

## **Salt Lake County Planning Commission**

### **Public Meeting Agenda**

**Wednesday, June 15, 2016 8:30 A.M.**

#### **Location**

SALT LAKE COUNTY GOVERNMENT CENTER  
2001 SOUTH STATE STREET, ROOM N1-110  
NORTH BUILDING, MAIN FLOOR  
(385) 468-6700

*UPON REQUEST, WITH 5 WORKING DAYS NOTICE, REASONABLE ACCOMMODATIONS FOR QUALIFIED INDIVIDUALS MAY BE PROVIDED. PLEASE CONTACT WENDY GURR AT 385-468-6707.  
TTY USERS SHOULD CALL 711.*

The Planning Commission Public Meeting is a public forum where, depending on the agenda item, the Planning Commission may receive comment and recommendations from applicants, the public, applicable agencies and County staff regarding land use applications and other items on the Commission's agenda. In addition, it is where the Planning Commission takes action on these items, which may include: approval, approval with conditions, denial, continuance or recommendation to other bodies as applicable.

#### **BUSINESS MEETING**

- 1) Approval of Minutes from the May 11, 2016 meeting.
- 2) Other Business Items (as needed)

#### **PUBLIC MEETING**

**29842** – Heather Limon and Kristen Faux are requesting approval for a conditional use allowing to establish an interactive farm at the Cross E Ranch. **Location:** 3500 North 2200 West. **Zone:** A-2. **Planner:** Tom Zumbado

**29717** – (Continued from 12/16/2015, 01/13, 02/10, 03/23, 04/13 and 05/11/2016) - Recommendation on the creation of a new Mountain Resort Zone; establishing Chapter 19.13 of the Salt Lake County Zoning Ordinance. **Presenter:** Curtis Woodward

#### **ADJOURN**

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**MEETING MINUTE SUMMARY**  
**SALT LAKE COUNTY PLANNING COMMISSION MEETING**  
**Wednesday, May 11, 2016 8:30 a.m.**

**Approximate meeting length:** 1 hour 30 minutes

**Number of public in attendance:** 0

**Summary Prepared by:** Wendy Gurr

**Meeting Conducted by:** Commissioner Cohen

**\*NOTE:** Staff Reports referenced in this document can be found on the State and County websites, or from Salt Lake County Planning & Development Services.

**ATTENDANCE**

Commissioners	Public Mtg	Business Mtg	Absent
Neil Cohen	x	x	
Ronald Vance	x	x	
Tod Young	x	x	
Bryan O’Meara	Tele-conference	Tele-conference	

Planning Staff / DA	Public Mtg	Business Mtg
Curtis Woodward	x	x
Wendy Gurr	x	x
Max Johnson		
Zach Shaw (DA)	x	x

**BUSINESS MEETING**

**Meeting began at – 9:03 a.m.**

- 1) Approval of Minutes from the April 13, 2016 meeting.

**Motion:** To approve minutes from the April 13, 2016 meeting as presented.

**Motion by:** Commissioner Vance

**2<sup>nd</sup> by:** Commissioner Young

**Vote:** Commissioners voted unanimous in favor

- 2) Other Business Items (as needed)

*Discussed potential applicants for the Salt Lake County Planning Commission and Commissioner Young’s annexation into Sandy City.*

**PUBLIC HEARINGS**

**Hearings began at – 9:10 a.m.**

**29717 – (Continued from 12/16/2015, 01/13, 02/10, 03/23 and 04/13/2016) - Recommendation on the creation of a new Mountain Resort Zone; establishing Chapter 19.13 of the Salt Lake County Zoning Ordinance. **Presenter:** Curtis Woodward**

*Salt Lake County Township Services Zoning Administrator Curtis Woodward addressed concerns from the speakers at the MPDPC meeting of May 5, 2016 and the information he has received.*

*Commissioners and County Counsel Zach Shaw discussed TDR's. Commissioner O'Meara said the TDR is a mechanism for conservation and MRZ is to create more density and leave more of the canyon in conservation.*

*Commissioner Vance said he is okay with waiting for the MPDPC recommendation. They'll continue their discussion, but will not be making a recommendation to the County Council at this meeting.*

*Mr. Woodward said he reached out to the forest service regarding ski runs and resorts. Mr. Shaw said we have done research on ordinances from other jurisdictions and found their ski resorts are on forest service land and talk of expansion on forest service lands. They had a difficult time finding ski resorts on private land.*

