new residents exhibit increasing intolerance, even to the long time locals who welcomed them to town.

F. Natural Resource Information

Available for Park City

Prior to the beginning of the research for the Sensitive Lands Ordinance, there was little specific natural resource information for Park City. The most complete information came from the Utah Geological and Mineral Survey, which had conducted
a study on geology, soils, and hydrology of the area within the municipal boundaries. Information on slope was available only at 1:24,000 scale on United States Geological Survey maps. Vegetation data was available on aerial photographs taken in 1989. There was no reliable information on wildlife habitat or migration patterns within the city limits. The effort to locate, collect, and map natural resource data is discussed in Chapter 5.
CHAPTER 2

HISTORY OF AESTHETICS
AND LAND USE REGULATION

Land use planning and regulation by federal, state, and local government agencies have traditionally been considered to be valid uses of police power. Originally, the regulations were related directly to the goals of protecting public health, safety, welfare and morals. Since the 1950s, however, the objectives of land use planning have expanded from strict interpretations of health, safety, welfare, and morals into more ambiguous areas, such as aesthetics. This expansion has generally been met with favor when tested in court. Robert J. Blackwell writes in the Boston College Environmental Affairs Law Review,

There seems to be no limits as to what may be included in the police power. Today, "general welfare" encompasses a "wider range of issues [that have] been brought into zoning--including esthetics [sic]...Zoning is stretched to protect social, fiscal, and environmental goals that were not traditionally its goals. As the theory of the public interest expands, zoning expands."11


Indeed, a Florida court stated in one ruling that "Zoning solely for aesthetic purposes is an ideal whose time has come; it is not outside the scope of the police power."\textsuperscript{12}

Because the Park City Sensitive Lands Ordinance is, to a great degree, based upon aesthetic considerations, it is important to understand the legal history of aesthetics and land use planning. To this end, this chapter will briefly examine the legal background of zoning for aesthetics nationwide. The discussion will then focus on Utah's case law and state constitution, and, finally, Utah's enabling legislation for land use planning with respect to aesthetics.

A. Legal Background

Throughout the United States

According to James W. Carter, "The evolution of aesthetic regulations began with historic preservation and has broadened with time, spurred by key court decisions upholding innovative governmental regulations designed to protect or enhance the character of communities."\textsuperscript{13} Originally, the courts upheld zoning for aesthetics, as long as the purpose of the regulation was not entirely for aesthetics alone. In the past forty years, aesthetics as an exclusive objective of land use regulation has been upheld by federal and many state courts. However, in two recent and notable cases, state courts have ruled against aesthetics-based restrictions. The following sections trace these developments in the case law of aesthetics-based regulations.


1. Aesthetics-Plus

The earliest case pertaining to aesthetics in land use regulation involved condemnation of land for a national battlefield memorial. The year was 1896 and there was uncertainty as to the validity of the government's role in appropriating and managing land for such uses. However, in *United States v. Gettysburg*, "the Supreme Court held that condemnation of land served a valid "public purpose," (United States v. Gettysburg Electric Railway Co., 160 U.S. 668 (1896)) namely, protection of important historical associations."\(^{14}\)

The second case was heard in the early 1900s when cities in the northeast were beginning to establish height limits based on aesthetics as well as safety. The City of Boston enacted such an ordinance regulating building heights differentially in commercial and residential areas. The ordinance was challenged and was eventually heard by the Supreme Court.\(^{15}\) "The Court upheld the restrictions on the grounds that they were reasonably related to the public welfare as a means of fire prevention. But while upholding the regulation, the Court sidestepped the issue of whether government could regulate on the basis of aesthetics alone."\(^{16}\)

Aesthetics alone was not recognized as a valid basis for exercises of police power, so regulations were typically couched in terms directly related to the public's

\(^{14}\)Duerksen, 2.


\(^{16}\)Duerksen, 3.
health, safety, welfare, and morals. Christopher J. Duerksen explains in Aesthetics and Land Use Controls: Beyond Ecology and Economics,

...while the courts of this era were generally sympathetic to aesthetic regulations..., they generally clothed such enactments in terms of fire protection, safety, and economics. Aesthetics were considered to be a matter of luxury and taste; courts generally struck down laws if they were based solely on aesthetic considerations.17

This practice of bolstering aesthetics with health, safety, and welfare concerns has been termed "aesthetics-plus." Even today, when most courts do uphold regulations based upon aesthetics alone, the doctrine of aesthetics-plus is employed to further strengthen regulations and guard against legal challenges.

2. Aesthetics Alone

Duerksen maintains that "No trend is more clearly defined in planning law than that of courts upholding regulations whose primary basis is aesthetics."18 This trend began in 1954 with Berman v. Parker, one of two cases most often cited in discussions of the legal history of aesthetics in land use regulations.19 Berman v. Parker examined whether a municipality could condemn buildings as part of an urban renewal project. The U.S. Supreme Court held that "It is within the power of the legislature to determine that the community should be beautiful as well as healthy,

17 Ibid.
18 Ibid., 4.

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spacious as well as clean, well-balanced as well as carefully patrolled." Berman set the stage for government agencies, particularly municipalities, to regulate solely for aesthetics.

The Berman decision was supported in 1978 with a second U.S. Supreme Court ruling in favor of aesthetics-based regulations. Penn Central Transportation Co. v. New York City entailed the denial of a proposal to construct a high-rise building over New York's Grand Central Station, which had been designated a landmark by the city's Landmarks Preservation Commission. The commission's denial was appealed by the developer on the grounds that landmark designations are based upon taste and are therefore arbitrary. However, the U.S. Supreme Court wrote, "This court has recognized in a number of settings, that states and cities may enact land-use regulations or controls to enhance the quality of life by preserving the character and the desirable aesthetic features of a city..." Even though both cases concerned the demolition of structures, language in both decisions emphasized the ability to regulate land use based on aesthetics alone, in order to maintain an orderly and desirable community. Carter states, "The Penn Central case and like decisions from other jurisdictions provide the constitutional basis for modern...aesthetics-based land-use regulatory schemes." He continues

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22 Penn Central v. New York City, quoted in Duerksen, 4.

23 Carter, 143.
that the case solidified the thinking that such regulations "are not necessarily discriminatory nor inevitably arbitrary and are therefore legitimate exercises of land-use regulatory authority."24

3. Aesthetics Invalidated

While the U.S. Supreme Court has been consistent in its support of equitably-applied aesthetics-based land use regulations, some state courts have not. In 1986, the Arizona Supreme Court struck down a Scottsdale ordinance regulating development on sensitive lands in Corrigan v. City of Scottsdale.25 The Scottsdale regulations (the revision of which will be discussed further in Chapter 4) prohibited development in certain areas defined by natural features such as steep terrain and intermittent washes, although it allowed transfer of density from these areas to development areas. The ordinance was based upon typical public health, safety, and welfare issues as well as aesthetic concerns. However, the Arizona Supreme Court found that "the city was actually attempting to establish a public mountain preserve without paying for it... [Moreover, the] public interest in aesthetics, standing alone, is often too vague to offset substantial injury to a landowner..."26

This decision was in conflict with court decisions in other jurisdictions and "has come under severe criticism," according to Attorney Duerksen.27 However, it

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24Ibid., 142.


26Corrigan v. Scottsdale, quoted in Duerksen, 19.

27Duerksen, 19.
has served to more rigidly define the authority of the state and municipalities when regulating land use in Arizona. Duerksen adds, "[Corrigan] stands as a sober warning to proceed carefully in the area of protecting scenic views when restrictions effectively prohibit development on significant tracts of land."\(^28\)

A second blow to proponents of aesthetics-based land use regulations came in 1991. In that year, the Pennsylvania Supreme Court heard a case involving the designation of an historic landmark without the consent of the owner of the property.\(^29\) Contrary to the U.S. Supreme Court decision in *Penn Central*, the Pennsylvania court ruled that such designation without consent amounted to a "taking," even though the Pennsylvania State Constitution contains specific references to historic preservation.\(^30\) The court wrote, "neither aesthetic reasons nor the conservation of property values or the stabilization of economic values...are, singly or combined, sufficient to promote the general health or the morals or the safety or the general welfare of the...inhabitants or property owners."\(^31\)

Like *Corrigan*, this ruling has limited applicability and is in conflict, specifically in this case, with U.S. Supreme Court decisions. However, both the *Corrigan* and *United Artists* decisions urge discretion to those who would regulate

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\(^28\)bid.


\(^30\)A taking occurs when government limits the use of a parcel of land to such an extent that no practical use remains. Effectively, the governmental entity is taking the land for its own purposes without due compensation.


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land use on the basis of aesthetics. Even with the judicial support of aesthetics-based regulations from federal and many state jurisdictions, state and local regulations should not be considered infallible until there is ample case law supporting them within that particular state.

**B. Legal Background and Enabling Legislation in Utah**

Unfortunately, Utah is a state in which the legal case history involving aesthetics-based land use regulations is "virtually non-existent." Consequently, maintains Carter, "any conclusion which might be drawn about Utah courts' views of governmental regulation of land-use for aesthetic objectives is highly speculative." Certainly, there is some risk in enacting strict regulations, even if they are bolstered by the aesthetics-plus doctrine. It is possible to strengthen regulations, however, by basing them directly upon the local comprehensive plan and the state's enabling legislation.

In 1943, the Utah Supreme Court heard *Marshall v. Salt Lake City*, which concerned a challenge to the city's zoning of small commercial parcels on major street corners. The city's zoning was disputed on the contention that the small districts amounted to "spot zoning." "The Court rejected a "spot zoning" argument even

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32 Carter, 139.
33 *ibid.*, 140.
35 Spot zoning occurs when zoning is designated or changed for a specific parcel to increase the value of that parcel.
though the parcels in question were small because of the comprehensive plan that supported the ordinance scheme. This ruling, like similar decisions in other jurisdictions, set the precedent in Utah for valid land use regulation based upon comprehensive planning. Indeed, if regulations are well grounded in the comprehensive plan and are not otherwise arbitrary, they are typically quite safe from legal challenge.

In addition to the comprehensive plan, a municipality can rely on the specifics of the state enabling legislation to reinforce its land use regulations. Utah's land use planning and zoning enabling legislation was revised in 1992. The new language legitimizes a much broader range of goals for land use planning. The enabling code declares its purpose: "to provide for the health, safety, and welfare, and to promote the prosperity, improve the morals, peace and good order, comfort, convenience and aesthetics" of the community. Moreover, the code states, municipalities may enact all ordinances, resolutions, and rules that they consider necessary for the use and development of land within the municipality, including ordinances, resolutions, and rules governing uses, density, open spaces, structures, buildings, energy-efficiency, light and air, transportation, infrastructure, public facilities, vegetation, and trees and landscaping, unless those ordinances, resolutions, or rules are expressly prohibited by law.

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37 Refer to Appendix 1 for a complete copy of Utah's planning and zoning enabling legislation for cities.


39 Ibid.
The legislation also directs that a municipality's comprehensive plan may contain an "environmental element" which includes "the protection, development, and use of natural resources, including...regulation of the use of land on hillsides, stream channels and other environmentally sensitive areas." Undeniably, the enabling legislation grants broad powers to Utah municipalities, making it quite simple to establish aesthetics-based land use regulations specifically within the enabling legislation.

One area of concern for state and local officials, however, is a clause contained in the Utah State Constitution. This clause states, "Property shall not be taken or damaged for public use without just compensation..." (emphasis added) While all land use regulation is imperilled by this clause—not just aesthetics-based regulation—it may be that regulation for aesthetics is more vulnerable because it has only relatively recently been considered a valid use of police power. To date, this clause has not been invoked in a broad judicial review of Utah land use planning.

This discussion has illustrated the difficulties in predicting, with a reasonable level of certainty, the outcome of a legal challenge to aesthetics-based land use regulations in Utah. While the national precedent seems clearly in favor of such land use regulations, some state courts have not followed the national precedent. The Utah enabling legislation strongly favors land use controls based upon aesthetics, while, on the other hand, the Utah State Constitution could be interpreted literally as requiring

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40 Ibid., sec. 10-9-302.
41 Utah State Constitution, art. I, sec. 22.
compensation merely for damage to a property's value caused by restrictive land use regulations. Carter concludes,

It appears that exercise of...[the] authority [to regulate land use] will be upheld when it is used to enact regulatory schemes which are generally accepted in other jurisdictions...Although regulation for aesthetics alone has been held to be no less legitimate than regulation for other health, safety and welfare purposes, regulatory schemes which achieve health and safety as well as aesthetics purposes are probably the most likely to survive a legal challenge.\footnote{Carter, 163.}
CHAPTER 3

GOALS AND FINDINGS:

WHY REGULATE HILLSIDE DEVELOPMENT?

As outlined earlier, Park City has experienced rapid growth over the past twelve years. Naturally, most growth occurred first on the flat areas of town, but in the mid- to late eighties, a number of proposed developments were to be sited on the hillside areas of Park City. This was particularly disturbing because, unlike most western resort towns, Park City is surrounded entirely by private land: there is no National Park, National Forest, or even Bureau of Land Management land to act as a buffer between the urban area and the hills.

In the late eighties, it was made quite clear to city officials from public input at meetings and in individual conversations that hillside development was unwanted in Park City. Moreover, the city administration had convincing information from "CommunityVision [sic] '89," regarding open space versus hillside development. Accordingly, the city officials directed the planning staff to draft and implement an ordinance which would limit hillside development and thereby help protect the character of the town. The purpose of the ordinance was couched in the doctrine of

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43CommunityVision was a single night of "living room meetings" designed to foster discussion regarding the city's future and direction. The meetings were attended by four hundred (5%) of the city and county residents.
aesthetics-plus; preserving the community's character and economy were the two principal goals, with avoiding damage to the environment a close third. These goals were incorporated into an amendment of the Park City Comprehensive Plan. For the purposes of discussion, these goals are divided into socioeconomic and physical issues in the next sections.

A. Socioeconomic Factors

Because Park City is surrounded by private land, the open space and rural atmosphere which attract visitors and residents need to be closely guarded through the regulation of addressing open space, density, and building mass and design. Even though the qualities of open space and a rural atmosphere are difficult to define—indeed, they are deeply rooted in the aesthetic—the elected officials looked to the Sensitive Lands Ordinance to interpret and protect these characteristics. The planners, in turn, relied upon the aesthetics-plus doctrine to justify the sensitive lands regulations: not only are open space and rural atmosphere important for preserving the quality of life for residents, but also for maintaining the viability of Park City's primary economic activity, tourism. A report on a national symposium on "amenity resources" supports this aesthetics-plus claim, stating that "There was broad agreement [among symposium participants] that amenity resources do contribute to rural well-being both socially and economically."44

In the CommunityVision '89 meetings, there were a myriad of issues discussed by Park City citizens, but this much was made very clear: "We are an 'intentional community' that highly prizes the natural environment, open space and recreation...We want a small town feeling and scale..." Duerksen affirms that, nationwide, "An increasing number of people are recognizing that vistas add to the community's sense of place and image, which, in turn have been shown to be important in contributing to the overall quality of life..." Moreover, "The public...has come to expect public and private property to be managed with consideration to protecting scenic landscapes." Indeed, the voice of the residents looking to preserve their quality of life through development restrictions was the loudest of all of the appeals for protection of Park City's sensitive lands.

Subordinate to this concern for many citizens but vitally important to the community's economic base was maintaining open space and rural atmosphere as defining qualities of the resort town. Tourism provides an estimated 60-65% of the tax base in Park City, and city officials firmly believe that part of the success of Park City as a resort is due to the open hillsides and vistas coupled with a successfully preserved and vibrant historic district. Results of the "amenity resources" symposium substantiate that belief: "actions by state and local governments that recognize and take advantage of amenity resources can play an important role in encouraging and

45Park City Municipal Corporation, Public Affairs Department, (Summary of CommunityVision '89), by Myles C. Rademan, (Park City, UT), 3.

46Duerksen, 17.

47CRS, Scenic Landscape, 20.
improving economic activities in rural areas.\footnote{CRS, Amenity Resources, 13.} James W. Carter, who formerly served as Park City Attorney elaborates, "Park City relies heavily on a tourism-based economy which, in turn, is dependent upon Park City's interest and appeal to visitors."\footnote{Carter, 146.} City officials perceive that once all of the hillsides are developed with subdivisions, much of the Park City's appeal and sense of place will be lost, damaging the town's viability as a resort destination.

Preserving Park City's rural characteristics to maintain the quality of life is purely an aesthetic goal. Preserving the rural characteristics for economic reasons, however, serves as a more traditional justification of land use regulation. The two goals together comprise a portion of Park City's aesthetics-plus basis for the Sensitive Lands Ordinance. They are reflected in one of the Sensitive Lands Amendments to the 1985 Comprehensive Plan: "Protect and preserve the aesthetic qualities of Park City which are vital to the attractiveness and economic viability of the community."\footnote{Park City, UT, Sensitive Lands Amendments to the 1985 Comprehensive Plan (1992), 3.}

B. Physical Factors

Heeding James Carter's advice that "regulatory schemes which achieve health and safety as well as aesthetics purposes are probably the most likely to survive a legal challenge," the planners also addressed physical environmental factors in
justifying the Sensitive Lands Ordinance. These included protecting watersheds and limiting erosion. While neither of these objectives are particularly pressing in Park City, as outlined below, they serve to support sound engineering practices.

As discussed in Chapter 1, the south-facing hillsides within the city limits are very dry and sparsely vegetated. The watersheds in these areas are small, and intermittently feed only modest streams. The meadow areas, which were originally at least seasonally wet, have mostly been built-out. Thus, the goal of watershed protection is of limited importance and applicability in these areas. The north-facing hillsides, on the other hand, are quite heavily vegetated and contain perennial streams. The city limits do not yet extend far into these areas, but goals relating to watershed protection will be important as annexations along the city’s south and west boundaries are considered.

Erosion control was another purpose of the Sensitive Lands Ordinance relating to health, safety, and welfare. The Utah Geological and Mineral Survey study found that "Soils in Park City exhibit low to moderate erodibility. No high erodibility soils were identified in the study area. (USDA Soil Conservation Service and others, 1977)" However, the study noted that "when vegetation is removed, the erosion hazard for Park City soils ranges from low to high." Park City does not have acute public health and safety concerns regarding erosion, so the new

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51Ibid., 163.

52"Buildout" occurs when no vacant lots remain within a subdivision or development area.

53UGMS, 22.

54Ibid.
sensitive lands regulations primarily serve to encourage proper construction practices for limiting erosion. The ordinance strives to achieve this goal primarily through protection and limitations on removal of vegetation.

The introduction to the Sensitive Lands Ordinance states,

"The basis for these regulations is the Comprehensive Plan [which emphasizes] the importance of protecting the characteristics that make Park City unique and desirable: The long-term viability of the community depends on its success as a year-round tourist destination and as a desirable place to live and work. Park City must maintain its identity to preserve and enhance its appeal." 55

It is clear from this statement that the ordinance is primarily based upon aesthetic and economic concerns—those relating to the welfare of the community—and less on public health and safety concerns. However, the planners and elected officials also invoked the more traditional objectives of health and safety in order to make the ordinance less prone to legal challenges.

55Park City, UT. Sensitive Area Overlay Zone Regulations (1992), 1.
CHAPTER 4

HILLSIDE PROTECTION METHODS

When Park City started developing its Sensitive Lands Ordinance, the planning staff conducted a survey of other municipalities, counties, and states which had adopted hillside protection regulations. Ordinances and statutes were collected from nineteen governmental entities and a summary of methods was compiled. This chapter will cover the major techniques considered by Park City for regulating hillside development. The chapter is divided into three sections: the first two explore framework methods and specific techniques, while the final section addresses options for ownership of the open space which typically results from sensitive lands regulations. Each approach will be discussed in general terms and a brief example will be presented. General discussion is limited to the context of hillside protection.

A. Framework Methods

The general framework of hillside development regulations can take a number of forms. The areas affected by the regulations may be delineated geographically using a map or physical description or they may be defined using a set of criteria. This section will focus on two methods for defining a boundary for hillside protection regulations, blueline and slope basis.
1. Blueline

A "blueline" defines a zone boundary and is drawn on a map or denoted by a specific verbal description; it is typically used to designate an overlay boundary.\(^56\) The location of the line can be based upon topography, elevation, or other variables and, once defined, the line is adopted by the legislative body and is usually included on the zoning map. A blueline can take a number of forms: it may have a finite "beginning" and "ending" or it may be open-ended so that any property lying outside of the line and within the jurisdiction is considered within the overlay. In this case, any annexations would automatically fall under the special overlay regulations. In addition, several bluelines can be used in combination, creating several overlay districts.

San Luis Obispo, California, uses two levels of bluelines to designate several categories of zoning.\(^57\) The first, called the Urban Reserve Line or Development Limit Line, defines the boundary between urban development and desired open space (designated as the Conservation/Open Space (C/OS) zone). The C/OS zone is open-ended, so that any city annexations of land adjacent to Conservation/Open Space zone automatically lie within that zone. The San Luis Obispo ordinance outlines a number of methods used to achieve the open space objectives of the C/OS zone, including city purchase and transfer of development rights. In addition, the Hillside Planning

\(^{56}\)Overlay zones have been described as "mapped area[s] with restrictions beyond those in the underlying zone. An overlay district is usually used when there is a special public interest in an area that does not coincide with already mapped traditional zones." "Standards for Overlay Districts," *Zoning News* (August 1991): 1.

\(^{57}\)San Luis Obispo, CA. *Hillside Planning Policies and Standards*, San Luis Obispo Land Use Element, sec. D.
Program designates a number of bluelines within the Urban Reserve Line which create specific planning areas. These planning areas are distinct overlay zones and require a level of review greater than other urban area lands.

2. Slope Basis

The slope basis differs from the blueline in that it is unknown whether a property will be subject to the special regulations until some study of the parcel has taken place; there typically is no detailed map or physical description. When designating areas for hillside regulations, a set of specific criteria is used to trigger the special regulations. In hillside protection, the criterion is typically slope and the trigger is specified anywhere from 15% up.

San Diego, California, has established a Hillside Review (HR) overlay zone which consists of those areas with 25% or greater slope and with at least a 50 foot elevation differential. Within this category of lands, there is a requirement for a special Hillside Review permit in addition to other permits which are required citywide. Moreover, there are other criteria which trigger even further restrictions. For instance, the HR zone prohibits encroachment (defined as disturbance from "grading or development") into a certain percentage of the property. The maximum encroachment is defined by a sliding scale dependent upon the percentage of a parcel over 25% slope. Thus, San Diego uses a slope basis twice, making for a complex set of regulations.

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B. Specific Methods

Within the framework of the blueline and slope basis, sensitive lands regulations can take a number of shapes; these specific methods are the meat of any hillside protection scheme. This section will outline four specific methods for regulating sensitive lands development: density requirements, open space requirements, road requirements, and visual impact prohibitions.

1. Density Requirements

Density reductions are one of the most commonly used methods for protecting sensitive lands. The reductions may be a function of the density allowed by the underlying zoning, a function of the slope of the parcel, or a constant density articulated for a number of categories. Ordinances from Walnut Creek, California, and Scottsdale, Arizona, are presented as examples of density regulations.

Walnut Creek created the Hillside Planned Development Zone which regulates hillside development primarily through density reductions. The zone bases the density of a parcel upon average slope, using two complicated mathematical formulas and an index called WIS (weighted incremental slope). Weighted incremental slope is equal to:

\[
WIS = \frac{(0.0023) (I) (L)}{\text{area}}
\]

---

60 The density of a parcel is typically measured in the number of dwelling units per acre.

61 Walnut Creek, CA. Hillside Planned Development District, Walnut Creek Municipal Code, art. 13.
The variables and constants in the formula are defined as:

\[
\begin{align*}
\text{area} &= \text{area of parcel expressed in acres} \\
I &= \text{contour interval of slope map} \\
L &= \text{sum of the length of the contour lines on the map of the parcel} \\
.0023 &= \text{a constant equal to 100 x (acres per square foot)}
\end{align*}
\]

In simpler terms, the WIS index varies with the steepness of the parcel; the steeper the parcel, the higher the WIS. In the ordinance, the allowed density of a parcel (per acre) is a function of the WIS:

\[
\text{BASE DENSITY} = 4.5 - (0.1) (\text{WIS})
\]  

(2)

Note the inverse relationship of the WIS and the density, so that as the WIS (slope) increases, the allowed density decreases.

Scottsdale uses a much simpler method of determining the allowable density of a parcel within its sensitive areas, specifying a constant density for each of several categories of slope. In a revision of the ordinance struck down by the Arizona Supreme Court in the Corrigan decision, Scottsdale defines slope simply as "rise over run." Further, the ordinance divides hillsides into three general categories: less than 25% slope, 25-35% slope, and more than 35% slope. Allowable densities in the 0-25% slope category are outlined in a table and are based upon the type of use; the maximum density for single family development is one unit per acre. In the 25-35% category, primarily single family development is allowed and density is limited to one

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unit per 20 acres. Finally, in the steepest category, only one unit is allowed per 40 acres and the same use restrictions apply as in the 25-35% slope category.

2. Open Space Requirements

Typically, a hillside protection measure will call for clustering of the development density in one area of a parcel, leaving the remainder as open space. This is often accomplished by requiring a certain percentage of a parcel to remain undeveloped. Open space restrictions often are the most important mechanisms for preserving significant hillside areas. Similar to methods for reducing density, open space regulations are typically expressed by assigning percentage requirements based upon categories of slope, although they can also be expressed as equations which are functions of slope. This section will again use Walnut Creek, California, and Scottsdale, Arizona, as samples of open space requirements and restrictions.

Walnut Creek uses a formula for its open space requirement which, like its density formula, is based upon the weighted incremental slope index (equation 1). The open space formula is:

\[ \text{REQUIRED OPEN SPACE} = (0.25)(1.5)(WIS) \]  

The maximum required open space for a parcel cannot exceed 90% of the parcel. Again, the Walnut Creek method is accurate, but can be a nightmare for citizens who are not mathematically inclined.

Scottsdale outlines several categories defined by physical landforms, one of which is the Hillside Landform class. Within Hillside Landform, there are three
levels of open space which may be required, based upon the three slope categories (under 25%, 25-35%, and over 35%) as summarized in Section 1 above. The city requires that 80% of a parcel in the steepest category remain as Natural Area Open Space. In the 25-35% category, 65% of the site must remain undeveloped, and in the 0-25% class, the requirement drops to 50% of the site. Reductions of these requirements can be granted in return for revegetation, designation of Conservation Areas or Conservation Open Space, improved open space, or other factors outlined in the ordinance.

3. Road Regulations

Some local governments regulate hillside development in very simple terms by regulating roads accessing parcels on steep slopes. This usually entails specifying a maximum slope which roads can traverse in addition to maximum road grades. The slope restrictions can be based upon health and safety considerations in locations with inherently weak or poor soils or where winter travel on steep grades is hazardous. In other areas, they may be based entirely upon aesthetics because of the large quantity of cutting and filling necessary for hillside road construction.

Salt Lake City relies heavily upon its road regulations to restrict development on the hillsides above the city.63 City streets may have a maximum grade of 12% and may not cross slopes of greater than 40%. Even where a more level, buildable area exists, if it cannot be accessed by a road that meets the standards, it cannot be

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63Planner Mike Anderson of the Salt Lake City Community Development Department, interview by author, 7 and 14 March 1991.
developed. Further, the city has street geometric requirements which control both horizontal and vertical elements of curves. These geometric regulations pertain primarily to the hillside development and limit access to particularly steep areas. Private roads must conform to the street standards as well.

4. Visual Impact Basis

Other jurisdictions use totally visual criteria for including land in an overlay zone. These criteria typically involve the visual impact of a development from designated vantage points or vantage corridors. The ordinances are usually written to protect ridgelines or prohibit development from breaking certain visual planes deemed important to the community's well-being.

Pitkin County, Colorado (home of Aspen), has designated a zone along the entry corridor into Aspen which is defined almost entirely by what can be seen from the highway leading into town. The provisions primarily provide for review of developments: if a development meets a specific set of criteria relating to its visual impact, the project can be approved by the Planning Director. The criteria include the use of natural features for screening, design of structures to minimize visibility from the highway, avoidance of siting structures on the most visible portions of a parcel. Any project not meeting the criteria is reviewed by the Planning Commission, which may approve the project if it is demonstrated that all efforts were made to meet the requirements of the ordinance.

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64Pitkin County, CO. Scenic Overlay, Pitkin County Land Use Code, sec. 3-1.13.
C. Open Space Custody Options

Many of the specific methods for hillside protection result in the preservation of significant tracts of open space, which creates yet another set of concerns and potential problems. Who will manage the property? Will the property be open for public access? If not, who will enforce the access restrictions? This section will address several options for open space custody, including private ownership, purchase by or dedication to a governmental entity, and purchase or dedication of conservation easements.

1. Private Ownership

Often, the open space required by a sensitive lands ordinance will be kept in private ownership, usually held by a homeowners' association or one or more residents of the subdivision. If the open space area is owned by the homeowners' association of a subdivision, each property owner typically purchases an undivided interest in the open space along with his or her individual lot. In this scenario, access to the open space area is usually reserved for residents of the development and the property is managed by the homeowners' association. Alternately, the open space may comprise some portion of one or more individual lots, and each homeowner usually limits access to his or her personal use. The homeowner is responsible for enforcement of access restrictions to and maintenance of the open space area.

In either case, development and use restrictions are established for the open space area at the time of the project approval. Hence, the subdivision plat is vitally important: the plat details the boundaries of the open space area and specifies
restrictions for its use. The boundaries are shown physically, with a line surrounding
the area, and verbally with a legal description. The restrictions usually prohibit
development or disturbance of any kind, including grading, removal of significant
vegetation, or other actions which alter the character of the open space.

2. Dedication or Purchase of the Property

In some cases, the developer or homeowners’ association is not willing to
accept maintenance, tax, or liability responsibilities for land which the local
government requires be set aside for open space. In other cases, the local
government may consider a parcel which has been set aside as open space particularly
valuable to the community and may therefore wish to control the open space parcel.
These scenarios may result in either dedication or outright purchase—or a combination
of the two—of the open space by the local government. The open space area is
essentially an additional lot created during the subdivision process, although the open
space "lot" has no density attributed to it. Control by the city or county often means
that public access is allowed (although it may be limited) and any required
maintenance is performed by the governmental entity. Use of the property, even
though it is held by the local or county government, can be limited on the plat, as
described under the private ownership section.

3. Conservation Easements

Finally, conservation easements may be used to protect a property in
perpetuity. A conservation easement consists of the grant of certain rights to a third
party organization which holds those rights in perpetuity. Typically, a conservation easement removes the development rights from a parcel, allowing them to be held by a separate organization, such as a land trust. An easement may be structured in a myriad of ways, with access limitations, ownership of the property, and responsibility for maintenance and liability negotiable at the time the easement is drawn up. For instance, the homeowners' association may own the property, but dedicate a conservation easement to the local land trust. The trust may accept maintenance responsibilities for the parcel and may prohibit public access to the parcel. The homeowners' association still retains ownership of the land and is responsible for all tax liabilities. In the case of a conservation easement, the subdivision plat plays a less important role in the preservation of the open space than in the two scenarios outlined above.

Park City's ordinance does not require any one type of ownership option for open space. The city has, in the past, allowed and accepted all of these options. The ordinance does, however, grant bonuses for conservation easements or for allowing public access to open space parcels.

The methods reviewed above comprise the most frequently used approaches to hillside protection. An ordinance may incorporate any number of the methods in a variety of iterations, either in overlays or as standard Euclidean zones. Indeed, all of the sample ordinances discussed above employ more than one of the methods.

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65 Euclidean zoning is traditional zoning based upon separation of potential conflicting land uses. It relies upon zones which are defined to specifically allow certain uses while prohibiting others.
of the sample ordinances discussed above employ more than one of the methods outlined. Moreover, any of the options for open space ownership can be used within the context of any of the framework and specific methods. The techniques and ordinances reviewed in this chapter formed the basis of discussion regarding Park City's implementation strategies for protecting the town's sensitive lands.
CHAPTER 5

PARK CITY'S PROCESS

Park City first began the sensitive lands study in 1991. The planners and city officials were dedicated to a process that involved the public throughout and resulted in a final product based solidly in the state enabling legislation and the city's comprehensive plan. As outlined in Chapter 4, Park City's process for developing sensitive lands regulations began with research of the methods already in use elsewhere. After finishing the background research, the planners began collecting data and mapping pertinent information specific to Park City. The City Council was then called on to set the stage for an intensive staff effort of drafting the ordinance and holding public meetings, both by adopting guiding documents and by prioritizing the planners' time. In addition, the City Council appointed a Citizens' Focus Group to assist the staff and city officials in the preparations and drafting of the ordinance. This chapter outlines Park City's process, specifically addressing data gathering, administrative preparations, public involvement, and the drafting approach.

A. Data Collection

As noted in Chapter 1, there was little natural resource information available for Park City at the beginning of the sensitive lands process. The only significant
information which was readily available was the Utah Geological and Mineral Survey (UGMS) study, entitled "Engineering Geology of Park City, Summit County, Utah."

In addition, the city had commissioned an aerial survey in 1989 and the photographs were available for staff use. In order to develop the most effective sensitive lands regulations, the planners needed to assemble and map information on streams and wetlands, slope, vegetation, provision of city services, soils, wildlife corridors, prominent ridgelines, and, finally, ownership. The information was mapped on clear mylar at a scale of 1' = 400' so that all combinations of the data could be easily viewed; the resulting maps measured four feet by six feet. Computer mapping, while more efficient in the long run, could not be used because of budget and existing software limitations. Each type of information is briefly outlined below in terms of the source of data and each one's importance to the development and drafting of the ordinance.

1. Streams and Wetlands

Streams were mapped from a variety of sources, including the UGMS survey and 7½-minute United States Geological Survey maps, as well as field inspection. The city did not have enough information to determine the importance of specific wetland areas, so wetlands were loosely defined and all areas with at least seasonal marshes and known high groundwater were included on the maps. Streams, and

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66UGMS, 12-13. USGS quadrants Brighton, Park City West, Park City East, and Heber.
wetlands in particular, were very important for defining the boundary of Park City's Sensitive Areas Overlay Zone as the boundary was drawn to include all such areas.

2. Slope

The city commissioned a local engineer to digitize and prepare a 400-scale slope map for use during the Sensitive Lands Ordinance process. The engineer based his work upon the four 7½-minute USGS quadrangles which comprise the Park City area. The computer generated both a contour map and a slope map, with the slope map produced using a triangulation system on the contour data. The slope map was broken into four categories: 0-14.9%, 15-29.9%, 30-39.9% and 40% or greater. These categories were chosen as the most likely breaking points for hillside restrictions in Park City. Slope, similar to streams and wetlands, played an integral part in defining the boundary for the sensitive lands regulations.

3. Vegetation

Vegetation within the Park City limits was mapped from the 1989 aerial survey photos. The photos were at 1:1,200 scale, which allowed general identification and mapping of vegetative types sufficient for the purposes of the Sensitive Lands Ordinance. The planners divided Park City's vegetation into three classes: low vegetation, typically grasses and sagebrush; medium vegetation, which included gambel oak and big-toothed mountain maple; and high vegetation, consisting of aspen and assorted conifers. The categories were defined primarily by their potential for screening development. Vegetation within the existing urban area was
not mapped. This information was very helpful in drafting ordinance language to ensure that development would be appropriately sited, whether clustered in the more open areas, or scattered on the vegetated slopes. The vegetation map was of only minimal use, however, for mapping the overlay boundary.

4. Provision of City Services

The planners met with the city fire marshall, deputy chief of police, and city engineer to determine the extent of city services, including fire protection and response time, police protection and response time, and water service levels. Each of these factors was mapped, with the fire and police protection shown with isochronal lines of two minutes, five minutes, and ten minutes. The water service map showed the highest elevation at which development could be served by the existing gravity-flow water tanks. Although these factors were interesting to review visually, they were already a part of any project's review process and were therefore of limited use in defining the sensitive lands boundary or additional restrictions.

5. Soils

Soils were mapped using the UGMS report. Because the UGMS report found few areas with unstable soils and because soil information could be required during project review under existing codes, this information was not used during the ordinance conception and drafting.

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UGMS, 10-11.
6. Prominent Ridgelines and Vantage Points

After several field trips by the planners, a preliminary mapping of the most visually prominent ridgelines within the city was completed. The map indicated which side of a ridgeline was considered important so that development would be restricted only where it would be visually intrusive from a designated vantage point. The planners also specified preliminary vantage points within the city which were considered to be significant gathering places both for local residents and visitors. They included such locations as the golf course clubhouses, ski resort bases, and schools. The boundary for the area affected by the sensitive lands regulations included the designated ridgelines, but did not necessarily include the vantage points.

7. Wildlife Habitat and Corridors

Little information was available on wildlife habitat and corridors for the Park City area and this continues to be the case. However, in 1990, the Summit Land Trust conducted an informal study of habitat and migration corridors relying on field work and interviews of long-time residents. The Trust found that there was important habitat along the west edge of town and that a major migration corridor skirted the entire north side of town. This information was considered when delineating the overlay boundary, which encompasses the habitat and migration areas. The ordinance provisions, however, address wildlife concerns only with respect to vegetation removal and a report on wildlife habitat is not required during project review.
8. Ownership

Ownership was mapped from the county recorder's ownership plats. The planners did not anticipate that the ownership map would be helpful specifically in drafting the ordinance or designating the overlay boundary. Rather, the planners looked to the ownership patterns to determine where potential takings problems would occur within the scheme of the regulations. Because some properties were located entirely within the overlay zone, ordinance provisions were included which specified how to treat properties where no reasonable use remained.

The maps were consulted to varying degrees throughout the ordinance process. Many were used only in determining the Sensitive Areas Overlay Boundary, while other components were integral in drafting the provisions themselves. The most important data components used by the planners were streams and wetlands, slope, prominent ridgelines, and vegetation. These factors formed the basis of the ordinance and each was used to regulate development in a distinct way. The ordinance provisions themselves will be discussed in Chapter 6.

B. Administrative Preparations

The City Council made completion of a Sensitive Lands Ordinance its highest priority for 1990 and 1991. The Councilors felt there was such an abundance of public support for protection of sensitive lands that they were prepared to slow other projects and incur additional expenses in order to have the ordinance finished quickly. The administrative groundwork needed to develop the ordinance included 1) making
time for the ordinance development and formulation by prioritizing workload, 2) setting policies to guide the process, and 3) hiring consultants to assist in ordinance drafting.

Because of the planners' heavy workload even before the Sensitive Lands Ordinance work commenced, the City Council passed a resolution which prioritized the planners' time and duties. The Sensitive Lands Ordinance effort was made the first priority while other tasks were designated as lower priorities. Approximately one-half full-time-equivalent was dedicated to the sensitive lands process on a regular basis, with that time taken primarily from building permit and Planning Commission review.

After the groundwork was laid by the research and mapping, the planners drafted principles which were adopted by the Council and which would guide development of the regulations. These were broad statements of intent, ranging from achieving a balance "between the public's desire to preserve our natural alpine environment and the rights of private property owners to develop their land," to formulating a "development process [which] recognize[s] and respect[s] our natural landforms and vegetative patterns," to requiring "A thorough analysis of the environmental impacts of developing a site, including aesthetic impacts...prior to approval of development of land." There were ten principles adopted in all.  

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68Lewis, 3-4.

69Refer to Appendix 2 for a complete record of the adopted principles.
Because of the amount of time needed to complete the drafting of the ordinance provisions, the staff felt it necessary to bring outside consultants into the process. The City Council consented to the planners' request for additional help and the consultants came on-line after the completion of implementation strategies (outlined in Section C below). The consultants' role was to perform the actual drafting of the Sensitive Lands Ordinance, basing it upon the completed implementation strategies and staff discussions. Drafting of the ordinance is addressed further in the next section.

C. Ordinance Development

Because of the lack of sound case law regarding aesthetics and land use regulation in Utah, as outlined in Chapter 2, the planners started the ordinance development process at the most basic level and built up. As noted above, the City Council first adopted principles for protecting sensitive lands that directed the ordinance development effort. Next, the planners drafted amendments to the 1985 Comprehensive Plan, primarily updating the sections addressing natural resources and aesthetics of the community. Implementation strategies were outlined which offered a number of options for attaining the new goals in the Comprehensive Plan. Finally, the ordinance provisions themselves were drafted.

1. Comprehensive Plan Amendments

The 1985 Comprehensive Plan addressed environmentally and visually sensitive areas, but it focused more on the physical factors of sensitive lands
preservation than on the aesthetics. The planners proposed amendments to the 1985 Comprehensive Plan that would reflect a growing concern in the community for preserving the appearance and open spaces threatened by the pace of development in the city. The planners proposed that the "Natural Resources" section be rewritten as "Sensitive Lands," with "Natural Resources" and "Aesthetics" becoming two distinct subsections. "Natural Resources" focused entirely on the physical aspects of preservation of sensitive areas, while the "Aesthetics" section focused on the economics and quality of life issues. The new goal within the "Aesthetics" section stated, "Protect and preserve the aesthetic qualities of Park City which are vital to the attractiveness and economic viability of the community." Nine objectives were articulated under "Aesthetics;" the "Natural Resources" goal was followed by three objectives. The comprehensive plan amendments were adopted prior to adoption of the Sensitive Lands Ordinance itself.

2. Implementation Strategies

After completing the comprehensive plan amendments, the planners focused on those comprehensive plan objectives that could be accomplished by an ordinance regulating development on sensitive lands. The planners met as a group several times, posing a wide variety of regulatory schemes for each objective. These were refined and organized, and the resulting document of implementation strategies

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70 Sensitive Lands Amendments to the 1985 Comprehensive Plan. 3.

71 Refer to Appendix 3 for a copy of the amendments to the 1985 Comprehensive Plan.
circulated to a larger group of city staff, officials, and the citizens' focus group. Based upon the resulting feedback, the planners selected the most appropriate regulatory methods for Park City's needs and circumstances.

3. Ordinance Drafting

The consultants hired by the City Council to assist with the development of the Sensitive Lands Ordinance, Chris Duerksen of Clarion Associates in Denver and Ralph Becker and Paul Pratt of Bear West Associates in Salt Lake City, came on board at this point in the process. They were given copies of all work to date: background research, maps, comprehensive plan amendments, and implementation strategies. The planners had already selected general regulatory schemes which best fit Park City; the consultants proposed frameworks within which to enact the regulatory schemes. The planners "analyzed a range of regulatory approaches...to deal with the development pressures on sensitive lands... [T]he city staff and consultants concluded that, given the need to act expeditiously, the best approach was to adopt a special overlay zoning protection district for all lands containing sensitive environmental areas."73

In the next step of the process, the consultants and planners spent several days in discussions of the actual provisions and regulations. For example, while a chosen implementation strategy for protecting ridgelines directed that permitted density adjacent to ridgelines be reduced, the ridgeline area and specific amount of

72Refer to Appendix 4 for a copy of the implementation strategies.