*Mr. Woodward discussed the difference between "shall" and "may," as the Save our Canyons had an issue with. Commissioner Cohen said he thought MPDPC wanted it to remain as the word "may."*

*Mr. Woodward discussed conditional use. Mr. Shaw explained the difference between permitted and conditional uses. Commissioner Young said an issue raised and has nothing to do with natural resources. Mr. Woodward said he did some research on mountain coasters and resort is being careful to place the coaster.*

*Mr. Woodward discussed the skateboard park objection, many champion snowboarders are skateboarders. Commissioner Young said this would be on a case by case basis.*

*Mr. Woodward discussed environmental dashboard project. He said this is still in early stages and in its infancy to put into the ordinance. He discussed the fact state law requires on every general plan document, a resource management plan. County is under mandate to do a forestry study and the county will be looking at that, as it is mandated by the state.*

*Commissioner Cohen asked about numbers eight and nine of potential motions. Mr. Woodward quoted the original paragraph in the opening line. Mr. Shaw said talking about the development plan, on the ground. Mr. Shaw said the master plan is focused on the bigger picture and may have a parking component. The area plan was created to look like the current master plan. Development plan is focused on construction. Commissioner Cohen asked if a resort would have a current master plan. Mr. Shaw advised no. Mr. Woodward doesn't know if everything on an approved conditional use permit has been built, but thinks if there is one on file and resorts are content to let that guide them, they would have to come in with a development plan. Commissioner O'Meara said an issue in the canyons is parking, and resorts would like more use for parking, but add to the situation with more cars and more parking needs. He wants to know if the commission has authority for alternative means of transportation. Mr. Woodward said that is part of the reason for number eight. The resorts address a way to get your customers without the parking. Mr. Shaw said he found the parking provision for Snowbird and read it and read the County's provision. Commissioner Cohen said more things are being put in that doesn't need to go in, it's being repeated. Commissioner Young said if it is addressed in the area plan, why is it needed in both places. Mr. Woodward said that is for the commission to decide and he said they're right, it is addressed. Mr. Shaw said the area plan shows what you plan to do as far as transportation, this is justified.*

*Commissioners had a brief discussion.*

**Motion:** To continue file #29717 to the June 15<sup>th</sup> meeting.

**Motion by:** Commissioner Young

**2<sup>nd</sup> by:** Commissioner O'Meara

**Vote:** Commissioners voted unanimous in favor

**MEETING ADJOURNED**

**Time Adjourned – 10:33 a.m.**

DRAFT

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**OFFICE OF TOWNSHIP SERVICES**

Planning and Development Services  
2001 S. State Street N3-600 • Salt Lake City, UT 84190-4050  
Phone: (385) 468-6700 • Fax: (385) 468-6674  
[www.pwpds.slco.org](http://www.pwpds.slco.org)

**File # 29842**

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## Conditional Use Summary and Recommendation

**Public Body:** Salt Lake County Planning Commission

**Meeting Date:** June 15, 2016

**Parcel ID:** 0809226001

**Current Zone:** A-2

**Property Address:** 3500 North 2200 West

**Request:** Conditional Use for Interactive Farm

**Planner:** Tom C. Zumbado

**Township/Unincorporated:** Unincorporated

**Planning Staff Recommendation:** Approved

**Applicant Name:** Heather Limon

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### PROJECT DESCRIPTION

Heather Limon is requesting approval for a conditional use allowing Cross E Ranch to work as an interactive farm for supplementary income.

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### SITE & VICINITY DESCRIPTION (see attached map)

Located in one of the northernmost reaches of Salt Lake County, Cross E Ranch is bordered north and south by A-2 zone parcels. To the west is a tract of land belonging to Salt Lake City and to the east is Davis County. The property of File #29842 is only one of several large parcels encompassing the Cross E Ranch.




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### ISSUES OF CONCERN/PROPOSED MITIGATION

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**CONCERN 1**

Site plan does not detail parking access and quantities.

**MITIGATION 1**

Applicant shall provide a detailed site plan estimating parking stalls, crosswalks and vehicle access for largest type of event.

**CONCERN 2**

Various uses associated with interactive farm proposal change in magnitude and intensity. This includes amounts of visitors, duration of events, nature of activity, food sales, and hours of operation. It is anticipated that many of the patrons will be children.