73Sensitive Area Overlay Zone Regulations, 2-3.
density reduction had to be defined. The planners and consultants made preliminary determinations on specific application requirements, slope categories, ridgeline definitions, density reductions, and other parameters. The consultants then wrote a draft of the regulations and requirements for review by the planning staff. After several iterations which involved meetings with and circulation of the draft to the citizens’ focus group and city staff members, the specifics of the regulations were finalized and the draft was prepared for presentation to the public, Planning Commission, and City Council.

D. Public Involvement

As noted in this chapter’s introduction, the planners and city officials were dedicated to public involvement throughout the development of the sensitive lands provisions. The continuous public involvement was structured as a focus group/task force. This group provided feedback to the planners on principles, comprehensive plan amendments, implementation strategies, and the regulations themselves. In addition, once the planners had completed the preliminary draft of the ordinance, the public was invited to an informational meeting to discuss the Sensitive Lands Ordinance provisions. Finally, formal public hearings were held before both the Planning Commission and City Council prior to adoption of the regulations.

The focus group was composed of 14 citizens representing ten community organizations, business sectors, and governmental jurisdictions. Specifically, these included citizens’ groups, the Board of Realtors, the Chamber of Commerce, school board, and the county. Each group was asked to nominate two or three members,
from which the City Council chose those persons most likely to be cooperative yet protective of their organization’s interests.

The focus group met four times to review material sent out to the members prior to each meeting. The focus group was asked to respond to the drafts by suggesting additions, deletions, or entire methodological changes. The focus group initially reviewed vantage points, definition of sensitive lands, and summaries of sensitive lands ordinances from other jurisdictions. As the process moved forward, the group responded to drafts of comprehensive plan amendments and implementation strategies. Throughout the process, the group participants reported back to their respective organizations and returned with any feedback. The group’s final task was to review the ordinance provisions to see if the regulations were easily understood and whether they would reflect the adopted policies and achieve the comprehensive plan goals and objectives.

Once the planners finished the preliminary draft, a public informational meeting introduced the proposed ordinance to the citizens and development community. The meeting was held on neutral ground at the community arts center; the presentation included a background discussion of the process and a multimedia description of the sensitive lands regulations. Members of the City Council and Planning Commission witnessed the unveiling of the ordinance. Even with announcements in the newspaper and on the radio, only three members of the public attended.
This seeming lack of public interest continued throughout the remainder of the public process. The Planning Commission held three public hearings on the proposed ordinance, the first including a major presentation on the new regulations. No more than three citizens attended any one meeting. The staff received one letter, from a prominent realtor, which suggested a number of minor changes. Apart from input that the ordinance would significantly impact the cost of new homes, no negative input was received. Local commentators speculated that the community’s lack of public interest was due to the close attention paid to a county land use plan revision which was being hotly debated concurrently with Park City’s effort. Others thought that the time was simply right for the Sensitive Lands Ordinance. Whatever the reason, the swift public hearing process was certainly an anomaly in public sector planning.

The process of drafting Park City’s Sensitive Lands Ordinance was incredibly smooth when the impact of the resulting regulations is taken into consideration. The entire process took approximately a year and a half, with the majority of that time spent on research, mapping, and drafting; the public hearing process was relatively minor. The regulations resulted in significantly reduced densities on hillsides and ridgelines and required setbacks for wetlands, streams, and entry corridors. Even so, the public seemed ready for strong regulations to protect the character of Park City, and the ordinance was unanimously approved both by the Planning Commission and City Council.
Originally intended to address only hillside development, the regulations enacted as part of the Sensitive Lands Ordinance extended protection to other sensitive lands as well. The Sensitive Lands Ordinance is divided into five sections, which focus on background, application requirements, the regulations themselves, administrative provisions, and definitions. In addition, there are three appendices which include design standards, tree and vegetation protection regulations, and a matrix outlining applicability of the ordinance. 74

This chapter summarizes the ordinance provisions, beginning with a discussion of the general framework and continuing to application requirements. Because this paper's primary focus is hillside development regulations, the provisions addressing hillsides are discussed in detail. A brief review of the other provisions concerning ridgelines, wetlands and streams, entry corridors into town, and economic hardship relief is provided as well.

74Refer to Appendix 5 for a copy of the Sensitive Lands Ordinance.
A. Framework

The general framework of the ordinance is an overlay zone called the Sensitive Areas Overlay Zone (SAOZ). The overlay is defined by a blueline which basically surrounds the urban area of Park City (refer to the map on the following page). The boundary follows the base of the hillsides in most areas, but it departs from the hillsides in those areas where there is a possibility that land will be defined as wetland. In addition, the overlay encompasses the two entry corridors into town. The SAOZ is open-ended; it encompasses everything outside of the urban boundary. Therefore, when annexations to Park City are considered, that land will automatically fall within the SAOZ and will be subject to the more restrictive land use regulations of the SAOZ.

In addition to the overlay, the Sensitive Lands Ordinance designates nine vantage points to assist in the analysis of visual impacts on hillsides and ridgelines. As discussed in Chapter 5, the vantage points represent locations important to residents and visitors. The ordinance specifies precise points and requires that visual analysis be conducted from these locations. In the case of an annexation, the city has the opportunity to specify additional vantage points for the purposes of reviewing the annexation petition. Designated vantage points are shown on the map on the following page.

B. Application Requirements

The Sensitive Lands Ordinance requires that additional information be submitted with any development application for land within the SAOZ. This
PARK CITY, UTAH

- APPROXIMATE CITY BOUNDARY
- APPROXIMATE SENSITIVE AREAS OVERLAY BOUNDARY
(all property outside of the boundary lies within the Sensitive Areas Overlay Zone)

- VANTAGE POINT

Contour interval: 40 feet
Scale 0, 1/8, 1/4 miles

Source: United States Geological Survey 7 1/2-minute quadrangles Brighton, Park City East, Park City West, and Heber.

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supplemental information is intended to assist in the review of the project's impacts on sensitive areas which may exist on the site. The information required includes maps containing the following information: slope; ridgeline areas designated as significant by the city which are found on the site; vegetation; entry corridors on the site; significant wetlands; and finally, stream corridors. Any of these requirements may be waived by the city based upon field inspection. For instance, if the site's vegetation consists entirely of sagebrush and grasses, no vegetation mapping will be required. On the other hand, the city may require additional information based upon a preliminary analysis of the submittals. This information could include a visual assessment, soil investigation report, geotechnical report, more detailed slope information, fire protection report, hydrologic report, and additional stream and wetland analysis.

C. Hillside Regulations

The hillside regulations are by far the most restrictive provisions of the Sensitive Lands Ordinance. Their purpose is "to protect Park City's visual character and environmentally sensitive areas on hillsides and slopes." They include significant open space requirements and bonuses for allowing public access. Density is significantly reduced from that granted by the underlying zoning: the density allowed under the SAOZ is a function of underlying zoning and slope of the parcel. Some density transfers are allowed from open space areas. Finally, the provisions

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75 Sensitive Area Overlay Zone Regulations, 10.
restrict roads in steeper areas and permit the city to require either scattering or clustering of development.

Park City defines slope simply as rise over run, or more formally, "The level of inclination of land from the horizontal determined by dividing the horizontal run of the slope into the vertical rise of the same slope." The regulations are divided into two categories: 15-40% and over 40%. There are specific restrictions for each category as well as general restrictions for all slope categories. Areas of less than 15% slope and not subject to other sensitive lands restrictions (such as ridgeline or entry corridor regulations) are reviewed solely under the provisions of the underlying zoning.

1. Slopes of 15-40%

Land in this category of slope must have 75% left as open space. Of this open space area, one-quarter of the underlying density can be developed, although it must be transferred out of the open space portion. The density transfer is subject to a suitability determination, based upon the appropriateness and compatibility of the resulting density on the receiving parcel. The remaining 25% of the land in the 15-40% slope category can be developed to the full density of the underlying zone. Essentially, the density for land in this category is reduced by just over half, while three-quarters of the land is retained as permanent open space as shown in the following example.

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76 Ibid., 35.
Total acreage in 15-40% slope = 16 acres
Underlying density = 2 units per acre
Required open space (16 x .75) = 12 acres
Density transferred from open space portion (12 x .25 x 2) = 6 units
Developable portion (16 x .25) = 4 acres
Density on developable portion (4 x 2) = 8 units

Therefore, for the 16 acre sample site, there will be 12 acres of open space and 14 units developed. The underlying density allowed if the project were not within the SAOZ would be 32 units.

2. Slopes over 40%

The regulations for slopes over 40% are more strict than those for the gentler slopes. The Sensitive Lands Ordinance requires that 100% of the land within this category be left as open space. However, a small amount (10%) of the underlying density may be transferred to other portions of the site, subject to a suitability determination. Thus, all very steep slopes (over 40%) will remain perpetual open space. The difference between the treatment of the 15-40% and over 40% slope categories is based upon the difficulty of development and the visual sensitivity of the land.

3. Road Restrictions

The Sensitive Lands Ordinance prohibits roads crossing slopes of 30% or more to avoid what can be "the most visually disruptive portion of a development."\footnote{ibid., 10.}
However, the Community Development Director may allow short crossings of 100 feet or less, based upon a recommendation from the Planning Director and City Engineer. In such a case, findings must be made that there will be no "significant adverse visual, environmental, or safety impacts." In addition, the ordinance contains provisions that limit cutting and filling, require revegetation plans, and direct that roads be planned to minimize environmental damage. There are no restrictions on road grade above and beyond the city-wide road standards.

4. Density Bonuses

Density bonuses of 20% or less may be offered to developers achieving any one of three purposes: donation of the required open space to the city or a non-profit conservation organization, providing public access other than what would normally be required, and restoration or "significant environmental improvements." The density bonuses may be recommended by the Planning Department but must be approved by the Planning Commission. The bonus is calculated as 20% of the transferrable density.

5. Grading and Filling Restrictions

Finally, the ordinance places restrictions on grading and filling during construction. All such earth-moving must be reviewed by the Community Development Department and grading to create larger building sites is prohibited.

78 Ibid., 11.
79 Ibid., 15.
The provisions specify a maximum slope of 3 to 1, with "All graded slopes...recontoured to the natural, varied contour of the surrounding terrain." Retaining walls are encouraged to minimize grading and create more favorable conditions for revegetation, but require Community Development Department approval.

D. Other Regulations

While this paper is intended to focus on hillside protection regulations, there are other provisions of the Sensitive Lands Ordinance which help to achieve the aesthetics-based goals of the ordinance. The ridgeline, wetlands and streams, entry corridor, and economic hardship relief provisions are briefly outlined here; the regulations themselves are included in Appendix 5.

1. Ridgeline Regulations

Like the hillside regulations for very steep slopes, the ridgeline restrictions require that 100% of the ridgeline area be retained as open space. The city mapped and adopted designated sensitive ridgelines; other ridgelines are not subject to these provisions. A ridgeline area is defined as "the crest of a hill or slope plus the land located within one-hundred fifty (150) feet horizontally (map distance) on either side of the crest." Development may not encroach on this area. Moreover, the boundary of the ridgeline area forms a visual plane which may not be broken by...

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\(^{80}\)Ibid., 10.

\(^{81}\)Ibid., 35.
structures as viewed from any one of the designated vantage points. One-quarter of the density granted by the underlying zone may be transferred to another portion of the site, outside of the ridgeline area, subject to a suitability determination. Like the hillside regulations, density bonuses may be granted for land donations, public access, or environmental restoration.

2. Wetland and Stream Regulations

Wetlands and streams must be preserved and development cannot encroach within fifty feet of a wetland or stream boundary. Federal manuals are used to define the wetland edge, while the stream boundary is defined as the ordinary high water mark. One hundred percent of the underlying density in the stream or wetland area and fifty-foot setbacks may be transferred to another portion of the site. The transfer is not subject to a suitability determination.

3. Entry Corridor Regulations

Park City's entry corridors are designated along the three entrances to town, two of which are major thoroughfares. The entry corridors regulated by the Sensitive Lands Ordinance are located only within the overlay zone; the city has additional restrictions on entry corridor development for those areas not within the SAOZ. The entry corridor is defined as 250 feet from the right-of-way boundary. Within that area, there is a minimum 100-foot setback, which actually can be increased by the Planning Commission during development review based upon aesthetic considerations. The entire underlying density from that setback may be transferred to other portions
of the site, without a suitability determination. The ordinance also contains provisions regulating placement of parking lots and requiring stepped height limits that vary with the distance from the right-of-way. Finally, the entry corridor regulations address earthwork, including berms and grading.


Park City included the economic hardship relief provisions in the Sensitive Lands Ordinance to provide an additional step for mediation between the City Council and the court system. If an applicant believes that he or she has suffered a "denial of all reasonable use of the property," by the City Council, the applicant may submit a Hardship Relief Petition to the Council. This gives the Council the opportunity to participate in a process where a hearing officer is appointed to hear the details of the case and make recommendations. If the hearing officer finds that the applicant would suffer a substantial economic hardship because of the action taken on the development application, the officer recommends options to the Council for eliminating the hardship. The Council may approve, deny, or act upon a modification of the recommendation. However, the Council is not bound to offer allowances at the conclusion of the process. The economic hardship relief provisions allow the city to pursue a variety of methods of alleviating substantial economic hardship before being taken to court. This process is particularly helpful because of Utah's dearth of case law regarding aesthetics and land use controls.

82Ibid., 27.
The process followed by Park City resulted in regulations which were expected to achieve the goals and objectives set out early in the process. After ordinance adoption, the staff's focus turned from ordinance drafting to ordinance implementation. One-page information sheets, which summarized the new regulations, were created and distributed to community and business groups. Planners attended local meetings, such as the Board of Realtors and Rotary, to explain the ordinance, its intended effects, and its impacts on the development community. Staff training sessions were held within the Planning and Building Departments so that the staff would be prepared to conduct specific analyses and answer questions from the public. These early implementation efforts lasted for approximately two months.

Even though the sensitive lands provisions are comprehensive and were carefully drafted, the ordinance has two areas of impotence: it cannot be applied to those uncompleted projects which received master plan approval in the past, nor can it always be strictly applied to developments resulting from legal settlements. This is significant because there are several large projects which are thus unaffected by the ordinance provisions. In these cases, the staff works with the developers to achieve the aims of the ordinance while not strictly applying the Sensitive Lands provisions.

Since enactment of the ordinance in the fall of 1992, the Sensitive Lands Ordinance provisions have been applied to several projects. As expected, the hillside regulations have been the most potent of the restrictions and have resulted in preservation of significant open space. The ridgeline provisions have resulted in effective preservation of one designated ridgeline to date. The wetland provisions
have been applied to one development and, in conjunction with the Army Corps of
Engineers restrictions, have been successful in protecting a significant wetland area.
The entry corridor regulations and economic hardship relief process have not yet been
employed.
The Sensitive Lands Ordinance is now two years old and it has been successfully applied to several major projects. There have been no legal challenges to the ordinance, even though it is widely recognized as the most restrictive sensitive lands ordinance in the state. The community continues to support the ordinance and its objectives as the pace of growth in Park City shows no signs of slowing. Park City Municipal Corporation sponsored another Community Vision forum in December of 1993 with much the same result as that of 1989: the citizens still fear that the community character and quality of life are deteriorating. However, fingers now point more to congestion, crime, and the enormous influx of people and less to losing the open hillsides.

Analyzing Park City's sensitive lands process in retrospect, there was only one aspect which was not highly productive, while several were exceptionally valuable. Foremost in the first category, mapping of the data early in the process would have been more effective and certainly more efficient if computerized rather than manual. Park City's maps, as pointed out in Chapter 5, were hand-drafted on clear mylar at a scale of 1" = 400'. The resulting maps measured four feet by six
feet. The maps were very helpful for reference during the process; they were particularly valuable in the definition of the blueline. However, since ordinance adoption, the maps have seldom been used, mostly because they are so unwieldy. If the data had originally been mapped on a computer, it could be manipulated and utilized for a number of other projects at any scale.

Of the aspects which stand out for their success, the use of the citizens' focus group was most significant. The group allowed for public input during the critical phases of the process such as Comprehensive Plan amendments, implementation strategies, and ordinance development. Because of the focus group's input, the staff had the opportunity to review and resolve major concerns early in the ordinance development. Moreover, much of the community received regular progress reports from their representatives who were members of the focus group. Therefore, when the ordinance draft was released, most of the provisions were already familiar and many concerns had already been addressed. The importance of the focus group in garnering public input and averting major conflicts cannot be overstated.

In addition, the project methodology of building upon the results of previous steps allowed the ordinance development to progress in a rational and systematic manner. Throughout the process, the planners could refer back to the results of earlier stages to ensure that their work continued on track, adhering to the adopted policies and meeting the articulated goals. Such a system will help to legally bolster the provisions, as any challenges to the ordinance provisions can be reviewed in light of the regulations' intents and objectives.
George H. Siehl states in *Scenic Landscape Protection*, "Though often controversial, land use planning through zoning tools is supposed to guide development in socially desirable directions. It can help to maintain the character of the community and the quality of their scenic landscapes." Park City's Sensitive Lands Ordinance has not yet had time to confirm Siehl's expectations. Indeed, the ordinance's success cannot be fully judged until the hillside property in Park City has been developed or, at least, planned. In the projects reviewed and developed under the Sensitive Lands provisions, however, the ordinance seems to be a great success, limiting disturbance in critical areas, while allowing some development where most appropriate. As a result, the city officials and the community have high hopes that the Sensitive Lands Ordinance will bring them one step closer to preserving those qualities for which they came to Park City.

The charming landscape which I saw this morning, is indubitably made up of some twenty or thirty farms. Miller owns this field, Locke that, and Manning the woodland beyond. But none of them owns the landscape. There is a property in the horizon which no man has but he whose eye can integrate all the parts... This is the best part of these men's farms, yet to this their lands-deeds give them no title.

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APPENDIX 1

UTAH ENABLING LEGISLATION
PART 1
GENERAL PROVISIONS

10-9-101 Short Title

This chapter shall be known as "The Municipal Land Use Development and Management Act."

10-9-102 Purpose

To accomplish the purpose of this Act, and in order to provide for the health, safety, and welfare, and promote the prosperity, improve the morals, peace and good order, comfort, convenience, and aesthetics of the municipality and its present and future inhabitants and businesses, to protect the tax base, secure economy in governmental expenditures, foster the state's agricultural and other industries, protect both urban and nonurban development, and to protect property values, municipalities may enact all ordinances, resolutions, and rules that they consider necessary for the use and development of land within the municipality, including ordinances, resolutions, and rules governing uses, density, open spaces, structures, buildings, energy-efficiency, light and air, transportation, infrastructure, public facilities, vegetation, and trees and landscaping, unless those ordinances, resolutions, or rules are expressly prohibited by law.

10-9-103 Definitions

As used in this chapter:

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

(2) "Chief Executive Officer" means:

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

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

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

(4) "County" means the unincorporated area of the county.

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

(6) (a) "General plan" means a document that a municipality adopts that sets forth general guidelines for proposed future development of the land within the municipality, as set forth in Sections 10-9-301 and 10-9-302.

(b) "General plan" includes what is also commonly referred to as a "master plan."

(7) "Handicapped person" means a person who:

(a) has a severe, chronic disability attributable to a mental or physical impairment or to a combination of mental and physical impairments that is likely to continue indefinitely and that results in a substantial functional limitation in three or more of the following areas of major life activity:

(i) self-care;

(ii) receptive and expressive language;

(iii) learning;

(iv) mobility;

(v) self-direction;

(vi) capacity for independent living; and

(vii) economic self-sufficiency; and

(b) requires a combination or sequence of special interdisciplinary or generic care, treatment,
or other services that are individually planned and coordinated to allow the person to function in, and contribute to, a residential neighborhood.

(8) "Legislative body" means the city council or city commission.

(9) "Municipality" means a city or town.

(10) "Nonconforming use" means a land use 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.

(11) "Nonconforming structure" means a structure that:
(a) legally existed before its current zoning designation; and
(b) because of subsequent zoning changes, does not conform with the zoning regulation's setback, height restrictions, or other regulations that govern the structure.

(12) (a) "Residential facility for elderly persons" means a single-family or multiple-family dwelling unit that meets the requirements of Part 5 and any ordinance adopted under authority of that part.
(b) "Residential facility for elderly persons" does not include a health care facility as defined by Section 26-21-2.

(13) "Residential facility for handicapped persons" means a single-family or multiple-family dwelling unit that meets the requirements of Part 6 and any ordinance adopted under authority of that part.

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

(15) "Street" means public rights-of-way, including highways, avenues, boulevards, parkways, roads, lanes, walks, alleys, viaducts, subways, tunnels, bridges, public easements and other ways.

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

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

(17) "Unincorporated" means the area outside of the incorporated boundaries of cities and towns.

10-9-104 Most restrictive regulation prevails

(1) Whenever the regulations made under authority of this chapter impose more strict or higher standards than are required in any other statute, ordinance, or regulation, the provisions of the regulations made under authority of this chapter shall govern.

(2) Wherever the provisions of any other statute, ordinance, or regulation require or impose more strict or higher standards than are required by the regulations made under authority of this chapter, the provisions of that statute, ordinance, or regulation shall govern.

10-9-105 State and federal property

Unless otherwise provided by law, nothing contained in Parts 3 and 8 of this chapter may be construed as giving the planning commission or the legislative body jurisdiction over properties owned by the State of Utah or the United States government.

10-9-106 Property owned by other government units—Effect of land use and development ordinances.

(1) (a) Each county, municipality, school district, special district, and political subdivision of Utah shall conform to the land use and development ordinances of any municipality when installing, constructing, operating, or otherwise using any area, land or building situated within that municipality only in a manner or for a purpose that conforms to that municipality's ordinances.
(b) In addition to any other remedies provided by law, when a municipality's land use and development ordinances are being violated or about
to be violated by another political subdivision, that municipality may institute injunction, mandamus, abatement, or other appropriate action or proceeding to prevent, enjoin, abate, or remove the improper installation, improvement, or use.

(2) A school district is subject to a municipality's land use regulations under this chapter, except that a municipality may not:
(a) impose requirements for landscaping, fencing, aesthetic considerations, construction methods or materials, building codes, building use for educational purposes, or the placement or use of temporary classroom facilities on school property;
(b) require a school district to participate in the cost of any roadway or sidewalk 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;
(c) require a district to pay fees not authorized by this section;
(d) provide for inspection of school construction or assess a fee or other charges for inspection, unless neither the school district nor the state superintendent has provided for inspection by an inspector, other than the project architect or contractor, who is qualified under criteria established by the state superintendent with the approval of the state building board and state fire marshall;
(e) require a school district to pay any impact fee for improvements not reasonably related to the impact of the project upon the need which the improvement is to address; or
(f) impose regulations upon the location of a project except as necessary to avoid unreasonable risks to health or safety.

PART 2
PLANNING COMMISSION

10-9-201 Appointment, term, vacancy, and compensation

(1) (a) Each municipality may enact an ordinance establishing a planning commission.
(b) The ordinance shall define:
(i) the number and terms of the members;
(ii) the mode of appointment;
(iii) the procedure for filling vacancies and removal from office; and
(iv) other details relating to the organization and procedures of the planning commission.

(2) The legislative body may fix per diem compensation for the members of the planning commission, based on necessary and reasonable expenses and on meetings actually attended.

10-9-202 Organization and procedures

(1) The planning commission shall elect a chairperson from its members as provided by the ordinance establishing the planning commission.

(2) (a) The planning commission may adopt policies and procedures for the conduct of its meetings, the processing of applications, and for any other purposes considered necessary for the functioning of the planning commission.
(b) The legislative body may provide that those policies and procedures be approved by the legislative body before taking effect.

10-9-203 Use of state data

The planning commission may obtain access to and use any data and information held by the state or any of its agencies:
(a) that is classified "public"; and
(b) that is classified "protected" if the planning commission's use of the data is lawfully authorized or if the data will be used for a purpose similar to the purpose for which it was gathered.

(2) Each state official, department, and agency shall:
(a) make any data and information requested by the planning commissions available if authorized under the requirements of this section; and
(b) furnish any other technical assistance and advice that they have available to planning commissions without additional cost to the municipality.

10-9-204 Powers and duties

The planning commission shall:
(1) prepare and recommend a general plan and amendments to the general plan to the legislative body as provided in this chapter;
(2) recommend zoning ordinances and maps, and
amendments to zoning ordinances and maps, to the legislative body as provided in this chapter;

(3) administer provisions of the zoning ordinance, where specifically provided for in the zoning ordinance adopted by the legislative body;

(4) recommend subdivision regulations and amendments to those regulations to the legislative body as provided in this chapter;

(5) recommend approval or denial of subdivision applications as provided in this chapter;

(6) advise the legislative body on matters as the legislative body directs;

(7) hear or decide any matters that the legislative body designates, including the approval or denial of, or recommendations to approve or deny, conditional use permits;

(8) exercise any other powers:
   (a) that are necessary to enable it to perform its function; or
   (b) delegated to it by the legislative body.

10-9-205 Entrance upon land

The planning commission or its authorized agents may enter upon any land at reasonable times to make examinations and surveys and to place and maintain necessary monuments and marks on the land.

PART 3
GENERAL PLAN

10-9-301 General plan

(1) In order to accomplish the purposes set forth in this chapter, each municipality shall prepare and adopt a comprehensive, long-range general plan for:
   (a) the present and future needs of the municipality; and
   (b) the growth and development of the land within the municipality or any part of the municipality.

(2) The plan may provide for:
   (a) health, general welfare, safety, energy conservation, transportation, prosperity, civic activities, and recreational, educational, and cultural opportunities;
   (b) the reduction of the waste of physical, financial, or human resources that result from either excessive congestion or excessive scattering of population;
   (c) the efficient and economical use, conservation, and production of the supply of food and water, and of drainage, sanitary, and other facilities and resources;
   (d) the use of energy conservation and solar and renewable energy resources; and
   (e) the protection of urban development.

(3) The municipality may determine the comprehensiveness, extent, and format of the general plan.

10-9-302 Plan preparation

(1) (a) The planning commission shall make and recommend to the legislative body a proposed general plan for the area within the municipality.
   (b) The plan may include areas outside the boundaries of the municipality if, in the commission's judgement, they are related to the planning of the municipality's territory.
   (c) Where the plan of a municipality involves territory outside the boundaries of the municipality, no action affecting that territory may be taken without the concurrence of the county or other municipalities affected.

(2) The general plan, with the accompanying maps, plats, charts and descriptive and explanatory matter, shall show the planning commission's recommendations for the development of the territory covered by the plan, and may include, among other things:
   (a) a land use element that:
      (i) designates the proposed general distribution and location and extent of uses of land for housing, business, industry, agriculture, recreation, education, public buildings and grounds, open space, and other categories of public and private uses of land as appropriate; and
      (ii) may include a statement of the standards of population density and building intensity recommended for the various land use categories covered by the plan;
   (b) a transportation and circulation element consisting of the general location and extent of existing and proposed freeways, arterial and collector streets, mass transit, and any other modes of transportation that are appropriate, all correlated with the land use element of the plan;
   (c) an environmental element that addresses:
      (i) the protection, conservation, development, and use of natural resources, including forests, soils,
rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources; and

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

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

(e) a rehabilitation, redevelopment, and conservation element consisting of plans and programs for the elimination of blight and for redevelopment, including housing sites, business and industrial sites, and public building sites;

(f) an economic element composed of appropriate studies and an economic development plan that may include review of municipal revenue and expenditures, revenue sources, identification of base and residential industry, primary and secondary market areas, employment, and retail sales activity;

(g) recommendations for implementing the plan, including the use of zoning ordinances, subdivision ordinances, capital improvement plans, and other appropriate actions; and

(h) any other elements that the municipality considers appropriate.

10-9-303 Plan adoption

(1) (a) After completing a proposed general plan for all or part of the area within the municipality, the planning commission shall schedule and hold a public hearing on the proposed plan.

(b) After the public hearing, the planning commission may make changes to the proposed general plan.

(2) The planning commission shall then forward the proposed general plan to the legislative body.

(3) (a) The legislative body shall hold a public hearing on the proposed general plan recommended to it by the planning commission.

(b) After the public hearing, the legislative body may make any modifications to the proposed general plan that it considers appropriate.

(4) The legislative body may:

(a) adopt the proposed general plan without amendment;

(b) amend the proposed general plan and adopt or reject it as amended; or

(c) reject the proposed general plan.

(5) The general plan is an advisory guide for land use decisions.

10-9-304 Amendment of plan

The legislative body may amend the general plan by following the procedures required by Section 10-9-303.

10-9-305 Effect of the plan on public uses

(1) After the legislative body has adopted a general plan or any amendments to the general plan, no street, park, or other public way, ground, place, or space, no publicly owned building or structure, and no publicly owned utility, whether publicly or privately owned, may be constructed or authorized until and unless:

(a) it conforms to the plan; or

(b) it has been considered by the planning commission and, after receiving the advice of the planning commission, approved by the legislative body as an amendment to the general plan.

(2) (a) Before accepting, widening, removing, extending, relocating, narrowing, vacating, abandoning, changing the use, acquiring land for, or selling or leasing any street or other public way, ground, place, property, or structure, the legislative body shall submit the proposal to the planning commission for its review and recommendations.

(b) If the legislative body approves any of the items contained in Subsection (a), it shall also amend the general plan.

PART 4
ZONING

10-9-401 General powers

The legislative body may enact a zoning
ordinance establishing regulations for land use and development that furthers the intent of this chapter.

10-9-402 Preparation and adoption

(1) The planning commission shall prepare and recommend to the legislative body a proposed zoning ordinance, including both the full text of the zoning ordinance and maps, that represents the commission's recommendations for zoning all or any part of the area within the municipality.

(2) (a) The legislative body shall hold a public hearing on the proposed zoning ordinance recommended to it by the planning commission.

(b) The legislative body shall publish notice of the time, place, and purpose of the public hearing in a newspaper of general circulation in the municipality at least 14 days before the hearing at which the proposed zoning ordinance is to be considered and public comment heard.

(3) After the public hearing, the legislative body may:

(a) adopt the zoning ordinance as proposed; or

(b) amend the zoning ordinance and adopt or reject the zoning ordinance as amended; or

(c) reject the ordinance.

10-9-403 Amendments and rezonings

(1) (a) The legislative body may amend:

(i) the number, shape, boundaries, or area of any zoning district;

(ii) any regulation of or within the zoning district; or

(iii) any other provision of the zoning ordinance.

(b) The legislative body may not make any amendment authorized by this subsection unless the amendment was proposed by the planning commission or is first submitted to the planning commission for its approval, disapproval, or recommendations.

(2) The legislative body shall comply with the procedure specified in Section 10-9-402 in preparing and adopting an amendment to the zoning ordinance or the zoning map.

10-9-404 Temporary regulations

(1) (a) The legislative body may, without a public hearing, enact ordinances establishing temporary zoning regulations for any part or all of the area within the municipality.

(b) Those temporary zoning regulations may prohibit or regulate the erection, construction, reconstruction, or alteration of any building or structure or subdivision approval.

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

(3) There shall be no claim for damages based on a temporary moratorium under this section.

10-9-405 Zoning districts

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

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

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

10-9-406 Zoning of annexed territory

(1) The legislative body of a municipality may assign a zoning designation to territory annexed to the municipality at the time the territory is annexed.

(2) If the annexing municipality's zoning ordinance does not designate a zone for the territory to be annexed to the municipality, or if the legislative body does not assign a zone to territory at the time it is annexed, the territory annexed to a municipality shall be zoned according to the zone of the annexing municipality with which it has the longest common boundary.

10-9-407 Conditional uses

(1) A zoning ordinance may contain provisions for conditional uses that may be allowed, allowed with conditions, or denied in designated zoning districts, based on compliance with standards and criteria set forth in the zoning ordinance for those uses.

(2) The board of adjustment has jurisdiction to
decide appeals of the approval or denial of conditional use permits unless the legislative body has enacted an ordinance designating another body as the appellate body for those appeals.

10-9-408 Nonconforming uses and structures

(1) (a) Except as provided in this section, a nonconforming use or structure may be continued.
   (b) A nonconforming use may be extended through the same building, provided no structural alteration of the building is proposed or made for the purpose of the extension.
   (c) For purposes of this Subsection (1), the addition of a solar energy device to a building is not a structural alteration.

(2) The legislative body may provide in any zoning ordinance or amendment for:
   (a) the restoration, reconstruction, extension, alteration, expansion, or substitution of nonconforming uses upon the terms and conditions set forth in the zoning ordinance;
   (b) the termination of all nonconforming uses except billboards by providing a formula establishing a reasonable time period during which the owner can recover or amortize the amount of his investment in the nonconforming use, if any; and
   (c) the termination of billboard that is a nonconforming use by either:
      (i) acquiring the billboard and associated property rights by gift, purchase, agreement, exchange, or eminent domain, provided that if the legislative body acquires the billboard by eminent domain, it pays the owner just compensation; or
      (ii) establishing a reasonable time period for expiration of the nonconforming use that:
         (A) balances the harm to the owner against the public good, without imposing an undue burden upon the owner; and
         (B) allows the owner to recover or amortize the fair market value, in an amount that is equal to the amount by condemnation, and takes into consideration the reasonable cost of operation to the owner over the amortization period.

(3) Notwithstanding Subsection (2) a legislative body may remove a billboard without providing compensation or amortization if, after providing the owner with reasonable notice of proceedings and an opportunity for a hearing, the legislative body finds that:
   (a) the applicant for a permit made a false or misleading statement in his application;
   (b) the billboard is unsafe; or
   (c) the billboard is in an unreasonable state of repair.

PART 5
RESIDENTIAL FACILITIES
FOR ELDERLY PERSONS

10-9-501 Residential facilities for elderly persons

(1)(a) A residential facility for elderly persons may not operate as a business.
   (b) A residential facility for elderly persons shall:
      (i) be owned by one of the residents or by an immediate family member of one of the residents, or by an eleemosynary, charitable, or beneficial organization, including a facility for which the title has been placed in trust for a resident;
      (ii) be consistent with existing zoning of the desired location;
      (iii) be occupied on a 24-hour-per-day basis by eight or fewer elderly persons in a family-type arrangement; and
      (iv) conform with applicable standards of the Department of Human Services and be licensed and inspected by that department.

(2) (a) A residential facility for elderly persons may not be considered a business because a fee is charged for food or for actual and necessary costs of operation and maintenance of the facility.
   (b) The owner of a residential facility for elderly persons may not charge residents administrative costs or salaries greater than 15% of that fee.
   (c) A person charging a fee shall:
      (i) keep a record of all expenses and costs related to the fee; and
      (ii) make that record available for inspection by any resident of the facility, the Department of Human Services, and local building officials.

10-9-502 Municipal ordinances governing elderly residential facilities

(1) Each municipality shall adopt ordinances that establish that a residential facility for elderly persons is a permitted use in any area where residential dwellings are allowed, except an area zoned to permit exclusively single-family dwellings.
(2) The ordinances shall establish a permit process that may require only that:
   (a) the facility meet all applicable building, safety, zoning, and health ordinances applicable to similar dwellings;
   (b) adequate off-street parking space be provided;
   (c) the facility be capable of use as a residential facility for elderly persons without structural or landscaping alterations that would change the structure's residential character;
   (d) no residential facility for elderly persons be established within three-quarters mile of another residential facility for elderly persons or residential facility for handicapped persons, as defined by Section 10-9-103;
   (e) no person being treated for alcoholism or drug abuse be placed in a residential facility for elderly persons; and
   (f) placement in a residential facility for elderly persons be on a strictly voluntary basis and not a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional facility.

10-9-503 Municipal approval of elderly residential facilities

(1) (a) Upon application for a permit to establish a residential facility for elderly persons in any area where residential dwellings are allowed, except an area zoned to permit exclusively single-family dwellings, the municipality may decide only whether or not the residential facility for elderly persons conforms to ordinances adopted by the municipality under this part.

   (b) If the municipality determines that the residential facility for elderly persons complies with the ordinances, it shall grant the requested permit to that facility.

   (2) The use granted and permitted by this section is nontransferable and terminates if the structure is devoted to a use other than as a residential facility for elderly persons or if the structure fails to comply with the ordinances adopted under this part.

   (3) If a municipality has not adopted ordinances under this part at the time an application for a permit to establish a residential facility for elderly persons is made, the municipality shall grant the permit if it is established that the criteria set forth in this part have been met by the facility.

10-9-504 Elderly residential facilities in areas zoned exclusively for single-family dwellings

(1) For purposes of this section:
   (a) no person who is being treated for alcoholism or drug abuse may be placed in a residential facility for elderly persons; and
   (b) placement in a residential facility for elderly persons shall be on a strictly voluntary basis and may not be a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional institution.

(2) Subject to the granting of a conditional use permit, a residential facility for elderly persons shall be allowed in any municipal zoning district that is zoned to permit exclusively single-family dwelling use, if that facility:
   (a) conforms to all applicable health, safety, zoning, and building codes;
   (b) is capable of use as a residential facility for elderly persons without structural or landscaping alterations that would change the structure's residential character; and
   (c) conforms to the municipality's criteria, adopted by ordinance, governing the location of residential facilities for elderly persons in areas zoned to permit exclusively single-family dwellings.

(3) A municipality may, by ordinance, provide that no residential facility for elderly persons be established within three-quarters mile of another existing residential facility for elderly persons or residential facility for handicapped persons, as defined by Section 10-9-2.5.

(4) The use granted and permitted by this section is nontransferable and terminates if the structure is devoted to a use other than as a residential facility for elderly persons or if the structure fails to comply with applicable health, safety, and building codes.

(5) (a) Municipal ordinances shall prohibit discrimination against elderly persons and against residential facilities for elderly persons.

   (b) The decision of a municipality regarding the application for a permit by a residential facility for elderly persons must be based on legitimate land use criteria and may not be based on the age of the facility's residents.

(6) The requirements of this section that a residential facility for elderly persons obtain a conditional use permit or other permit do not apply if the facility meets the requirements of existing
zoning ordinances that allow a specified number of unrelated persons to live together.

PART 6
RESIDENTIAL FACILITY
FOR HANDICAPPED PERSONS

10-9-601 Residential facility for handicapped persons

(1) A residential facility for handicapped persons shall be consistent with existing zoning of the desired location.

(2) A residential facility for handicapped persons shall:
   (a) be occupied on a 24-hour-per-day basis by eight or fewer handicapped persons in a family-type arrangement under the supervision of a house family or manager;
   (b) conform to all applicable standards and requirements of the Department of Human Services; and
   (c) be operated by or operated under contract with that department.

10-9-602 Municipal ordinances governing handicapped residential facilities

(1) Each municipality shall adopt ordinances that establish that a residential facility for handicapped persons is a permitted use in any area where residential dwellings are allowed, except an area zoned to permit exclusively single-family dwellings.

(2) Those ordinances shall establish a permit process that may require only that:
   (a) the facility meet all municipal building, safety, and health ordinances applicable to similar dwellings;
   (b) the operator of the facility provide assurances that the residents of the facility will be properly supervised on a 24-hour basis;
   (c) the operator of the facility establish a municipal advisory committee through which all complaints and concerns of neighbors may be addressed;
   (d) the operator of the facility provide adequate off-street parking space;
   (e) the facility be capable of use as a residential facility for handicapped persons without structural or landscaping alterations that would change the structure's residential character;
   (f) no residential facility for handicapped persons be established or maintained within three-quarters mile of another residential facility for handicapped persons;
   (g) no person being treated for alcoholism or drug abuse be placed in a residential facility for handicapped persons;
   (h) no person who is violent be placed in a residential facility for handicapped persons; and
   (i) placement in a residential facility for handicapped persons be on a strictly voluntary basis and not a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional facility.

10-9-603 Municipal approval of handicapped residential facilities

(1) (a) Upon application for a permit to establish a residential facility for handicapped persons in any area where residential dwellings are allowed, except an area zoned to permit exclusively single-family dwellings, the municipality may decide only whether or not the residential facility for handicapped persons conforms to ordinances adopted by the municipality under this part.

   (b) If the municipality determines that the residential facility for handicapped persons is in compliance with those ordinances, it shall grant the requested permit to that facility.

   (2) The use granted and permitted by this section is nontransferable and terminates if the structure is devoted to a use other than as a residential facility for handicapped persons or if the structure fails to comply with the ordinances adopted under this part.

   (3) If a municipality has not adopted ordinances under this part at the time an application for a permit to establish a residential facility for handicapped persons is made, the municipality shall grant the permit if it is established that the criteria set forth in this part have been met by the facility.

10-9-604 Handicapped residential facilities in areas zoned exclusively for single-family dwellings

(1) For purposes of this section:
   (a) no person who is being treated for
alcoholism or drug abuse may be placed in a residential facility for handicapped persons;
(b) no person who is violent may be placed in a residential facility for handicapped persons; and
(c) placement in a residential facility for handicapped persons shall be on a strictly voluntary basis and may not be a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional institution.

(2) Subject to the granting of a conditional use permit, a residential facility for handicapped persons shall be allowed in any municipal zoning district that is zoned to permit exclusively single-family dwelling use, if that facility:
   (a) conforms to all applicable health, safety, and building codes;
   (b) is capable of use as a residential facility for handicapped persons without structural or landscaping alterations that would change the structure’s residential character; and
   (c) conforms to the municipality’s criteria, adopted by ordinance, governing residential facilities for handicapped persons in areas zoned to permit exclusively single-family dwellings.

(3) A municipality may, by ordinance, provide that no residential facility for handicapped persons be established or maintained within three-quarters mile of another existing residential facility for handicapped persons.

(4) The use granted and permitted by this subsection is nontransferable and terminates if the structure is devoted to a use other than as a residential facility for handicapped persons or, if the structure fails to comply with applicable health, safety, and building codes.

(5) (a) Municipal ordinances shall prohibit discrimination against handicapped persons and against residential facilities for handicapped persons.

(b) The decision of a municipality regarding the application for a permit by a residential facility for handicapped persons must be based on legitimate land use criteria, and may not be based on the handicapping conditions of the facility's residents.