**MITIGATION 2**

Any concerns or issues reported to Township Services may be grounds for revocation (or modification) of Conditional Use.

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### NEIGHBORHOOD RESPONSE

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As of June 8<sup>th</sup> 2016, there has been no neighborhood response to File #29842.

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### PLANNING STAFF ANALYSIS

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See Exhibit A: Letter from Zoning Administrator defining the conditional use as an "Interactive Farm." This is currently not defined by ordinance. The determination is that it is similar in intensity to a Dude Ranch, Dairy and Riding Academy.

## PLANNING STAFF RECOMMENDATION

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Planning staff recommends approval of File #29842 subject to the following conditions:

- a) Applicant works with Staff to provide a more detailed site plan to address parking for the largest expected event.
- b) Applicant shall comply with all Health Department regulations regarding restroom facilities, food handling permits, noise ordinances, etc.
- c) Applicant must obtain building permits for any construction on site associated with interactive farm operations.
- d) Applicant understands that any complaints received by Township Services may be grounds for revocation (or modification) of Conditional Use.

**Ben McAdams**  
Mayor  
**Lori Bays**  
Deputy Mayor  
**Russ Wall**  
Acting Township Executive



**Scott R. Baird, P.E.**, Director  
Engineering Services  
**Rolen Yoshinaga**, Director  
Planning & Development Services  
**Allison Weyher**, Director  
Economic Development

Memorandum

Date: January 13, 2016  
To: Jay Sisson  
From: Curtis Woodward  
Re: Cross E Ranch

A handwritten signature in black ink, appearing to read 'Curtis', is written over the 'From:' line of the memorandum.

As you know, we have received a request to meet with a planner to begin a conditional use process for the Cross E Ranch at 3500 North 2200 West. The property is currently located in the A-2 agricultural zone, and the question has arisen as to whether the proposed use is allowed in that zone. From the information submitted, it appears that the Cross E Ranch is a working “interactive farm” that raises crops and animals; but also includes events and activities that are operated either seasonally or by appointment for paying customers. The events include rides, games, educational activities, and social gatherings that are all focuses on the “farm” experience. This includes such activities as hay rides, hay bale mazes, pumpkin patch, and private parties.

I have concluded that the use of the property as an “Interactive Farm” is allowed as a conditional use in the A-2, A-5, A-10, and A-20 zones as being similar in nature and intensity to the following uses which are currently allowed in these zones: Dude Ranch, Dairy, and Riding Academy.

To that extent, you may process the application to meet with a planner accordingly and forward the file on to the planning team.

**File #29842**  
**Exhibit A**



Small white sign with illegible text, possibly a price list or notice, posted near the hay bales.

TOYOTA RACING DEVELOPMENT  
**TRD**  
SPORT







File # 29717

## Planning Commission Summary and Recommendation

**Public Body:** Salt Lake County Planning Commission

**Meeting Date:** June 15, 2016

**Request:** Recommendation for Mountain Resort Zoning Ordinance

**Planner:** Curtis Woodward

**Community Council Recommendations:** See attachments

**Planning Staff Recommendation:** Recommendation of approval

### PROJECT DESCRIPTION

In response to the recommendations of the Blue Ribbon Commission, various changes have been proposed to the Foothills and Canyons Overlay Zone (FCOZ) and a new Mountain Resort Zone (MRZ) is being proposed. The Commission's report indicates 7 points of emphasis for ordinance revisions, one of which is: "A specific Mountain Resort Zone (MRZ) needs to be created for mountain resort areas. This zoning designation would recognize the year-round nature, function and needs of the resorts and commercial and recreational activities of visitors to the canyons." In considering specific changes to the ordinances, the Commission emphasizes striking a balance between private property rights and the public interest in preserving and protecting the watershed and natural beauty of the canyon areas.

### STAFF ANALYSIS

Public input has been received from a number of interested parties, including private citizens, land owners, environmental groups, and others regarding the proposed MRZ since December of 2015. Based on that public input, the Mountainous Planning District planning commission held a series of work meetings to discuss the issues and concerns that were raised in an effort to find points of agreement among planning commission members about which specific recommendations could be made. After several hours of work and discussion at the work meetings, a number of potential recommendations were formed and voted upon via straw poll. The planning staff has attempted to summarize those recommendations below. Please be aware, however, that since the recommendation is coming from the planning commission, any or all of the recommendations below may be amended to more accurately reflect the intent of the planning commission regarding each issue. In April and May, public input was received regarding the potential recommendation items. It is our recommendation that a recommendation be forwarded to the County Council with whatever amendments the planning commission deem necessary to address new issues that have been raised.