PART 7
BOARD OF ADJUSTMENT

10-9-701 Board of adjustment — Appointment —

Term — Vacancy

(1) In order to provide for just and fair treatment in the administration of local zoning ordinances, and to ensure that substantial justice is done, each municipality adopting a zoning ordinance shall appoint a board of adjustment to exercise the powers and duties provided in this part.

(2) (a) The board of adjustment shall consist of five members and whatever alternate members that the chief executive officer, with the advice and consent of the legislative body, considers appropriate.

(b) The chief executive officer shall appoint the members and alternate members, with the advice and consent of the legislative body, for a term of five years.

(c) The chief executive officer shall appoint members of the first board of adjustment to terms so that the term of one member expires each year.

(3) (a) No more than two alternate members may sit at any meeting of the board of adjustment at one time.

(b) The legislative body shall make rules establishing a procedure for alternate members to serve in the absence of members of the board of adjustment.

(4) (a) The legislative body may remove any member of the board of adjustment for cause if written charges are filed against the member with the legislative body.

(b) The legislative body shall provide the member with a public hearing if he requests one.

(5) (a) The chief executive officer, with the advice and consent of the legislative body, shall fill any vacancy.

(b) The person appointed shall serve for the unexpired term of the member or alternate member whose office is vacant.

10-9-702 Organization — procedures

(1) The board of adjustment shall:
   (a) organize and elect a chairperson; and
   (b) adopt rules that comply with any ordinance adopted by the legislative body.

(2) The board of adjustment shall meet at the call of the chairperson and at any other times that the board of adjustment determines.

(3) The chairperson, or, in the absence of the
chairperson, the acting chairperson, may administer oaths and compel the attendance of witnesses.

(4) (a) All meetings of the board of adjustment shall be open to the public.

(b) The board of adjustment shall:
   (i) keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact; and
   (ii) keep records of its examinations and other official actions.

(c) The board of adjustment may, but is not required to, have its proceedings contemporaneously transcribed by a court reporter or a tape recorder.

(d) The board of adjustment shall file its records in the office of the board of adjustment.

(e) All records in the office of the board of adjustment are public records.

(5) The concurring vote of three members of the board of adjustment is necessary to reverse any order, requirement, decision, or determination of any administrative official or agency or to decide in favor of the appellant.

(6) Decisions of the board of adjustment become effective at the meeting in which the decision is made, unless a different time is designated in the board’s rules or at the time the decision is made.

(7) The legislative body may fix per diem compensation for the members of the board of adjustment, based on necessary and reasonable expenses and on meetings actually attended.

10-9-703 Powers and duties

(1) The board of adjustment shall:
   (a) hear and decide appeals from zoning decisions applying the zoning ordinance;
   (b) hear and decide special exceptions to the terms of the zoning ordinance; and
   (c) hear and decide variances from the terms of the zoning ordinance.

10-9-704 Appeals

(1) (a) The applicant or any other person or entity adversely affected by a decision administering or interpreting a zoning ordinance may appeal that decision applying the zoning ordinance by alleging that there is error in any order, requirement, decision, or determination made by an official in the administration, interpretation, or enforcement of the zoning ordinance.

(b) Any officer, department, board, or bureau of a municipality affected by the grant or refusal of a building permit or by any other decisions of the zoning administrator in the enforcement and administration of the zoning ordinance may appeal any decision to the board of adjustment.

(2) The board of adjustment shall hear and decide appeals from planning commission decisions regarding conditional use permits unless the zoning ordinance designates another body to hear conditional use permit appeals.

(3) The person or entity making the appeal has the burden of proving that an error has been made.

(4) (a) Only zoning decisions applying the ordinance may be appealed to the board of adjustment.

(b) A person may not appeal, and the board of adjustment may not consider, any zoning ordinance amendments.

(5) Appeals may not be used to waive or modify the terms or requirements of the zoning ordinance.

10-9-705 Hearing Officer

(1) (a) The chief executive officer, with the consent of the legislative body, may appoint a hearing officer to decide routine and uncontested matters before the board of adjustment.

(b) The board of adjustment shall:
   (i) designate which matters may be decided by the hearing officer; and
   (ii) establish guidelines for the hearing officer to comply with in making decisions.

(2) Any person affected by a decision of the hearing officer may appeal the decision to the board of adjustment as provided in this part.

10-9-706 Special exceptions

(1) In enacting the zoning ordinance, the legislative body may:
   (a) provide for special exceptions; and
   (b) grant jurisdiction to the board of adjustment to hear and decide some or all special exceptions.

(2) The board of adjustment may hear and decide special exceptions only if authorized to do so by the zoning ordinance and based only on the standards contained in the zoning ordinance.

(3) The legislative body may provide that conditional use permits be treated as special
exceptions in the zoning ordinance.

10-9-707 Variances

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

(2) (a) The board of adjustment may grant a variance only if:

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

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

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

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

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

(b) (i) In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under this subsection, the board of adjustment may not find an unreasonable hardship unless:

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

(B) the alleged hardship comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

(ii) In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under Subsection (2)(a), the board of adjustment may not find an unreasonable hardship if the hardship is self-imposed or economic.

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

(i) relate to the hardship complained of; and

(ii) deprive the property of privileges granted to other properties in the same district.

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

(4) Variances run with the land.

(5) The board of adjustment and any other body may not grant use variances.

(6) In granting a variance, 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.

10-9-708 District court review of the board of adjustment decision

(1) Any person adversely affected by any decision of a board of adjustment may petition the district court for a review of the decision.

(2) In the petition, the plaintiff may only allege that the board of adjustment's decision was arbitrary, capricious, or illegal.

(3) The petition is barred unless it is filed within 30 days after the board of adjustment's decision is final.

(4) (a) The board of adjustment shall transmit to the reviewing court the record of its proceedings including its minutes, findings, orders and, if available, a true and correct transcript of its proceedings.

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

(5) (a) (i) If there is a record, the district court's review is limited to the record provided by the board of adjustment.

(ii) The court may not accept or consider any evidence outside the board of adjustment's record unless that evidence was offered to the board of adjustment and the court determines that it was improperly excluded by the board of adjustment.

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

(6) The court shall affirm the decision of the board of adjustment if the decision is supported by substantial evidence in the record.

(7) (a) The filing of a petition does not stay the
decision of the board of adjustment.

(b) (i) Before filing the petition, the aggrieved party may petition the board of adjustment to stay its decision.

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

(iii) After the petition is filed the petitioner may seek an injunction staying the board of adjustment's decision.

PART 8
SUBDIVISION REGULATIONS

10-9-801 General Powers

(1) The legislative body of any municipality may enact a subdivision ordinance requiring that a subdivision plat comply with the provisions of the subdivision ordinance and be approved as required by this part before:
   (a) it may be filed or recorded in the county recorder's office; and
   (b) lots may be sold.

(2) In municipalities under the council-mayor form of government, Section 10-3-1219.5 governs.

10-9-802 Preparation — adoption

(1) The planning commission shall:
   (a) prepare and recommend a proposed subdivision ordinance to the legislative body that regulates the subdivision of land in the municipality; and
   (b) hold a public hearing on the proposed subdivision ordinance before making its final recommendation to the legislative body.

(2) The legislative body shall hold a public hearing on the proposed subdivision ordinance recommended to it by the planning commission.

(3) After the public hearing, the legislative body may:
   (a) adopt the subdivision ordinance as proposed;
   (b) amend the subdivision ordinance and adopt or reject it as amended; or
   (c) reject the ordinance.

10-9-803 Amendments to subdivision ordinance

(1) The legislative body may amend the provisions of the subdivision ordinance if the proposed amendment was proposed by or submitted to the planning commission for its approval, disapproval, or suggestions.

(2) The legislative body and the planning commission shall comply with the procedures contained in Section 10-9-802 in adopting an amendment to the subdivision ordinance.

10-9-804 Maps and plats required

(1) Whenever any lands are laid out and platted, the owner of those lands shall cause an accurate map or plat to be made of them that sets forth and describes:
   (a) all the parcels of ground laid out and platted, by their boundaries, course and extent, and whether they are intended for streets or other public uses, together with any areas that are reserved for public purposes; and
   (b) all blocks and lots intended for sale, by numbers, and their precise length and width.

(2) (a) The owner of the land shall acknowledge the map or plat before an officer authorized by law to take the acknowledgement of conveyances of real estate.

      (b) The surveyor making the map or plat shall certify it.

      (c) The legislative body shall approve the map or plat as provided in this part.

(3) After the map or plat has been acknowledged, certified and approved, the owner of the land shall file and record it in the county recorder's office in the county in which the lands platted and laid out are situated.

10-9-805 Subdivision approval procedure

No one may file or record a plat of a subdivision of land in the county recorder's office unless:

(1) it has been approved by:
   (a) the legislative body; or
   (b) other officers that the legislative body designates in an ordinance; and

(2) the approvals are entered in writing on the plat by the mayor or chairperson of the legislative body or by the other officers designated in the
ordinance.

10-9-806 Exemptions from plat requirement

In subdivisions of less than ten lots, land may be sold by metes and bounds, without the necessity of recording a plat if:

(1) the subdivision layout has been approved in writing by the planning commission;

(2) the subdivision 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; and

(3) if the subdivision is located in a zoned area, each lot in the subdivision meets the frontage, width, and area requirements of the zoning ordinance or has been granted a variance from those requirements by the board of adjustment.

10-9-807 Dedication of streets

(1) Maps and plats, when made, acknowledged, filed, and recorded according to the procedures specified in this part, operate as a dedication of all streets and other public places, and vest the fee of those parcels of land in the municipality for the public for the uses named or intended in those maps or plats.

(2) The dedication established by this section does not impose liability upon the municipality for streets and other public places that are dedicated in this manner but unimproved.

10-9-808 Vacating or changing a subdivision plat

(1)(a) The governing body of a municipality may, with or without a petition, consider any proposed vacation, alteration, or amendment of a subdivision plat, any portion of a subdivision plat, or any street, lot, or alley contained in a subdivision plat at a public hearing.

(b) If a petition is filed, the governing body shall hold the public hearing within 45 days after it is filed.

(2) Any fee owner, as shown on the last county assessment rolls, of land within the subdivision that has been laid out and platted as provided in this part may, in writing, petition the legislative body to have the plat, any portion of it, or any street or lot contained in it, vacated, altered, or amended as provided in this section.

(3) A petition to vacate, alter, or amend an entire plat, a portion of a plat, or a street or lot contained in a plat shall include:

(a) the name and address of all owners of record of the land contained in the entire plat;

(b) the name and address of all owners of record of land adjacent to any street that is proposed to be vacated, altered or amended; and

(c) the signature of each of these owners who consents to the petition.

(4) (a) Petitions that lack the consent of all owners referred to in subsection (3) may not be scheduled for consideration at a public hearing before the legislative body until the notice required by this part is given.

(b) The petitioner shall pay the cost of the notice.

(5) When the legislative body proposes to vacate, alter, or amend a subdivision plat, or any street or lot contained in a subdivision plat, they shall consider the issue at a public hearing after giving the notice required by this part.

10-9-809 Notice of hearing for plat change

(1) The legislative body shall give notice of the date, place, and time of a hearing before them to consider a vacation, alteration, or amendment without a petition or to consider any petition that does not include the consent of all land owners as required by subsection 10-9-808 by mailing the notice of hearing to all owners referred to in Section 10-9-808, addressed to their mailing addresses appearing on the rolls of the county assessor of the county in which the land is located.

(2) If the proposed change involves the vacation, alteration, or amendment of a street, the legislative body shall give notice of the date, place, and time of the hearing by:

(a) mailing notice as required in Subsection (1); and

(b) either:

(i) publishing the notice once a week for four consecutive weeks before the hearing in a newspaper of general circulation in the municipality in which the land subject to the petition is located; or

(ii) if there is no newspaper of general circulation in the municipality, post the notice for four consecutive weeks before the hearing in three public places in that municipality.
10-9-810 Grounds for vacating or changing a plat

(1) (a) Within 30 days after the public hearing required by this part, legislative body shall consider the petition.

(b) If the legislative body is satisfied that neither the public nor any person will be materially injured by the proposed vacation, alteration, or amendment, and that there is good cause for the vacation, alteration, or amendment, the legislative body, by ordinance, may vacate, alter, or amend the plat, any portion of the plat, or any street or lot.

(c) The legislative body shall ensure that the vacation, alteration, or amendment is recorded in the office of the county recorder in which the land is located.

(2) An aggrieved party may appeal the legislative body's decision to district court as provided in Section 10-9-1001.

10-9-811 Penalties

(1) (a) Any county recorder who files or records a plat of a subdivision without the approvals required by this part is guilty of misdemeanor.

(b) Any plat of a subdivision filed or recorded without the approvals required by this part is void.

(2) (a) Any owner or agent of the owner of any land located in a subdivision as defined in this part who transfers or sells any land in that subdivision before a plan or plat of the subdivision has been approved and recorded as required in this part is guilty of a violation of this part for each lot or parcel transferred or sold.

(b) The description by metes and bounds in the instrument of transfer or other documents used in the process of selling or transferring does not exempt the transaction from a violation or from the penalties or remedies provided in this part.

PART 9
RESTRICTIONS FOR ENERGY DEVICES

10-9-901 Restrictions for solar and other energy devices

(1) The legislative body, in order to protect and ensure access to sunlight for solar energy devices, may adopt regulations governing legislative subdivision development plans that relate to the use of restrictive covenants or solar easements, height restrictions, side yard and setback requirements, street and building orientation and width requirements, height and location of vegetation with respect to property boundary lines, and other permissible forms of land use controls.

(2) The legislative body may refuse to approve or renew any plat or subdivision plan, or dedication of any street or other ground, if the deed restrictions, covenants or similar binding agreements running with the land for the lots or parcels covered by the plat or subdivision prohibit or have the effect of prohibiting reasonably sited and designed solar collectors, clotheslines, or other energy devices based on renewable resources from being installed on buildings erected on lots or parcels covered by the plat or subdivision.

PART 10
APPEALS, ENFORCEMENT & PENALTIES

10-9-1001 Appeals

(1) No person may challenge in district court a municipality's land use decisions made under this chapter or under the regulation made under authority of this chapter until they have exhausted their administrative remedies.

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

(3) The courts shall:

(a) presume that land use decisions and regulations are valid; and

(b) determine only whether or not the decision is arbitrary or capricious.

10-9-1002 Enforcement

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

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

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

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

(2) (a) The municipality may enforce the ordinance by withholding building permits.

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

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

10-9-1003 Penalties

Violation of any of the provisions of this chapter or of any ordinance adopted under the authority of this chapter are punishable as a class C misdemeanor upon conviction.
APPENDIX 2

SENSITIVE LANDS PRINCIPLES
PRINCIPLES FOR PROTECTING SENSITIVE LANDS

1. A balance must be maintained between development and Park City's natural habitat.
The City's economic and cultural well being is directly related to our attractiveness as a resort community. In order to maintain our appeal for tourists and our year round residents we must not compromise our unique mountain environment as development occurs.

2. The development process must recognize and respect our natural landforms and vegetative patterns.
The existing landscape must be part of the overall design to be preserved and enhanced as development occurs. A sense of harmony with the landscape and man-made elements is imperative.

3. A balance must be achieved between the public's desire to preserve our natural alpine environment and the rights of private property owners to develop their land.
Property that has been identified as Sensitive Land should be protected from adverse impacts when development occurs by using creative techniques such as density transfer, conservation easements, land trusts, master planning, etc., to protect it if public acquisition is not possible.

4. As development occurs, significant, contiguous areas of natural habitat should be left undisturbed.
In order to create a sense of natural spacing and rhythm which enhances the visual experience, individual as well as masses of structures should not dominate the landscape.

5. The natural ridgelines must be retained as a backdrop to the City.
Development near ridgelines must blend in with rather than visually modify the natural contour elevations of these landforms. Significant ridgelines should be retained in a natural state by allowing development which does not create a silhouette against the skyline as viewed from prominent areas of the City. In addition, we must be aware of the visual impact on our neighbors outside the City limits as we develop near ridgelines.

6. Stream corridors, flood plains, and wetlands should be preserved as natural areas.
These areas should be considered for use as open space, trail linkages, and wildlife habitat aetas. As development occurs around these areas, they should be viewed as development enhancement opportunities, not as a constraint to be overcome by modification or elimination.

7. Developed areas must relate in scale, texture, color, and density to the particular landscape in which they are located. Since the type, height, and extent of vegetation varies greatly in our mountain setting, the man-made environment, including homes and other structures can dominate the setting if property care is not taken in their design.

8. A thorough analysis of the environmental impacts of developing a site, including aesthetic impacts should be performed prior to approval of development of land. Such an analysis is as important as lot and infrastructure design, architecture, mass, and other compatibility issues if we are to offer protection to sensitive lands.

9. Road development and other disturbance to natural habitat on the sides of mountains and hills should be limited or designed in such as way as to minimize their visual impact. Development on steep slopes has the potential to cause visual as well as engineering problems. With the exception of ski runs, such cuts should follow rather than bisect contour lines when possible and revegetation of the cuts and fill areas should replicate the adjacent habitat.

10. The removal or modification of natural earth forms such as rock outcroppings, minor ridgelines, etc. should be kept to a minimum as development occurs. These features add to the natural character and total visual experience of our community and alternative should be examined before their alteration is allowed.
APPENDIX 3

SENSITIVE LANDS

COMPREHENSIVE PLAN AMENDMENTS
Sensitive Lands

The economic and cultural well being of Park City is directly tied to our community's attractiveness as a place to live and visit. As such, it is crucial to maintain a balance between development and the natural environment in order to preserve our appeal. A sense of harmony between the landscape and man-made elements is imperative.

In order to meet the community's goal of preserving and enhancing the natural features which are so important for the well being of our citizens, it is recognized that the public interest and the rights of property owners to develop their land in a responsible manner must be balanced. The City should work pro-actively with land owners to allow reasonable property use while safeguarding community benefits.

The City must mandate constraints for design and site planning on parcels containing fragile natural features such as wetlands, floodplains, ridgelines, hillsides, avalanche paths, forested areas, and wildlife habitats. Adverse impacts on such sensitive lands can be reduced or eliminated by using creative techniques such as density transfer, conservation easements, land trusts, master planning, and public acquisition.

NATURAL RESOURCES

Park City's spectacular mountain setting is an important element in the town's appeal to visitors and residents. It is important that development be accomplished in a manner which complements the aesthetic features of the existing landscape as well as conforming to sound engineering practices. The extremes of weather possible in Park City make it imperative that new construction be planned in a manner which considers natural "tests" such as avalanches, floods, heavy snowfall, high water tables, steep slopes and intense sunlight.

The Utah Geologic and Mineral Survey completed a report entitled "Engineering Geology of Park City, Summit County, Utah" in June of 1984. The purpose of the report is to provide general information on geologic conditions and hazard in Park City for use in making planning decisions. The report discusses areas with the potential for natural problems such as flood plains and steep hillsides as well as mine-related hazards such as open shafts and adits, increased loading on slopes due to waste piles, contamination of soil and water by toxic elements in old mill tailings, and subsidence resulting from collapse of abandoned underground workings. Persons contemplating building should check the report itself.
Goal:

Preserve and enhance the natural features such as ridgelines, hillsides, meadows, streams, flood plains, and significant vegetation, which form the sensitive mountain environment which makes Park City so appealing.

Objectives:

♦ Protect stream corridors and their associated wetlands and flood plains as natural areas, usable open space, aquifer recharge zones, and for trail linkage. Maintain and enhance open streams rather than burying streams in culverts. Promote restoration of altered stream corridors whenever possible.

♦ Protect significant natural vegetation and encourage new planting to be designed to blend into the natural landscape. Site new buildings so that disturbance of existing vegetation during construction is minimized.

♦ Guide hillside development so that new construction and associated grading is completed in a manner which is aesthetically pleasing as well as conforming to sound engineering practices. Minimize disruption of sites through the implementation of site sensitive construction practices.

AESTHETICS

In planning for the future of Park City, it is important to acknowledge the characteristics which make Park City unique and desirable. The long term viability of the community depends on its success as a year-round tourist destination and as a desirable place to live and work. Park City must maintain its identity to preserve and enhance its appeal.

"Aesthetics" encompasses not only the appearance of a place, from its natural to its built environment, but also the effect of its appearance: how does the place "feel"? Exact definitions are difficult because of individual perceptions, however, Aesthetics in this context primarily represents "visual quality." For instance, the open ridgelines and hillsides in Park City, combined with the agricultural meadows along the entries of State Roads 248 and 224, introduce Park City as a distinct mountain community, basing its livelihood upon the natural environment. This perception is based on the visual quality of the entry experience.

Aesthetics—or visual quality—is vitally important to the economic success of Park City because of the resort nature of the economy; people come to Park City because it is attractive and different. Because of this impact on the well-being of Park City, Aesthetics is a necessary component when planning the community’s future.
Aesthetics is being recognized more frequently as a valid consideration in Planning. In 1991, the Utah State Legislature approved an amendment to the State planning enabling legislation which acknowledges both Aesthetics and Historic Preservation as legitimate bases for land use decisions. As a result, aesthetic standards for development can be used to protect and maintain the important aesthetic qualities of Park City.

Goal:

*Protect and preserve the aesthetic qualities of Park City which are vital to the attractiveness and economic viability of the community.*

Objectives:

*Develop a mechanism to require the consideration of aesthetic issues in all land use decisions.*

*Protect the progression of ridgelines which is visible from significant vantage points in the Park City area.*

*Define significant vantage points. These should include the highway corridors into town and points of public exposure such as the Park City Golf Course, the Park Meadows Golf Course, the Osguthorpe Barn, the Park City and Deer Valley Ski Area Bases, and the base of Main Street.*

*Preserve the open, "welcoming" feeling of the entry experience to Park City.*

*Maintain large expanses of open spaces and provide functional linkages between open space parcels.*

*Maintain vistas of the ski areas in keeping with the resort nature of the community.*

*Establish restrictions on development in heavily vegetated areas recognizing that, while development in heavily vegetated areas can result in a significant fire hazard, trees are an important visual resource.*

*Establish landscape standards for new development to enhance the built environment.*

*Review and revise the Land Management Code, Design Guidelines and the Historic District Design Guidelines to require that development in sensitive areas harmonizes with the landscape and the site through the use of appropriate materials, methods, and design.*
APPENDIX 4

SENSITIVE LANDS

IMPLEMENTATION STRATEGIES
SENSITIVE LANDS IMPLEMENTATION STRATEGIES

Natural Resources Objectives:

1) Protect stream corridors and their associated wetland and flood plains as natural areas, usable open space, aquifer recharge zones and for trail linkages. Maintain and enhance open streams rather than burying in culverts. Promote restoration of altered stream corridors whenever possible.

Implementation Strategies:

A. Map existing wetlands and stream corridors on an overlay of the zoning map. Create a hierarchy of stream corridors based upon the importance and size of the associated streams. Corridors and wetland areas should be defined to include buffer areas based upon the significance of the stream or wetland. Develop definitions for wetlands and standards for significance of streams.

B. Reduce the permitted density within those wetland and stream corridor areas. Allow transfer of development rights out of corridors and wetlands at a density higher than the base density to encourage development outside those areas.

C. Modify the subdivision and MPD regulations to require enhancement or preservation of stream corridors and wetlands areas. Develop standards for restoration when encroachment occurs in these areas.

D. Develop construction standards which will limit disturbance within stream corridors and wetlands and which will restrict runoff and erosion into these areas during construction. Regulations must specify under what circumstances encroachment will be allowed and the process in which it would be reviewed.
E. Develop construction standards which deal with downstream impacts from construction and from increase in runoff from impervious surfaces. Require on-site storm drainage retention and facilities to improve water quality for large parcels (threshold size to be defined specifically).

F. Articulate standards for maintaining aquifer recharge.

G. Refer to the Trails Master Plan so that useful trail connections are created as part of the process of preserving stream corridors and wetlands.

2) Protect significant natural vegetation and encourage new planting to be designed to blend into the natural landscape. Site new buildings so that disturbance of existing vegetation during construction is minimized.

Implementation Strategies:

A. Identify the different vegetative types in Park City and develop site design criteria for the differing vegetative types. Require clustering of development and retention of larger natural areas on the sage-grassland areas. Promote appropriate site design so that construction in treed areas minimizes tree removal and addresses wildfire potential. Road construction should be included in the design criteria.

B. Adopt aggressive revegetation and slope stabilization standards.

C. Develop consistent limits of disturbance regulations which will limit site disturbance during construction using mechanical means. The Community Development Director should have the authority to modify limits of disturbance regulations because necessity of such regulations varies with vegetative cover.

D. Require an analysis of existing vegetation on all new subdivisions and MPDs. Develop standards for revegetation in keeping with existing natural vegetation which include seasonal limitations for disturbance and revegetation. The Community Development Director should have the authority to modify these requirements.
3) Guide hillside development so that new construction and associated grading is completed in a manner which is aesthetically pleasing as well as conforming to sound engineering practices. Minimize disruption of sites through the implementation of site sensitive construction practices.

**Implementation Strategies:**

A. Reduce the permitted density in areas over 25% slope and develop mechanisms to require a slope analysis and clustering of development in less steep portions of a parcel. Create an overlay representing areas where density reductions are required.

B. Determine regulations on road grades and cut and fills based upon steepness of the slope, existing vegetation, and soil stability. Variation of restrictions can be granted for special conditions by the Community Development Director.

C. Develop aggressive slope stabilization, revegetation, and maintenance requirements for road construction. Determine guidelines for grading and retaining walls associated with road construction to minimize the visual impacts as seen from prominent viewing areas of the city.

D. Establish a requirement in the Land Management Code for an environmental review of existing site conditions, including but not limited to vegetation, soils, slope, wildlife habitat, wetlands and geology.

E. Develop guidelines for site design and construction practices including seasonal limitations on grading and site disturbance.

F. Require a grading and restoration plan prior to construction which is consistent with adopted construction standards and addresses limits of disturbance, vegetation protection, temporary erosion control, revegetation and slope stabilization.

G. More strictly enforce the requirements of Chapter 70 of the Uniform Building code regarding staging, phasing and site restoration.
**Aesthetics Objectives:**

1) Develop a mechanism to require the consideration of aesthetic issues in all land use decisions.

**Implementation Strategies:**

A. Include the requirement for a simulated "before and after" visual analysis in all MPD and subdivision applications. The Community Development Director shall have the authority to vary all or part of this requirement based upon site conditions.

B. Identify and map visually sensitive areas.

C. Lower the base density permitted in visually sensitive areas. Allow density increases only when density is clustered in areas which are the least visually sensitive.

D. Add aesthetics to one of the criteria for evaluating discretionary reviews and MPDs.

2) Protect the progression of ridgelines which is visible from significant vantage points in the Park City area.

**Implementation Strategies:**

A. Identify and map significant ridgelines within the City Limits and reduce the permitted density. Create an overlay district which specifies at least two levels of protected ridgelines. Develop standards for development in each of these districts.

B. Allow density increases in development if clustered in the least sensitive and most serviceable portions of the property. Develop specific restrictions for proximity of development to ridgelines.

C. Offer assistance to Summit County in promoting the implementation of similar restrictions in the County.
D. Identify and codify the significant vantage points.

E. Revise design and development standards to prevent roads from traversing significant ridgelines hillsides. Include provisions which allow consideration of necessary public infrastructure facilities. This shall not be construed to eliminate current requirements for secondary access.

3) Define significant vantage points. These should include the highway corridors into town and points of public exposure such as the Park City Golf Course, the Park Meadows Golf Course, the Osguthorpe Barn, the Park City and Deer Valley Ski Area Bases, and the base of Main Street.

Implementation Strategies:

A. Create a definition in the Land Management Code of “vantage points.” Specific vantage points should be identified in the Land Management Code and displayed on the zoning map.

4) Preserve the open, “welcoming” feeling of the entry experience to Park City.

Implementation Strategies:

A. Create an entry corridor overlay district and establish maximum heights of structures and setbacks within the corridor. Develop design criteria to limit the amount of glass, color, materials, lighting, and orientation of structures and signage within the view corridor.

B. Revise the Frontage Protection provisions of the Land Management Code to require a variation in setback, limitations on fencing, design parameters for berms and landscaping and provision of open space corridors.
C. Require visual analysis as part of applications within the Frontage Protection Zone. This requirement may be modified by the Community Development Director in certain cases.

D. Revise the zoning in the identified entry corridor so that signage, commercial uses, and intensity of development are limited.

E. Assist Summit County in developing design guidelines for the enhancement corridor.

5) Maintain large expanses of open spaces and provide functional linkages between open space parcels.

**Implementation Strategies:**

A. Reduce base densities and allow increased density as clustering occurs in general areas where open space is desired in conjunction with the Open Space Plan.

B. Develop an open space plan which identifies view corridors and linkages between sensitive areas to form a network. Require project open space to coincide with this plan. Linkages should coincide with the Trails Master Plan.

C. Amend the subdivision Section of the Land Management Code to promote the substantial visual and physical linkage between public and private open space areas. Encourage consistent adherence to the Park City Trails Master Plan.

6) Maintain vistas of the ski areas in keeping with the resort nature of the community.

**Implementation Strategies:**

A. Require a visual analysis for all projects in the Frontage Protection Zone or adjacent to significant vantage points. Amend the Land Management Code to prohibit
structures of heights that would have the effect of blocking vistas as viewed from designated vantage points.

7) Establish restrictions on development in heavily vegetated areas recognizing that, while development in heavily vegetated areas can result in a significant fire hazard, trees are an important visual resource.

Implementation Strategies:

A. Identify and map areas of significant vegetation.

B. Establish site design criteria for development in treed areas which shall address mitigation of potential fire hazard.

C. Institute the capability to require, when appropriate, that tree surveys be conducted prior to commencement of construction in the areas surrounding the limits of disturbance and collect a security to ensure compliance with the limits of disturbance.

D. Amend the Land Management Code and Grading and Grubbing Ordinance to prohibit the cutting of view corridors or removal of more than a specific percentage of trees from the site, with restrictions based upon parcel size and existing vegetation.

E. Authorize the Parks, Recreation and Beautification Board to explore the possibility of a tree replacement program which would require that all trees removed during the course of construction must be replaced. Determine a specific ratio of replaced to removed trees, provide a mechanism for payment of fees in lieu of tree planting, and develop a program for planting off-site.
8) Establish landscape standards for new development to enhance the built environment.

**Implementation Strategies:**

A. Require developers to submit landscape plans for single family subdivisions which include revegetation and landscaping of areas disturbed during construction. Require guarantees to ensure compliance with the landscape plans.

B. Develop a handbook discussing landscape standards emphasizing visual enhancement and drought tolerance.

9) Review and revise the Land Management Code, Design Guidelines and the Historic District Design Guidelines to require that development in sensitive areas harmonizes with the landscape and the site through the use of appropriate materials, methods, and design.

**Implementation Strategies:**

A. Explore FARs for single family residences in areas which are considered visually sensitive.

B. Reduce the permitted building heights for all uses in sensitive areas.

C. Revise the MPD and subdivision regulations to codify site design standards.

D. Review the existing guidelines and update them to be more specific. Define design features which would be considered complimentary to the natural environment and include these in the various regulations for site design and building.

E. Modify the Design Guidelines and MPD and subdivision regulations to address new development (including new homes in previously approved subdivisions) which is in visually sensitive areas. More specifically address color, materials, height, bulk, scale and design.
F. Develop a “night sky” ordinance limiting the amount and type of outdoor lighting.

G. Develop a handbook for builders which outlines limits of disturbance, temporary erosion control methods and slope stabilization practices based upon aesthetic considerations.
SENSITIVE AREA OVERLAY ZONE REGULATIONS

Final Draft
September 24, 1992

Park City Municipal Corporation
Park City, Utah
### SENSITIVE AREA OVERLAY ZONE REGULATIONS

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INTRODUCTION AND OVERVIEW

A. **Conditions and Development Pressures Leading to Action**

For many years, Park City has discussed the need to develop more comprehensive regulations to deal with development on sensitive lands within Park City. The need for new regulations has intensified with increasing development pressures and with the continued buildout of areas within Park City.

The City Council adopted a resolution in October of 1991 that directed the staff to update the current ordinances to include additional regulations for sensitive lands. A citizens focus group was formed and draft Comprehensive Plan amendments and implementation strategies were formulated. This document proposes changes to the Land Management Code to address development in the sensitive areas of Park City.

The basis for these regulations is the Comprehensive Plan for which amendments are proposed to stress the importance of protecting the characteristics that make Park City unique and desirable:

"The long-term viability of the community depends on its success as a year-round tourist destination and as a desirable place to live and work. Park City must maintain its identity to preserve and enhance its appeal."

The primary intent of the regulations included in this document is to restrict development in aesthetically and environmentally sensitive areas. This is done by requiring open space on hillsides, prohibiting development on ridgeline areas and wetlands and strictly regulating development in entry corridors. The intent is that these regulations will encourage large expanses of open space and the clustering of development while still allowing a reasonable use of property.

There are several different categories of land to which these regulations apply. Much of the property within the existing city limits of Park City is subdivided or master planned. Additionally, there is land within the City which is zoned but undeveloped, and land within the Annexation Policy Declaration which is unzoned and not within the current City Limits. The regulations will apply to land only within the Sensitive Area Overlay Zone and will have a different level of application for each of these situations. A matrix is included (Appendix B) as a part of these
regulations to better understand how requirements apply to these different categories of land:

1. **Unannexed, Unzoned Land** - The City currently has a significant amount of negotiating power in these situations, but these regulations will provide a minimum basis for those negotiations and will set forth the intent so that new development can be made consistent with that intent.

2. **Land within the City Limits and Zoned** - All of the proposed regulations would apply to this category of land including the density transfer provisions.

3. **Land within the City Limits which is Master Planned but not Subdivided** - As site specific plans come before the City, these regulations shall be used for site planning and final density determinations. The building design standards and tree/vegetation protection regulations shall apply.

4. **Land within the City Limits which is Subdivided** - The building design standards and tree/vegetation protection regulations shall apply to these areas.

It is the intent of this ordinance that the sensitive area regulations will also apply to unique or special developments like public works and utility projects, ski resorts, and industrial activities. However, given the special nature of these developments, the ordinance applies the regulations through special procedures.

These regulations are a beginning point. Because of limited staff resources, there has been an attempt to address the most vital issues relating to development on sensitive lands. Other future regulations may be appropriate as time and staffing allows.

**B. Basic Regulatory Approach**

The city staff and sensitive lands consultants analyzed a range of regulatory approaches and specific tools to deal with the development pressures on sensitive lands. For example, the team explored options such as a complete rewrite of the city’s zoning ordinance to emphasize protection of sensitive lands. They examined innovative growth management systems involving performance zoning and development point systems that are being utilized in other fast-growing communities.

Based on this analysis and an assessment of the pros and cons of each option, the city staff and consultants concluded that given the need to act expeditiously, the best approach was to adopt a special overlay zoning protection district for all lands containing sensitive environmental areas (importantly, defined to include both sensitive visual and natural environmental areas). Such overlay protection districts
are used frequently in localities throughout the United States, and in fact, Park City already utilizes this technique under its Land Management Code.

The overlay protection zone will work as follows. Within the new district, all existing land-use and building regulations now in place will continue to apply except to the extent the regulations contained in the protection district are stronger or more restrictive. In a few instances, new regulations are proposed that would amend existing zoning regulations (for example, the limits of disturbance regulations or building design standards would apply to all development, including residential and commercial, etc.). The overlay district regulations would also serve as minimum standards of review to guide annexation negotiations, but could be applied with a greater degree of discretion given the flexibility inherent in the annexation process.

The overlay review process, described in greater detail in the proposed regulations, will have four primary steps:

1. **Sensitive area analysis and delineation:** All applicants for development (defined as including applications for subdivision or other development permits, including significant changes in existing Master Planned Developments (MPD), and for annexation) whose property has been identified as being within the sensitive area overlay zone, will be required to undertake an analysis of their property to identify sensitive environmental and aesthetic areas such as steep slopes, ridgeline areas, wetlands, and stream corridors. The regulations set forth criteria for the staff delineation of sensitive environmental areas.

2. **Application of overlay zone regulations:** Once the staff delineates sensitive areas on a site, regulatory standards will apply depending on the type of area involved (for example, a setback from a crest of a hill or wetlands or a prescribed amount of open space and existing vegetation that must be retained).

3. **Site Development Suitability Review:** The site will be analyzed and the most appropriate location for development will be determined based upon criteria for suitability outlined in Sections 2.1.9.c and 2.2.3.c. The staff shall review the Sensitive Area Determination and the proposed locations for development at this time. A report shall be given to the Planning Commission which shall discuss appropriate areas for development and road restrictions. The Community Development Director may require that an application be reviewed by the Planning Commission prior to the master plan or subdivision review based upon size, location, and complexity of the project. A proposal will then continue with the design phase and will be reviewed and approved by the Planning Commission according to the process.
required in the Land Management Code. The MPD or Subdivision approval shall include density bonuses which may be appropriate as well as the open space requirement within the developed portion of an MPD site.

4. **Hardship relief:** Application of the sensitive area regulations may in a few cases, particularly involving smaller parcels, give rise to substantial economic hardship. Special procedures are recommended to obviate such hardship. If the applicant can demonstrate that the regulations would deny all reasonable use of the property, administrative steps are specified to provide relief through a special hearing process.

C. **Effect on Existing Master Plans**

There are number of existing, valid Master Plans which have been approved. Requests for site specific approval for parcels within Large Scale Master Plans which are located within the Sensitive Area Overlay Zone shall be required to go through the Sensitive Lands Analysis and the development will be required to be placed on the least sensitive portion of the parcels. In general, the site design criteria shall apply to these proposals.

If there is a request to change the form of density for a part or all of a Master Plan or a request to substantially modify the plan, the total permitted density will be reevaluated based upon the criteria in these provisions.

D. **Changes in Existing Ordinance Provisions**

In some instances, adoption of the sensitive area overlay zone regulations will require changes in existing city land development regulations to ensure consistency and compatibility. These provisions are identified in general terms.

E. **Future Ordinance Revisions**

In addition to recommendations for new sensitive area overlay regulations that should be adopted immediately, possible future revisions to the city’s land development regulations are identified for consideration.
SENSITIVE AREA OVERLAY ZONE
ORDINANCE PROVISIONS

SECTION 1: APPLICATION AND ANALYSIS REQUIREMENTS

In the Sensitive Area Overlay Zone as depicted in the accompanying map, the following application and analysis requirements and standards shall apply. The map requires that the following analysis be conducted to determine the exact boundaries of the sensitive areas and does not in and of itself define the sensitive areas.

1.1. Sensitive Area Analysis and Determination

Any applicant for any development approval must produce a sensitive lands analysis performed by qualified professionals that identifies and delineates all the following features and conditions.

1.1.1 Slope/topographic map, which shall be based on a certified boundary survey and depict contours at an interval of five (5) feet or less. Additionally, the map shall highlight areas of high geologic hazard, areas subject to landsliding, and all significant steep slopes in the following categories: (1) greater than fifteen (15) percent but less than or equal to thirty (30) percent; (2) greater than thirty (30) percent but less than or equal to forty (40) percent; and (3) over forty (40) percent. Steep slopes shall be defined as all areas within a parcel with a slope of greater than fifteen (15) percent. Slope determinations shall be made upon areas at least twenty-five (25) feet vertically and fifty (50) feet horizontally.

1.1.2 Ridgeline areas, which shall include all crests of hills or steep slopes as defined in Section 4.

1.1.3 Vegetative cover, generally by type and density of vegetation, including: 1) deciduous trees, 2) coniferous trees, 3) gamble oak or high shrub, and 4) sage, grassland, and agricultural crops. The Community Development Department shall have the discretion to require a more detailed tree/vegetation survey if the site has significant or unusual vegetation, stands of trees, or woodlands.
1.1.4 All designated entry corridors and designated vantage points present within or adjacent to the site, including Utah Highway 248 east of Wyatt Earp Way and Utah Highway 224 north of Holiday Ranch Loop Road and Payday Drive.

1.1.5 Wetlands as established by using the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, dated January 10, 1989. Although the Federal Manual may change in the future, the City will use this referenced manual as a basis for wetlands determination.

1.1.6 Stream corridors as defined by their ordinary high-water mark.

1.2 Additional Information and Study Requirements

In addition to the analysis required by the preceding subsection, the Community Development Department may require the applicant to undertake the following studies and submit the following information and assessments to ensure that the City has adequate information to comprehensively assess all development proposals. Such information and studies may include, but are not limited to:

1.2.1 Visual assessment of the subject property from relevant designated vantage points as directed by the Community Development Department, depicting conditions before and after the proposed development, including the proposed location, size, design, landscaping, and other visual features of the project to assist in analyzing the potential aesthetic impact and most advantageous location of structures and other improvements to reduce any adverse impact. The visual assessment shall be conducted using techniques as approved by the Community Development Director, including but not limited to sketches, models, drawings, renderings, hand-enhanced photographs, and computerized images. Selection of the appropriate technique will depend on the size of the development and the visual sensitivity of the proposed development site.

1.2.2 Soil investigation report, including but not limited to shrink-swell potential, elevation of water table, general soil classification and suitability for development, erosion potential, hazardous material analysis, and potential frost action.

1.2.3 Geotechnical report, including but not limited to location of major geographic and geologic features, depth of bedrock,
structural features (folds, fractures, etc.), and potential slide and other high-hazard areas such as mine shafts and avalanche paths.

1.2.4 Additional Slope Information. If the size of the proposed development and visual sensitivity of the site dictate, the Community Development Department may require the submission of a slope/topographic map depicting contours at an interval of two (2) feet.

1.2.5 Fire protection report, including but not limited to identification of potential fire hazards, mitigation measures, access for fire protection equipment, existing and proposed fire flow capability. The fire protection report shall address, as appropriate, the State Forester’s Wildfire Hazards and Residential Development Identification Classification and Regulation Report and the Summit County Wildfire Plan.

1.2.6 Hydrologic report, including but not limited to information on groundwater levels, drainage channels and systems, and base elevations in floodplains.

1.2.7 Wetland/stream corridor resource evaluation, including a delineation of wetland and stream corridor boundaries and a determination of resource significance pursuant to Section 2.4.

1.3 Waiver/Modification of Analysis and Study Requirements.

Based upon a preliminary assessment of the development proposal and a site field inspection, the Community Development Director may modify or waive any of the sensitive area analysis requirements upon a determination that the information is not necessary for a full and adequate analysis of the development or is sufficient at a reduced level of detail.