1. Amend section 19.13.030(A) (permitted uses in the MRZ recreation district) to:

- Remove “outdoor recreation equipment,” and “solar farm,” noting that the definition of “outdoor recreation equipment” under section 19.13.090 is to be amended to remove picnic tables from the definition.
- Amend “Mountain resorts, including the following” to exclude “recreational sports field,” “skating rink,” “skateboard park,” “mountain bike terrain park,” “frisbee golf course,” “ski lift,” “ski run,” “ski tram,” and “tram station” from the list; but add them to 19.13.030(B) as conditional uses, noting that “mountain bike terrain park” needs to be defined in the ordinance under 19.13.090.
- Remove “public and quasi-public use structure,” but add it to 19.13.030(B) as a conditional use.
- Amend “parking area or structure with four(4) or fewer spaces,” to read “employee and maintenance parking area with four(4) or fewer spaces.”

2. Amend section 19.13.030(B) (conditional uses in the MRZ recreation district) to:

- Amend “Recreational uses not listed in subsection A” to instead read, “Recreational uses having a similar character as other permitted or conditional uses in this section, as approved by the planning commission, including alpine slide and mountain coaster but excluding tennis courts, water slides/water parks, swimming pools, golf courses, or amusement parks.”
- Amend “Restaurant, including restaurant liquor license” to instead read, “food and beverage businesses, including alcoholic beverage licenses”

3. Amend 19.13.030.C(2) to add “f. Protect people from injury and properties from damage or degradation caused by unintended trespass onto adjoining land”

4. Modify 19.13.050(B) and 19.13.060(B) to include notification to the Forest Service as part of the MRZ Area Plan and MRZ Village Development Plan approval processes.

5. Add the following subsection to 19.13.030: “F. Any application for a new or expanded ski run that includes the removal of significant trees shall be accompanied by a forestry study prepared by a certified forester that includes mitigation measures to protect the overall health of the forest in harmony with the purpose and intent of section 19.72.110 of the Foothills and Canyons Overlay Zone. Conditions of approval may be imposed to mitigate the impacts of the removal of significant trees.”

**(Alternative #5).** Add the following subsection to 19.13.030: “F. Any application for a new or expanded ski run that includes the removal of significant trees shall be accompanied by a report prepared by a certified forester, showing how the proposal is in harmony with the goals and objectives of the resort’s Forest Management Plan on file with the U.S. Forest Service, and with the purpose and intent of section 19.72.110 of the Foothills and Canyons Overlay Zone. The report shall include recommended mitigation measures to be made in lieu of the tree replacement provisions of FCOZ. If necessary, the Forest Management Plan may be amended to account for the new ski terrain and submitted to the Forest Service for review.”

6. Add subsection “G” to 19.13.050 as follows:

G. Plan Amendments

A previously approved MRZ Area Plan may be amended subject to the review procedures in subsection 19.13.050(D) to change the boundaries of the MRZ-village and the MRZ-recreation districts or to add land that has been acquired by the resort through purchase or land trade to the MRZ area.

7. Amend 19.13.080(E)(1)(d) to read: “The property shall be located in the F-1, FM, or any of the FR zones within Big or Little Cottonwood Canyon in unincorporated Salt Lake County. The property may but need not be contiguous to an MRZ-Village District; and”

**8.** Amend 19.13.060(C) to include the paragraph on parking from the original draft; which will read, “Have the following issues been considered? 1) The probable number of cars to be operated by those using the proposed development and the nature of the proposed uses; 2) the availability of public transit and other transportation facilities, including those for pedestrian access; 3) the commitment to utilize automobile disincentive techniques in the proposed development; and 4) the potential for joint use of common parking.”

**9.** Amend the last sentence of 19.13.060(C)(4) to read: “Are specific designs, traffic congestion mitigation techniques, and implementation timelines defined as part of the Development Plan?”

**10.** Insert a new section to provide incentives for resorts to purchase the development rights of privately held properties that are currently undevelopable due to various constraints by allowing additional density at the resort in exchange for the constrained land being dedicated as permanent open space. The number of additional units allowed at the resort shall be based on the valuation of the constrained property and of the additional dwelling units.