1.4 Sensitive Area Determination.

The Community Development Department shall delineate all sensitive areas on the parcel, including steep slope areas, ridgeline areas, entry corridors, and wetlands and stream corridors based on information submitted pursuant to this section, any other information and data available to or acquired by the Community Development Department, and an analysis thereof. Such delineation shall be used as the basis for all calculations of open space, density, buffers, setbacks, and density transfers permitted or required by this ordinance.
1.5 **Density Transfer.**

Whenever land within the Sensitive Areas Overlay Zone is subject to more than one density transfer provision, the more restrictive provision shall apply.

1.6 **Annexations**

Whenever an Annexation Petition is presented to the City, that Annexation shall be required to provide a Sensitive Area Analysis according to this code and may require varying levels of detail based upon existing conditions on the site. The Sensitive Area will be determined based upon that analysis. The analysis may lead to the designation of additional significant ridgelines, wetlands or vantage points which may not have been previously included as a part of this ordinance or of the accompanying maps.
SECTION 2: SENSITIVE AREA REGULATIONS

The following provisions shall apply to all delineated sensitive areas contained in the Sensitive Area Overlay Zone, including steep slopes, ridgeline areas, meadows, entry corridors, wetlands, and stream corridors.

2.1 Slope Protection Regulations

2.1.1 Intent. It is the intent of these regulations to protect Park City's visual character and environmentally sensitive areas on hillsides and slopes. This shall be accomplished by minimizing the visual and environmental impacts of development through careful site planning that maintains the maximum amount of open space, protects existing vegetation, avoids sensitive natural areas, minimizes erosion, recognizes the need for water conservation and locates structures in the least visually sensitive location. These regulations shall apply to all slopes in excess of fifteen (15) percent.

2.1.2 Prohibitions. No development shall be allowed on or within fifty (50) feet of slopes in excess of forty (40) percent, areas subject to landsliding, and other high-hazard geological areas as determined by a geotechnical or soils report produced pursuant to Section 1.2.2 and 1.2.3 herein.

2.1.3 Graded or filled slopes. Cutting and filling to create additional or larger building sites shall be kept to a minimum and avoided to the maximum extent feasible. All proposed grading and filling shall be subject to review by the Community Development Department to ensure minimum visual impact and geotechnical safety. Graded or filled slopes shall be limited to thirty-three a 3 to 1 slope or less. All graded slopes shall be recontoured to the natural, varied contour of surrounding terrain. Exceptions to this provision may be made for grading associated with ski area development based upon Section 3.2.

2.1.4 Benching or terracing to provide additional or larger building sites is prohibited.

2.1.5 Streets and roads. Road construction in hillsides can be the most visually disruptive portion of a development. Development in some areas may not be appropriate if roads cannot be constructed to access it without causing significant
visual impacts. Where streets and roads, public and private, are proposed to be constructed on steep slopes:

(a) Streets and roads that cross slopes of thirty (30) percent or greater shall not be allowed, except that a short run of not more than one hundred (100) feet across slopes greater than thirty (30) percent may be allowed by the Community Development Director upon a favorable recommendation by the Planning Director and the City Engineer that such streets or roads will not have significant adverse visual, environmental, or safety impacts.

(b) Where streets and roads, public and private, are proposed to cross slopes greater than ten (10) percent, the following standards shall apply:

1. Evidence must be presented that such streets and roads will be built with minimum environmental damage and within acceptable public safety parameters.

2. Such streets and roads shall, to the maximum extent feasible, follow contour lines, preserve the natural character of the land, and be screened with trees or vegetation.

3. Cutting and filling shall be held to a minimum and retaining walls employed to help provide planting areas conducive to revegetation. Revegetation plans will be required for all areas disturbed during road construction.

2.1.6 Retaining walls. Use of retaining walls is encouraged to reduce the steepness of man-made slopes and provide planting pockets conducive to revegetation. The use, design, and construction of all retaining walls shall be subject to the approval of the Community Development Department based upon assessment of visual impact, compatibility with surrounding terrain and vegetation, and safety considerations.

2.1.7 Landscaping and revegetation. In order to mitigate adverse environmental and visual effects, slopes exposed in new development shall be landscaped or revegetated in accord with
a revegetation/landscaping plan as provided in Sections 15.4.2 (d) and 10.9 (k) of the Park City Municipal Land Management Code (Limits of Disturbance/Vegetation Protection), as amended. See Appendix B herein. Topsoil from any disturbed portion of a steep slope shall be preserved and utilized in revegetation. Fill soil must be of a quality to support plant growth.

2.1.8 Private development design standards. All development on steep slopes shall comply with the design standards set forth in Chapter 9 of the Land Management Code--Architectural Review (See Appendix A attached hereto.).

2.1.9 Open space and density on delineated portions of sites with steep slopes greater than fifteen (15) percent but less than or equal to forty (40) percent. In addition to the specific development regulations set forth above, the following general open space, limits of disturbance, and density transfer regulations shall apply:

(a) Open space. Seventy-five (75) percent of the steep slope area shall remain in natural open space as defined in the Land Management Code. Twenty five (25) percent may be developed in accordance with the underlying zoning subject to the following conditions.

(1) Maximum development density. The maximum allowable density that may be developed on the portion of the steep slope area not set aside for open space shall be governed by the underlying zoning. However, the maximum allowable density shall be permitted only by approval of the Community Development Department pursuant to the visual and environmental analysis provided for in Sections 1.1 and 1.2, and a finding that development at that density will not have a significant adverse visual or environmental affect on the community as set forth in Section 2.1.9(c).

(2) Location of development within sensitive areas. Any development permitted in steep slope areas pursuant to this section shall be located in such a manner to reduce visual and environmental

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impacts to the maximum extent feasible. To determine the most appropriate location for development, the Community Development Department shall require that the applicant conduct a visual and environmental analysis considering visual impact from key vantage points, potential for screening, location of natural drainage channels, erosion potential, vegetation protection, access, and similar site design criteria. Based upon such analysis, the Community Development Department may require any one or a combination of the following measures:

(i) clustering of development within the sensitive area, or

(ii) dispersal of development throughout the sensitive area, or

(iii) transferral of development density to nonsensitive or less sensitive portions of the site not subject to Section 2. In transferring development to less sensitive portions of the site, meadows must also be considered as important visual resources. A low lying meadow area may not always be the most appropriate location for all the development on a site to occur. Development shall be sited to preserve the open meadow vistas which are also desirable.

(b) Density transfer. Up to twenty-five (25) percent of the densities otherwise permitted in the underlying zone attributable to the 75% open space portion of the site may be transferred to other portions of the site. The density transfer shall be subject to a suitability determination as set forth in Section 2.1.9(c). In addition to density transfers permitted above, up to one hundred percent of the remaining preexisting density as set forth in Section 2.1.9(a) is eligible for transfer.
Suitability determination. A suitability determination certifying that a development will have no significant adverse impact on adjacent properties or development shall be granted by the Planning Commission at the time of master plan or subdivision review if the following conditions are satisfied:

1. The overall development density of the entire parcel (not limited to the portion of the parcel receiving the transferred densities) is compatible with that of adjacent properties or developments. The fact that individual lot sizes in the receiving area may vary from those of adjacent properties or developments shall not be determinative of incompatibility.

2. The architecture, height, building materials, and other design features of the development in the receiving area are compatible with adjacent properties or developments.

3. The applicant has agreed to adopt appropriate mitigation measures such as landscaping, screening, illumination standards, and other design features as recommended by the Community Development Department to buffer the adjacent properties from the receiving area.

2.1.10 Open space and density on portions of sites with very steep slopes (in excess of 40 percent).

(a) One hundred (100) percent of the very steep slope area shall remain in open space. No vegetation within fifty (50) feet of the very steep slope area shall be disturbed.

(b) Up to ten (10) percent of the densities otherwise permitted in the zone may be transferred to other portions of the site, including delineated sensitive areas. The density transfer shall be subject to a suitability determination by the Community Development Department as set forth in Section 2.1.9(c).

2.1.11 Land Management Code Master Planned Development (MPD) Open Space Requirements. The sixty (60) percent open space
requirements contained in Chapter 10.9.(c) of the Land Management Code shall continue to apply to the developed portion of an MPD site. However, the Community Development Department may recommend to the Planning Commission at master plan or subdivision approval to reduce the sixty (60) percent open space requirement on non-sensitive areas on the site receiving a density transfer upon a determination that:

(a) The sensitive area open space set aside is sufficient to provide adequate natural open space for the entire development, and

(b) Sufficient neighborhood and recreational open space is set aside within the developable portion of the site to serve residents of the development.

(c) In no case shall less than twenty (20) percent of the developable portion of the MPD site be set aside for neighborhood and recreational open space.

2.1.12 **Density bonuses.** In addition to the density transfers permitted pursuant to this Section, the Community Development Department may recommend that the Planning Commission grant, at the MPD or subdivision review, up to a maximum of twenty (20) percent increase in transferrable densities if the applicant:

(a) Donates open space either in fee or a less-than-fee interest to either the City or another unit of government or nonprofit land conservation organization approved by the City. Such density bonus shall only be granted upon a finding by the Director that such donation will ensure the long-term protection of a significant environmentally or visually sensitive area; or

(b) Provides public access other than trails normally required through the development process and as shown on the Trails Master Plan; or

(c) Restores degraded wetlands or stream areas on the site or makes other significant environmental improvements.
2.2 **Ridgeline Area Protection Regulations**

2.2.1 **Intent.** The intent of these provisions is to protect the unique visual and environmental character of all designated ridgeline areas within the Sensitive Area Overlay Zone and to ensure that development near ridgeline areas blends in with rather than interrupts or modifies the natural contour elevations of these landforms. Significant ridgeline areas should be retained in a natural state, and development should be sited in such a manner so as not to create a silhouette against the skyline or mountain backdrop as viewed from designated vantage points.

2.2.2 **Minimum setback.** No building, roof, or other appurtenant device shall encroach upon the ridgeline area, as defined in Section 4.2. Additionally, no roof or other appurtenant device, including mechanical equipment, on any building may visually intrude on the ridgeline area from any of the eight designated vantage points as depicted on the accompanying map, determined by a visual assessment.

2.2.3 **Open space and density.** In addition to the specific development regulations set forth above, the following general open space, limits of disturbance, and density transfer regulations shall apply to all ridgeline areas in the Sensitive Area Overlay Zone as defined in Section 4.2:

(a) No vegetation within the ridgeline area shall be disturbed. One hundred (100) percent of the ridgeline area shall remain in open space.

(b) Density transfer. Up to twenty-five (25) percent of the densities otherwise permitted in the zone attributable to the ridgeline area may be transferred to portions of the site determined not to be subject to regulations contained in Section 2 herein. The density transfer shall be subject to a suitability determination as set forth below.

(c) Suitability determination. A suitability determination certifying that a development will have no significant adverse impact on adjacent properties or development shall be granted by the Planning Commission at the time of master plan or subdivision review if the following conditions are satisfied:
(1) The overall development density of the entire parcel (not limited to the portion of the parcel receiving the transferred densities) is compatible with that of adjacent properties or developments. The fact that individual lot sizes in the receiving area may vary from those of adjacent properties or developments shall not be determinative of incompatibility.

(2) The architecture, height, building materials, and other design features of the development in the receiving area are compatible with adjacent properties or developments.

(3) The applicant has agreed to adopt appropriate mitigation measures such as landscaping, screening, illumination standards, and other design features as recommended by the Community Development Department to buffer the adjacent properties from the receiving area.

2.2.4 Density bonuses. In addition to the density transfers permitted pursuant to this Section, the Community Development Director may recommend that the Planning Commission grant, at MPD or subdivision review, up to a maximum of twenty (20) percent increase in transferrable densities if the applicant:

(a) Donates open space either in fee or a less-than-fee interest to either the City or another unit of government or nonprofit land conservation organization approved by the City. Such density bonus shall only be granted upon a finding by the Director that the donation will ensure the long-term protection of a significant environmentally or aesthetically sensitive area; or

(b) Provides public access for trails, other than those normally required as a part of the development process and as shown on the Trails Master Plan; or

(c) Restores degraded environmental areas on the site or makes other significant environmental improvements.
2.3 **Entry Corridor Protection**

2.3.1 **Intent.** To protect the image of Park City as a mountain community with sweeping, attractive vistas, it is the intent of this section to maintain the visual character of all designated entry corridors into Park City including open space and meadows located in the entry corridor protection areas, views of hillsides and ridgeline areas, and natural areas such as streams and wetlands. This objective can be attained by eliminating or mitigating visually obtrusive development and ensuring that significant portions of meadows remain in open space.

2.3.2 **Applicability to property within existing Park City limits.** The regulations contained in this subsection shall apply to all structures on lots adjacent to or within two-hundred and fifty (250) feet of the nearest right-of-way of entry corridors within the existing boundaries of Park City including (1) Utah State Highway 224 north of Holiday Ranch Loop Road and Payday Drive, (2) Utah State Highway 224 south of Prospect Avenue, and (3) Utah Highway 248 east of Wyatt Earpp Way.

2.3.3 **Applicability to future annexed properties.** Upon submission of an annexation petition, the Community Development Department shall identify relevant entry corridors for designation by the City Council and to the maximum extent feasible open vistas and meadows shall be maintained.

2.3.4 **Access/traffic.** Access points and driveways connecting directly to the entry corridor roadways shall be minimized. Access shall be from existing city streets that join with the corridor roadways rather than direct roadway access. Common driveways between adjoining projects shall be encouraged. Whenever direct driveway access is necessary, it shall be located in such a manner to minimize interference with through traffic on the corridor roadway.

2.3.5 **Setbacks.**

(a) A setback line shall be established by the Community Development Department based upon a visual assessment of the property. However, in no case shall the setback be less than one-hundred (100) feet from the nearest entry roadway right-of-way. In areas where
open meadow vistas are considered important, the required setback may be increased significantly. The 100 foot standard is intended to be more appropriate for properties currently within the City Limits. Upon Annexation request, the appropriate setback will be determined based upon a site specific visual analysis.

(b) Building setbacks shall vary from structure to structure within any one lot or development. Setbacks shall also vary from those on adjoining roadway-oriented property to avoid creating a walled effect. Buildings shall be located in such a manner to enhance and frame important views as determined in the visual assessment provided for in Section 1.2.1.

(c) Agricultural or stock fences shall be permitted in the setback area subject to approval by the Community Development Department.

2.3.6 Parking lots. Parking lots shall be located to the rear or sides of buildings to the maximum extent feasible.

2.3.7 Berms/earthwork screening. All earthen berms and earthwork screening shall be graded and planted in such a manner so as to permit views of primary uses on the site from the adjacent entry corridor roadway. Additionally, berm crests shall be contoured and varied in height to avoid a straight-line barrier effect.

2.3.8 Fencing. In addition to the requirements contained in Section 8.7 of the Land Management Code, all fences in the entry corridor shall be of one of the following styles:

(a) Wooden rail

(b) Architecturally compatible solid wood and natural stone.

(c) Stock fences

(d) Various forms of steel fencing as determined by the Community Development Department, not including chain link fencing.
2.3.9 **Height controls.** No building shall exceed the following height limits, as defined in Section 2 of the Land Management Code:

(a) Twenty (20) feet if the entry corridor setback is less than one-hundred fifty (150) feet.

(b) Twenty-five (25) feet if the entry corridor setback is greater than one-hundred fifty (150) feet but less than two-hundred (200) feet.

(c) Up to the maximum height allowed by the underlying zone if the setback is two-hundred (200) feet or greater.

In addition, buildings may be required to be stepped back to preserve and enhance important views defined in the visual assessment as provided in Section 1.2.1.

2.3.10 **Pedestrian facilities.** Trails and sidewalks shall be provided in all entry corridor developments in accordance with the Park City Trails Master Plan.

2.3.11 **Landscaping/vegetation protection.** A landscaping plan shall be required for all entry corridor developments, and vegetation protection shall be undertaken pursuant to Chapter 15.4.2.(d) of the Land Management Code as amended (See Appendix B).

2.3.12 **Design standards.** All development within an entry corridor shall comply with the design standards contained in Chapter 9 of the Land Management Code, as amended. (See Appendix A).

2.4 **Wetlands and Stream Corridors**

2.4.1 **Intent.** Park City finds that the wetlands and stream corridors provide important hydrologic, biological and ecological, aesthetic, recreational, and educational functions. Important functional values of wetlands and streams have been lost or significantly impaired as a result of various activities and additional functional values of these important resources are in jeopardy of being lost. The following requirements and standards have been developed to promote, preserve and enhance these valuable resources and to protect them from adverse effects and potentially irreversible impacts.
2.4.2 **Jurisdiction.** All significant wetlands and stream corridors in the Sensitive Areas Overlay Zone are regulated as provided herein and are subject to the jurisdiction of this ordinance.

2.4.3 **Prohibited Activities.** No person shall engage in any activity that will disturb, remove, fill, dredge, clear, destroy or alter any area, including vegetation, ("surface disturbance") within significant wetlands and significant stream corridors and their respective setbacks, except as may be expressly allowed herein.

2.4.4 **Boundary Delineations.** Wetland and stream corridor delineations shall be performed by a qualified professional that has demonstrated experience necessary to conduct site analysis. The qualified professional shall be approved by the Community Development Director and shall perform the work on behalf of Park City Municipal Corporation through a third-party contract where all fees, costs and expenses are borne by the applicant. Delineation of wetlands and stream corridors shall be subject to the approval of the Community Development Director.

(a) Pursuant to Section 1.1.5, boundary delineation of wetlands shall be established using the Federal Manual For Identifying and Delineating Jurisdictional Wetlands, dated January 10, 1989, and jointly published by the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers and the U.S. Soil conservation Service. Subsequent revisions to the Federal Manual shall not be incorporated as part of the methodology. Although the Federal Manual may change in the future, the City will use this referenced manual as a basis for wetlands determination.

(b) Stream corridors shall be delineated at the ordinary high water mark as defined in Section 4.2.

2.4.5 **Determination of Significance.**

(a) A wetland delineated pursuant to the 1989 Federal Manual shall be found significant based upon the following criteria:
(1) Size. All wetlands that occupy a surface area greater than 1/10 acre or are associated with permanent surface water are significant.

(2) Location. All wetlands that are adjacent to or contiguous with a stream corridor are significant.

(b) All stream corridors are significant. Stream Corridors shall not include ditches which are commonly known to be irrigation ditches and do not contribute to the preservation or enhancement of fisheries or wildlife.

2.4.6 Setbacks. The following setbacks are considered minimum distances:

(a) Setbacks from wetlands shall extend a minimum of 50 feet outward from the delineated wetland edge.

(b) Setbacks from stream corridors shall extend a minimum of 50 feet outward from the ordinary high water mark.

(c) Setbacks from irrigation ditches shall extend a minimum of 20 feet from the ordinary high water mark.

2.4.7 Runoff Control. All projects adjacent to wetlands will provide appropriate temporary and permanent runoff control to minimize sediment and other contaminants to the maximum extent feasible.

2.4.8 Habitat Restoration Projects. The Community Development Department may approve wetland and stream restoration and enhancement projects providing that the project plan has been reviewed by a qualified professional and approved by the appropriate state and federal agencies with jurisdiction. All habitat restoration work shall be performed under the direct supervision of a qualified professional.

2.4.9 Land Management Code Master Planned Development (MPD) Open Space Requirements. The sixty (60) percent open space requirements contained in Chapter 10.9.(c) of the Land Management Code shall continue to apply to the developed portions of an MPD site. However, the Community Development Department may recommend to the Planning Commission at master plan or subdivision approval to reduce

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the sixty (60) percent open space requirement in the developed portion of an MPD site upon a determination that:

(a) The sensitive area open space set aside is sufficient to provide adequate natural open space for the entire development, and

(b) Sufficient neighborhood and recreational open space is set aside within the developable portion of the site to serve residents of the development.

(c) In no case shall less than twenty (20) percent of the developable portion of the MPD site be set aside for neighborhood and recreational open space.
SECTION 3: ADMINISTRATIVE PROVISIONS

3.1 Development Approvals For Public Projects/Public Works/Public Utilities

All public development projects and public works that visually impact or otherwise adversely impact sensitive areas, and all public utility installations including but not limited to water and sewer projects, pipelines, electrical supply facilities and wires, roads, and trails, constructed or undertaken within the Sensitive Area Overlay Zone shall be reviewed according to the following process and guidelines. It is the intent of this section that the proposed public utilities projects, both private and public, make all reasonable attempts to comply with the standards and guidelines of the Sensitive Lands regulations. The primary emphasis shall be on reasonable and practical reclamation and revegetation of areas disturbed by major public works and utility projects. In some situations, it may be necessary to encroach upon certain environmentally sensitive lands in order to maintain a desirable level of public service and safety. In those cases, an evaluation of alternatives and possible mitigation shall be required prior to such projects being submitted.

3.1.1 Consultation.

(a) Public Utilities projects. The project sponsor shall notify the Community Development Director of the proposed project. A project plan delineating the location, alignment, and scope of the undertaking shall be submitted with such notification. If the Community Development Director determines that the project may have significant visual and environmental impacts, a consultation meeting shall be scheduled. No development shall occur until after the consultation meeting and compliance with the steps outlined in the following subsections, unless the Community Development Director has determined that no significant visual or environmental impact will result from the proposed project.