**(Alternative #10):** Remove section 19.13.080 “transfer of development rights (TDR) in the MRZ-village district” from the ordinance.

**(Potential #11):** Amend paragraph 19.13.050(E)(4) to read, “Uses, activity, and density that are consistent with protecting the natural setting in which the property is located, based on the current environmental data available to Salt Lake County.”

**(Potential #12):** Add subparagraph 19.13.060(C)(2)(e) to read, “In assessing the impacts of the proposed development plan, has consideration been given to the current environmental data available to Salt Lake County?”

## Baseline Proposed Ordinance

### **SALT LAKE COUNTY CODE OF ORDINANCES CHAPTER 19.13 – MOUNTAIN RESORT ZONE**

- 19.13.010 PURPOSE STATEMENT**
- 19.13.020 MINIMUM REQUIREMENTS**
- 19.13.030 MRZ-RECREATION DISTRICT**
- 19.13.040 MRZ-VILLAGE DISTRICT**
- 19.13.050 MRZ AREA PLAN**
- 19.13.060 MRZ VILLAGE DEVELOPMENT PLAN**
- 19.13.070 REGULATIONS THAT APPLY TO BOTH MRZ-RECREATION AND MRZ-VILLAGE DISTRICTS**
- 19.13.080 TRANSFER OF DEVELOPMENT RIGHTS (TDR) IN MRZ-VILLAGE DISTRICT**
- 19.13.090 DEFINITIONS**

#### **19.13.010 PURPOSE STATEMENT**

The purpose of the Mountain Resort Zone (MRZ) is to provide a base zone that is suited for a mountain resort's year-round recreation function and provides for the residential and commercial needs of visitors and residents of the resort. It is intended to maintain the environmental, watershed, and aesthetic protections of the Foothills and Canyons Overlay Zone (FCOZ), with appropriate flexibility to accomplish a resort's year-round recreational functions. It is intended to encourage higher density mixed-use village centers that reduce sprawl in the canyons and are compatible with the natural and scenic resources of the canyons, and to encourage transfer of development rights from more sensitive areas in the canyons to these village centers.

#### **19.13.020 MINIMUM REQUIREMENTS**

##### **A. Minimum Area**

The minimum area requirement for a Mountain Resort Zone shall be 1,000 contiguous acres located within the Salt Lake County Mountainous Planning District. The resort area may be made up of multiple property owners making application under one contiguous and cohesive plan. At least one of the owners must be a Mountain Resort. Lands under contract or agreement with a local, state, or federal agency may satisfy the contiguous requirement and the minimum area requirement, although land owned by the federal government is not subject to the requirements of this Chapter. The resort area shall be primarily for the use of persons who do not reside on the same lot or parcel as that on which the recreational use is located.

##### **B. Required Recreation and Village Districts within the MRZ**

To qualify for an MRZ, the applicant shall designate both a Recreation and Village District for its property. The proposed boundaries of the MRZ-Recreation and MRZ-Village Districts shall be shown on the Area Plan (see section 19.13.050).

#### **19.13.030 MRZ-RECREATION DISTRICT**

##### **A. Permitted Uses**

Permitted uses in the MRZ-Recreation District are as follows:

- Accessory buildings and uses customarily incidental to permitted use
- Conservation activity
- Trail and trailhead improvement
- Outdoor recreation equipment
- Public and quasi-public use structure
- Parking area or structure with four (4) or fewer spaces
- Temporary construction improvement
- Minor ski or mountain resort improvements
- Solar farm
- Mountain resorts, including the following:
  - Recreational outdoor and trail lighting
  - Passenger ski or tramway station and ski base/terminal facility
  - Ski tow rope, ski lift, ski tram, ski run and ski bridge
  - Recreational sports field
  - Skating rink
  - Skateboard park
  - Outdoor event, outdoor music
  - Resort support, commercial
  - Zip line
  - Ropes course
  - Mountain bike terrain park and trails
  - Frisbee golf course

## **B. Conditional Uses**

Conditional uses in the MRZ-Recreation District are as follows:

- Accessory buildings and uses customarily incidental to conditional use
- Parking area or structure with five (5) or more spaces
- Forest industry
- Restaurant, including restaurant liquor license
- Recreational uses not listed in subsection A. "Permitted Uses", including alpine slide and mountain coaster

## **C. FCOZ Exceptions**

1. The following uses in the MRZ-Recreation District are exempt from all requirements of Section 19.72.060 (Slope Protection and Development on Ridgelines), subject to reasonable conditions that may be imposed under subsection (2) below.
  - a. Accessory buildings and uses customarily incidental to the permitted uses in this subsection (C)(1).
  - b. Conservation activity
  - c. Trail/trailhead improvement
  - d. Outdoor recreation equipment
  - e. Passenger ski or tramway station, ski base/terminal facility, & ski bridge
  - f. Ski tow rope, ski lift, ski tramway, run
  - g. Zip line
  - h. Ropes course
  - i. Mountain bike terrain park and trails
  - j. Frisbee golf course
  - k. Minor ski or mountain resort improvements
  - l. Alpine slide or mountain coaster, if approved as a conditional use by the planning commission.

2. For the above uses, the Director (for permitted uses) and the planning commission (for conditional uses) may impose reasonable conditions as necessary to accomplish any or all of the following:
  - a. Preserve area views;
  - b. Reduce adverse impacts on existing trees and vegetation;
  - c. Reduce overall degree of disturbance to steep slopes over 30%;
  - d. Protect wildlife habitat;
  - e. Protect stream corridors, wetlands, rock outcrops & other sensitive environmental features in vicinity of proposed improvements.

#### **D. Lot and Site Requirements**

All structures must be no less than twenty-five feet (25') from the boundary line of the Lot, district, or public right-of-way. However, fences, walls, stairs, paths, trails, sidewalks, patios, driveways, accessory structures, approved parking areas, and screened mechanical and utility equipment are allowed as exceptions in the front, side, and rear yards.

#### **E. Building Height**

No structure may be erected to a height greater than thirty feet (30') from existing grade. This is the District Height.

1. **Building Height Exceptions.** To allow for a pitched roof and to provide usable space within the structure, the following height exceptions shall apply:
  - a. A gable, hip, or similar pitched roof may extend up to five feet (5') above the District Height, if the roof pitch is 4:12 or greater.
  - b. An antenna, chimney, flue, vent, or similar structure may extend up to five feet (5') above the highest point of the building to comply with International Building Code (IBC) requirements.
2. **Other Height Exceptions.** Subject to Director approval for permitted uses and planning commission approval for conditional uses, the following structures may exceed the standard District Height limit:
  - a. Ski lift towers and tramway towers. Submittal of a computer-generated visual simulation showing all structures is required.
  - b. Public or quasi-public uses.
  - c. Telecommunication facilities

### **19.13.040 MRZ-VILLAGE DISTRICT**

#### **A. Permitted Uses**

Permitted uses in the MRZ-Village District are as follows:

- Accessory buildings and uses customarily incidental to permitted use
- Bed and breakfast homestay
- Bed and breakfast inn
- Boardinghouse
- Class B beer outlet
- Class C beer outlet
- Day care/preschool center
- Dwellings, one-, two-, three-, four-family
- Home day care/preschool for six or fewer children
- Living quarters for persons employed on the premises of any principal use

- Lodginghouse
- Minor ski or mountain resort improvements
- Mountain resorts, including the following:
  - Recreational outdoor and trail lighting
  - Passenger ski and tramway station and ski base facility
  - Ski tow rope, ski lift, ski tram, ski run, and ski bridge
  - Recreational sports field
  - Skating rink
  - Skateboard park
  - Outdoor event, outdoor music
  - Resort support, commercial
  - Zip line
  - Ropes course
  - Mountain bike terrain park and trails
  - Frisbee golf course
- Office incidental to main use
- Outdoor recreation equipment
- Package agency
- Parking area or structure with 10 or fewer spaces
- Public and quasi-public use structure
- Residential facility for elderly persons
- Residential facility for persons with a disability
- Restaurant, excluding drive-through
- Restaurant liquor license
- Retail goods establishment
- Short-term dwelling rental
- State store
- Trail and trailhead improvement
- Temporary construction improvement

#### **B. Conditional Uses**

Conditional uses in the MRZ-Village District are as follows:

- Accessory buildings and uses customarily incidental to conditional use
- Dwelling group
- Dwellings, multiple-family
- Hotel/resort hotel
- Motel
- Parking area or structure with 11 or more spaces
- Recreational uses not listed in subsection A. "Permitted Uses", including alpine slide and mountain coaster.