(b) Public Works and other public projects. The department director shall notify the Community Development Director of all proposed projects which may have significant visual and environmental impacts and a consultation meeting shall be scheduled. No development shall occur until after the consultation meeting.
meeting and compliance with the steps outlined in the following subsections.

Minor projects which are determined by the Community Development Director to have no potential for significant visual or environmental impacts shall be exempt from the process outlined in Sections 3.1.2 through 3.1.6.

3.1.2 Mitigation. The Community Development Director shall review the proposed project and after the consultation meeting may request the project sponsor to prepare a mitigation plan that modifies the project to mitigate the environmental and visual impact of the project. To the maximum extent feasible, the project sponsor shall design the public works to preserve the natural character of the sensitive area and locate it in areas not visible from major public rights-of-way or public property such as parks.

3.1.3 Adoption of Recommendations. The project sponsor shall, before undertaking the project, to the maximum extent feasible, adopt the modifications and mitigation measures recommended by the Community Development Department or state in writing why adoption of such measures is not feasible before the project shall proceed.

3.1.4 Wetlands and Stream Corridors. All public utilities and public works, constructed or undertaken within significant wetlands and significant stream corridors and their respective setbacks, including but not limited to water and sewer projects, pipelines, electrical supply facilities and wires, roads, and trails, shall be governed pursuant to the procedures set forth in Section 3.1. They shall be exempted from the requirements of this Section 2.4 providing that: (a) no practical alternative location exists outside the significant wetland and significant stream corridor and their respective setbacks; and (b) the project meets the technical guidelines defined below.

(a) To the maximum extent feasible, disturbed areas within the setbacks shall be revegetated using native species common to the native vegetation community.

(b) Maintenance access shall be provided at specific access points rather than parallel access roads. To the extent
that access roads must be located within a corridor, the roads shall be kept to a minimum width. Parallel access roads shall be sited contiguous to the utility corridor to minimize disturbance and shall be sited on the outside edge of the utility corridor away from the resource.

(c) Surface materials used for trail construction and other access routes shall be approved by the Community Development Director.

(d) Road construction techniques for stream crossings shall use appropriate methods demonstrated to provide fisheries protection.

3.1.5 Emergency Repairs. In the event of an emergency that requires immediate action to protect the health and safety of the general public, such action may go forward without the immediate consent of the Community Development Director. The Community Development Director shall be consulted at the earliest stage reasonably possible in the construction/repair phase.

3.1.6 Maintenance. Maintenance projects shall proceed only after notification of and approval by the Community Development Director. If the Community Development Director, due to the size or nature of the maintenance activity, determines that it may have a significant adverse impact on the sensitive area, the project shall proceed through the review procedures set forth in Sections 3.1.1 through 3.1.5.

3.2 Development Approvals for Ski Area Construction and Expansion

3.2.1 Consultation. Development of skiing and recreation related facilities within existing ski areas and expansion of ski facilities shall remain a permitted use. The project developer shall notify the Community Development Director of the proposed project. A plan detailing the location, alignment and scope of the undertaking shall be submitted with such notification. If the Community Development Director determines that the project may have significant visual and environmental impacts, a consultation meeting will be scheduled. No development shall occur until after the consultation meeting.
3.2.2 Mitigation. The Community Development Director shall review the proposed project and after consultation may request the project developer to prepare alternatives for consideration and to prepare a mitigation plan that modifies the project to mitigate the environmental and visual impact of the project. To the maximum extent feasible, the developer shall design the ski facilities to preserve the natural character of the sensitive area. The mitigation plan shall also address revegetation disturbed areas and temporary and permanent erosion control measures.

3.3 Substantial Compliance. To avoid unnecessary review by city agencies and disputes over the application of the Sensitive Area Overlay Zone ordinance provisions, whenever there are practical difficulties over the application of the provisions or whenever the aims of the ordinance can be better achieved through alternatives to strict compliance, the Community Development Director, pursuant to the authority granted under Ordinance No. 83-3, may make specific modifications to strict compliance with the Sensitive Area Overlay Zone ordinance provisions.

3.4 Economic Hardship Relief Provisions.

3.4.1 Hardship Relief Petition. Any applicant for development, after a final decision on its development application is taken by the City Council, may file a Hardship Relief Petition with the Community Development Director seeking relief from the overlay zone regulations on the basis that the denial of the application has created a substantial economic hardship, depriving the applicant of all reasonable use of its property.

3.4.2 Affected Property Interest. The hardship relief petition must provide information sufficient for Community Development Director and the City Attorney to determine that the petitioner possesses a protectable interest in property under Article I, Section 22 of the Constitution of Utah and the Fifth Amendment to the United States Constitution.

3.4.3 Economic Hardship Standard. For purposes of this ordinance, a substantial economic hardship shall be defined as a denial all reasonable use of the property. Upon a finding that the denial of the application has resulted in a denial of all reasonable use of the property, the Park City Municipal Corporation may provide the petitioner with relief from the overlay zone regulations.
3.4.4 Time for Filing Notice of Petition and Petition. No later than ten (10) calendar days from final action by the City Council on any development application, the applicant shall file a notice of petition in writing with the City Recorder. Within thirty (30) days of filing of a Notice of Petition, the applicant shall file a Hardship Relief Petition with the City Recorder.

3.4.5 Information to be Submitted with Hardship Relief Petition.

(a) The hardship relief petition must be submitted on a form prepared by the Community Development Director, and must be accompanied at a minimum by the following information:

(1) Name of the petitioner;

(2) Name and business address of current owner of the property, form of ownership, whether sole proprietorship, for-profit or not-for-profit corporation, partnership, joint venture or other, and if owned by a corporation, partnership, or joint venture, name and address of all principal shareholders or partners.

(3) Price paid and other terms of sale of the property, the date of purchase, and the name of the party from whom purchased, including the relationship, if any, between the petitioner and the party from whom the property was acquired;

(4) Nature of the protectable interest claimed to be affected, such as, but not limited to, fee simple ownership, leasehold interest;

(5) Terms (including sale price) of any previous purchase or sale of a full or partial interest in the property in the three years prior to the date of application;

(6) All appraisals of the property prepared for any purpose, including financing, offering for sale, or ad valorem taxation, within the three years prior to the date of application;
(7) The assessed value of and ad valorem taxes on the property for the previous three years;

(8) All information concerning current mortgages or other loans secured by the property, including name of the mortgagee or lender, current interest rate, remaining loan balance and term of the loan and other significant provisions, including but not limited to, right of purchasers to assume the loan;

(9) All listings of the property for sale or rent, price asked and offers received, if any, within the previous three years;

(10) All studies commissioned by the petitioner or agents of the petitioner within the previous three years concerning feasibility of development or utilization of the property;

(11) For income producing property, itemized income and expense statements from the property for the previous three years; and

(12) Information from a title policy or other source showing all recorded liens or encumbrances affecting the property;

(b) The Community Development Director or the appointed Hearing Officer may request additional information reasonably necessary, in their opinion, to arrive at a conclusion concerning whether there has been a denial of all reasonable use constituting a substantial economic hardship.

3.4.6 Failure to Submit Information. In the event that any of the information required to be submitted by the petitioner is not reasonably available, the petitioner shall file with the petition a statement of the information that cannot be obtained and shall describe the reasons why such information is unavailable.

3.4.7 Preliminary determination of substantial economic hardship. Prior to the appointment of a hearing officer, and based on a review of documents submitted by the applicant, the City
Council, upon advice of the Community Development Director and City Attorney, shall make a determination whether the applicant has made a prima facie case that the subject property has suffered a serious diminution of value or a denial of all reasonable use that amounts to a substantial economic hardship. If a determination is made that a prima facie case has been established, then the Community Development Director and City Attorney shall recommend whether the hearing shall be formal or informal under the Utah Administrative Procedures Act. Such determination shall be made within thirty (30) days of the filing of a Hardship Relief Petition and submission of all information required by the Community Development Director and City Attorney necessary to make such determination. Upon such showing, the City Council may appoint a hearing officer, elect either formal or informal administrative proceedings, and proceed with a review of the hardship petition. If upon advice of the Community Development Director and the City Attorney, the City Council finds that the applicant has not made a prima facie case of economic hardship as defined above, the petition for hardship relief shall be denied and no hearing officer shall be appointed.

3.4.8 Appointment of Hearing Officer. The Community Development Director shall, within thirty (30) days following a preliminary determination of hardship by the City Council, appoint a Hearing Officer to review information submitted by the petitioner, to hold a hearing to determine whether there is an affected property interest and whether a substantial economic hardship has been created as a result of the final action on the application, and to make a recommendation to the City Council concerning approval or denial of the Hardship Relief Petition.

3.4.9 Qualifications of the Hearing Officer. Every appointed Hearing Officer shall have demonstrated experience in either development, real estate finance, real estate analysis, real estate consulting, real estate appraisal, planning, real estate or zoning law, or in other real estate related disciplines sufficient to allow understanding, analysis and application of the economic hardship standard. Prior to appointment, the hearing officer shall submit a statement of no potential or actual conflict of interest.
3.4.10 **Notice of the Public Hearing.** Within ten (10) days following appointment of the Hearing Officer, written notice shall be published and posted in accordance with Section 1.15 of the Land Management Code. The hearing shall be held within thirty (30) days following the final date of written notice, unless a reasonable extension of time is agreed to by both the Community Development Director and the petitioner.

3.4.11 **Rules for Conduct of the Hearing.** The hearing shall be conducted according to the rules of the Utah Administrative Procedures Act.

3.4.12 **Application of the Economic Hardship Standard.** In applying the economic hardship standard in Section 3.4.3 above, the Hearing Officer shall consider among other items the following information or evidence.

(a) Any estimates from contractors, architects, real estate analysts, qualified developers, or other competent and qualified real estate professionals concerning the feasibility, or lack of feasibility, of construction or development on the property as of the date of the application, and in the reasonably near future;

(b) Any evidence or testimony of the market value of the property both considering and disregarding the Sensitive Area Overlay Zone designation; and

(c) Any evidence or testimony concerning the value or benefit to the petitioner from the availability of opportunities to transfer density or cluster development on other remaining contiguous property owned by the petitioner eligible for such transfer as provided herein;

3.4.13 **Burden of Proof.** The petitioner shall have the burden of proving that the denial of the application creates a substantial economic hardship under the standard provided in Section 3.4.3.

3.4.14 **Findings of the Hearing Officer.** The Hearing Officer shall, on the basis of the evidence and testimony presented, make the following specific findings as part of its report and recommendations to the City Council:
(a) Whether the petitioner has complied with the requirements for presenting the information to be submitted with a hardship relief petition;

(b) Whether the petitioner has a protectable interest in property;

(c) The market value of the property considering the Sensitive Area Overlay Zone designation;

(d) The market value of the property disregarding the Sensitive Area Overlay Zone designation;

(e) The market value of, or benefit accruing from opportunities to transfer density or cluster development on other remaining contiguous property owned by the petitioner eligible for such transfer as provided herein;

(f) Whether it was feasible to undertake construction on or development of the property as of the date of the application, or in the reasonably near future thereafter;

(g) Whether, in the opinion of the Hearing Officer, the denial of the application would create a substantial economic hardship as defined in Section 3.4.3.

3.4.15 **Report and Recommendations of the Hearing Officer.**

(a) The Hearing Officer, based upon the evidence and findings, shall make a recommendation to the City Council concerning the Hardship Relief Petition.

(b) If the Hearing Officer recommends that the City Council approve the Hardship Relief Petition, then the report of the Hearing Officer shall discuss the type and extent of incentives necessary, in the opinion of the Hearing Officer, to provide an appropriate increase in market value or other benefit or return to the petitioner sufficient to offset the substantial economic hardship. The types of incentives that the hearing officer may consider include, but are not limited to, the following:

(1) An increase in the opportunity to transfer density or cluster development on other property owned
by the applicant outside the Sensitive Area Overlay Zone;

(2) A waiver of permit fees;

(3) Development finance assistance on property outside the Sensitive Area Overlay Zone;

(4) Approval of development on some portion of the property within the Sensitive Lands Protection District; and

(5) Acquisition of all or a portion of the property at market value.

(c) The report and recommendation shall be submitted to the City Council and mailed to the petitioner within thirty (30) days following conclusion of the public hearing.

3.4.16 City Council Review and Consideration. The City Council shall review the report and recommendations of the Hearing Officer and approve or disapprove the Hardship Relief Petition within sixty (60) days following receipt of the Hearing Officer’s report. The City Council may hold a public hearing and provide notice as provided in the Land Management Code. Only new testimony and evidence shall be presented at any public hearing held by the City Council. The City Council may adopt any incentive reasonably necessary to offset any substantial economic hardship as defined in Section 3.4.3 and may condition such incentives upon approval of specific development plans.

3.4.17 Time Limits/Transferral of Incentives. Any incentives adopted by the City Council pursuant to this section may be transferred and utilized by successive owners of the property or parties in interest, but in no case shall the incentives be valid after the expiration date of the development approval.
SECTION 4: DEFINITIONS

4.1 Definition Usage.

For the purposes of this ordinance, certain terms and words used herein shall be used, interpreted, and defined as set forth in this subsection and the Park City Municipal Corporation Land Management Code.

4.2 Definitions.

Compatible. A development is compatible with an existing development or property if its architectural features, building height and materials, approved uses, intensity of such use and other features are complementary and do not have a significant adverse economic and aesthetic impact on the existing development or property.

Crest of hill. The highest point on a hill or slope as measured continuously throughout the property. Any given property may have more than one hill crest.

Substantial economic hardship. Means denial of all reasonable economic use of the property.

Development Approval Application. Includes any application for any development approval including but not limited to grubbing, grading, an alteration or revision to an approved MPD, conditional use permits, zoning or rezoning, subdivision, or annexation. The term "development approval application" shall not include any building permits associated with construction within an approved subdivision or on an existing platted lot unless otherwise specified.


Maximum extent feasible. Means no prudent, practical and feasible alternative exists, and all possible planning to minimize potential harm has been undertaken. Economic considerations may be taken into account but shall not be the overriding factor in determining "maximum extent feasible."

Open space. Shall have the meaning set forth in Chapter 2 of the Land Management Code.
**Ordinary high water mark.** Means the line on the bank to which the high water ordinarily rises annually in season as indicated by changes in the characteristics of soil, vegetation or other appropriate means which consider the characteristics of the surrounding areas. Where the ordinary high water mark cannot be found, the top of the channel bank shall be substituted. In braided channels, the ordinary high water mark or substitute shall be measured so as to include the entire stream feature.

**Qualified professional.** Means a professionally trained person with the requisite academic degree, experience, and professional certification or license in the field or fields relating to the subject matter being studied or analyzed.

**Ridgeline area.** Means the crest of a hill or slope plus the land located within one-hundred fifty (150) feet horizontally (map distance) on either side of the crest.

**Significant wetland.** All wetlands which occupy a surface area greater than 1/10 acre or are associated with permanent surface water or which are adjacent to or contiguous with a stream corridor.

**Slope.** The level of inclination of land from the horizontal determined by dividing the horizontal run of the slope into the vertical rise of the same slope and converting the resulting figure into a percentage value. For purposes of regulation and measurement, slopes must cover at least twenty five (25) feet vertically and fifty (50) feet horizontally.

**Steep slope.** Slopes greater than fifteen (15) percent but less than or equal to forty (40) percent.

**Stream.** Means those streams, excluding ditches and canals constructed for irrigation and drainage purposes, that flow year around or intermittently during years of normal rainfall.

**Stream corridor.** Means the corridor defined by the stream’s ordinary high water mark.

**Suitability determination.** A determination carried out by the Community Development Director to ascertain if a development at increased densities due to a density transfer from a sensitive area is compatible with development on surrounding or adjacent property.
**Vantage points.** A height of five feet above a set reference marker in the following designated vantage points within Park City that function to assist in analyzing the visual impact of development on hillsides and steep slopes:

1. Osguthorpe Barn  
2. Treasure Mountain Middle School  
3. Intersection of Main Street and Heber Avenue  
4. Park City Ski Area Base  
5. Snow Park Lodge  
6. Park City Golf Course Clubhouse  
7. Park Meadows Golf Course Clubhouse  
8. Utah Highway 248 at the turn-out one quarter mile west from U.S. Highway 40  
9. Highway 224, 1/2 mile south of the intersection with Kilby Road.
APPENDIX A—DESIGN STANDARDS

All private development within the Sensitive Area Overlay Zone shall comply with the following design standards which supplement, and supersede in the case of a conflict, Chapter 9 of the Land Management Code.

A.1 Building color and material. All buildings shall be constructed of material of a muted earth tone color that reflects the dominant color of the surrounding vegetation. Building materials shall comply with the provisions of Chapter 9 of the Park City Municipal Land Management Code (Architectural Review).

A.2 Windows and other glass. Glass areas shall be reviewed to avoid highly reflective surfaces. Mirrored glazing is prohibited on any building, except that solar absorption glazing is an acceptable material.

A.3 Parking. Subdivision lots and streets shall be designed so that wherever possible parking is located behind buildings on the uphill lots. Uses other than single-family residences shall break up parking areas into smaller lots that should be located in linear strips running parallel to the slope contours. The perimeter of parking areas shall be screened with vegetation, fencing, or other architectural elements.

A.4 Rooftop mechanical equipment. All rooftop mechanical equipment, including HVAC equipment and similar appurtenances, must be screened so as not to be visible from nearby properties or hillsides above the equipment.

A.5 Roof pitch, color, and materials. The pitch of any roof shall generally parallel the slope upon which the building is located, but in any case shall not exceed a height to horizontal ratio of 9/12 and shall not descend closer than seven (7) feet from the ground. The minimum roof pitch shall be 4/12. Roofs shall be of a dark, muted earth tone color in a shade of dark gray, dark brown, or black that reflects the dominant color of the surrounding vegetation and shall be constructed of materials as set forth in Chapter 9 of the Park City Municipal Corporation Land Management Code (Architectural Review).

A.6 Height controls. Upon review of any subdivision or MPD within the Sensitive Area Overlay Zone, an analysis of appropriate building heights will be conducted. Based upon the visual analysis, building heights may be reduced for all or part of a proposed development.
A.7 **Dwelling size.** Maximum single-family dwelling size shall be evaluated at the time of project approval taking into consideration visual impact and community character.

A.8 **Underground utilities.** All utility lines in steep slope developments shall be underground, except that the Community Development Director may allow above-ground utilities if burying would result in severe damage to significant vegetation or sensitive environmental areas.
APPENDIX B--TREE/VEGETATION PROTECTION REGULATIONS

B.1 The following provisions are hereby adopted as amendments to existing limits of disturbance regulations contained in Section 15.4.2(d) and Section 10.9 (k) of the Park City Municipal Corporation Land Management Code and will apply to existing platted subdivisions in the Sensitive Area Overlay Zone, to include the following criteria to be used in establishing limits of disturbance.

B.1.1 Visual impacts of the development, including but not limited to screening from adjacent properties, ridgeline area protection, and protection of critical viewsheds as defined in the Sensitive Area Overlay Zone District Regulations Section 1 herein.

B.1.2 Erosion prevention and control, including but not limited to protection of natural drainage channels.

B.1.3 Fire prevention and safety, including but not limited to location of trees and vegetation near structures.

B.1.3 Irrigation and water conservation.

B.1.4 Wildlife habitat, including but not limited to preservation of critical wildlife habitat and migration routes.

B.1.5 Stream and wetland protection and buffering.

B.2 Tree/vegetation removal. No trees or vegetation within the Sensitive Area Overlay Zone shall be removed for the purpose of providing open views to or from structures on a site.

B.3 Irrigation limits. The amount of irrigated area shall be minimized depending on the amount existing natural vegetation on the site prior to construction and type of irrigation proposed to be used.

B.4 Revegetation plan. All applicants for developments on land subject to Sensitive Area Overlay Zone regulations involving cut and fill and graded slopes shall submit a revegetation/landscaping plan for approval by the Community Development Department. The plan shall depict the type, size, and location of any vegetation and trees being planted and illustrate how the site will be recontoured in such a fashion and with sufficient topsoil to ensure that revegetation is feasible. The plan shall also indicate a time frame for revegetation which is acceptable to the Community Development
Department. Retaining walls shall be used to provide breaks in man-made steep slopes exceeding fifteen (15) percent and to provide planting pockets.

B.5 Violation/Replacement provision. Any applicant who violates the provisions of this subsection by removing trees or vegetation or exceeding the prescribed limit of disturbance shall replace two for one in number all trees/vegetation illegally removed. Size of trees planted in replacement of illegally removed trees must be approved by the Community Development Department.
## APPENDIX C—LAND USE MATRIX

### APPLICATION OF SENSITIVE LANDS PROVISIONS

<table>
<thead>
<tr>
<th>Annexations</th>
<th>Building Design Standards</th>
<th>Limits of Disturbance &amp; Vegetation Protection Standards</th>
<th>Site Planning Standards</th>
<th>Density Limitations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Used as a basis for negotiation</td>
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<td>Yes</td>
</tr>
<tr>
<td>Projects within City Limits, but not Master Planned</td>
<td>Yes</td>
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<td>Yes</td>
<td>Yes</td>
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<td>Projects within approved Large Scale MPD’s</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Where changes in concept are proposed</td>
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<tr>
<td>Small Scale MPD’s</td>
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<td>Yes</td>
<td>Where changes in concept are proposed</td>
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<tr>
<td>Building Permits within subdivisions on visually sensitive hillsides</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
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</tbody>
</table>
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