#### **C. Height**

Height limits in the MRZ Village District shall be determined by the County Council in the Area Plan, subject to the following limitations. In no case shall the height of single-family dwellings exceed thirty feet (30'). For uses in the MRZ Village District that are also listed in the MRZ Recreation District, the height shall be in accordance with 19.13.030(E). The height of any other use in the MRZ Village District shall be no greater than one hundred feet (100'); the County Council may consider the criteria in section 19.13.050(F) in making this determination.

#### **D. Density (Dwelling Units per Acre)**

Density limits in the MRZ Village District shall be determined by the County Council in the Area Plan, and shall be conditioned on water, sewer, and utility availability for the density proposed in the Area Plan. However, except where increased by a transfer of development rights, the maximum density for residential dwelling units shall be 20 dwelling units or 40 guestrooms per net developable acre.

#### **E. Lot Area, Lot Width, and Setbacks**

##### **1. Minimum Lot Area**

- a. Single-family residential: 6,000 Sq. Ft.
- b. All other uses, unless lot area otherwise specified in the Ordinance: No minimum lot area.

##### **2. Minimum Lot Width**

- a. Single-family residential: 60 feet.
- b. All other uses, unless lot width otherwise specified in the Ordinance: No minimum lot width.

##### **3. Setbacks**

- a. Front yard
  - i. Single, two, three, and four-family dwelling: 20 feet.
  - ii. Accessory building related to the above: 20 feet.
  - iii. All other uses, unless front yard setback otherwise specified in the Ordinance: 0 feet.
- b. Side yard
  - i. Single, two, three, and four-family dwelling: 8 feet, with a total of two required side yards of not less than 18 feet.
  - ii. Accessory building related to the above: 8 feet, except 3 feet when located at least 10 feet from the rear of the dwelling.
  - iii. All other uses, unless side yard setback otherwise specified in the Ordinance: 0 feet.
- c. Rear yard
  - i. Single, two, three, and four-family dwelling: 20 feet.
  - ii. Accessory building related to the above: 3 feet, except 8 feet where accessory building rears on side yard of a lot that lies adjacent to a corner lot.
  - iii. All other uses, unless rear yard setback otherwise specified in the Ordinance: 0 feet.
- d. Exceptions. An applicant may locate a structure closer to the property line than specified by the above setbacks if applicant can demonstrate to the land use authority that the structure will not place additional burden on neighboring properties by addressing the following factors: snow load, drainage, access, fire protection, and building code.

#### **F. FCOZ Exceptions**

1. The following uses in the MRZ-Village District are exempt from all requirements of Section 19.72.060 (Slope Protection and Development on Ridgelines), subject to reasonable conditions that may be imposed under subsection (2) below.
  - a. Conservation Activity
  - b. Trail/Trailhead Improvement
  - c. Passenger Ski and Tramway Station, Ski Base/Terminal Facility, & Bridge
  - d. Ski Tow Rope, Ski Lift, Ski Tramway, Ski Run



- iv. Location of construction fences;
  - v. Site-specific construction drawings of excavation stabilization measures;
  - vi. Necessary erosion control measures;
  - vii. Location and depth of utilities located within 12 feet of the proposed system; and
  - viii. How service lines will be accommodated with the proposed system.
4. To the extent that FCOZ does not allow development of streets, roads, alleys, or driveways on slopes between 31% - 40%, the Director may accept these as suitable under the requirements in subsection (F)(3) of this section.

### **19.13.050 MRZ AREA PLAN**

#### **A. Purpose.**

The purpose of an area plan is: 1) to acknowledge vested rights that a mountain resort already has in a previously approved master plan, 2) to establish boundaries of the MRZ-Recreation and MRZ-Village Districts, 3) to establish height and density limits for the MRZ-Village District, 4) to establish water, sewer, and utility availability for the proposed density, and 5) to map the location of current improvements and possible future projects.

#### **B. Application.**

An application for approval of an Area Plan shall be filed in conjunction with an application to rezone the property in the Area Plan to a Mountain Resort Zone. The application shall be made on a form provided by the Director and shall include a legal description of the property, a list of names and mailing addresses of all adjacent property owners and written consent of owners of all property to be included in the Area Plan, or their agents or authorized representatives. The application shall be accompanied by submittal requirements outlined in subsection D(2) of this section and an Area Plan as outlined in subsection C of this section.

#### **C. Contents of Proposed Area Plan.**

The proposed Area Plan shall be comprised of materials submitted in accordance with subsection D(2) of this section. The Area Plan shall contain at minimum the following information:

1. A map that contains the following basic information:
  - a. The proposed boundaries for the MRZ-Recreation and MRZ-Village Districts.
  - b. Topography and natural water features (including wetlands) of the property within the area plan, including all adjoining areas owned or leased by the Mountain Resort as part of the resort.
  - c. Current improvements within the proposed MRZ-Village and MRZ-Recreation Districts, including buildings (and their uses), parking structures/lots, roads, etc.
  - d. Proposed building pads, housing areas, and parking areas/structures.
  - e. Proposed traffic circulation plans.
  - f. Current, and if applicable, proposed mass transit stops or centers.
2. A list of the proposed permitted and conditional uses for the MRZ-Village and MRZ-Recreation Districts, which complies with the MRZ zone.
3. Proposed total number of dwelling units and guestrooms for the MRZ-Village District, which complies with the MRZ zone or previously approved master plan.
4. Heights of existing buildings and proposed height limits of future buildings.

5. Water agreement with Salt Lake City, or service area as applicable, certifying water availability for the proposed number of dwelling units and guestrooms for the MRZ-Village District.
6. Approval of the proposed number of dwelling units and guestrooms for the MRZ-Village District by the Salt Lake County Health Department, or service area as applicable, after verification of water availability and sufficient sewer capacity; alternatively, approval from the Salt Lake County Health Department for a previously approved master plan for the same number of dwelling units and guestrooms is adequate.
7. "Will provide" letters from power and natural gas suppliers, certifying availability of those utilities for the proposed number of dwelling units and guestrooms for the MRZ-Village District, or such a letter for a previously approved master plan for the same number of dwelling units and guestrooms.

#### **D. Area Plan Review Procedures.**

1. **Pre-application Conference.** Prior to submittal of a formal application for an Area Plan and associated MRZ rezone, the applicant shall hold a pre-application conference with the Director or Director's designee. The purpose of this meeting shall be to discuss the goals of the proposed Area Plan and associated MRZ rezone, the relationship of the proposal to applicable elements of any applicable master plan or general plan, and the review procedure that will be followed for the application.
2. **Submittal Requirements.** The Director shall establish the submittal requirements for an approved Area Plan application. Certain submittal requirements may be waived or modified by the Director or the planning commission if it is demonstrated by the applicant that the information and materials required are not relevant to the proposed Area Plan. A complete list of the submittal requirements shall be maintained by the Director and filed in the Salt Lake County Office of Township Services.
3. **Planning Commission Recommendation.** The planning commission shall review the proposed Area Plan and associated MRZ rezone request at a regularly scheduled meeting. A report of the Planning staff's findings and recommendations shall be presented at a public hearing before the planning commission. The planning commission shall make a recommendation to the County Council whether the proposed rezone and associated Area Plan should be approved. The planning commission may consider the criteria in subsection E below when making its recommendation.
4. **County Council Final Review.** The final review of a proposed Area Plan and associated MRZ rezone shall be by the County Council at either a regularly scheduled meeting or a special meeting. Prior to this meeting, and at the discretion of the Director, a work session at a regularly scheduled public meeting may be held with the applicant, staff, and the County Council to discuss the Area Plan and associated MRZ rezone. A report of the Planning staff's findings and recommendations, together with those of the planning commission, shall be presented at a public hearing before the County Council. In making its determination whether to approve the Area Plan and associated MRZ rezone, the County Council may consider the criteria in subsection F below. The County Council may modify any element of the proposed Area Plan, so long as vested rights under a previously approved master plan are not modified, and subject to water agreements between the applicant and Salt Lake City, or service area as applicable.

**E. Area Plan and MRZ Rezone Criteria.** The following criteria may be considered in evaluating the merits of a proposed Area Plan and associated MRZ rezone.

1. **Compatibility.** Compatibility and sensitivity to the immediate environment, neighborhood, and adjacent properties.
2. **Relationship.** Uses, activity, and density, which provide a compatible, efficient, and workable relationship with surrounding uses and activity.
3. **General Plan.** Conformity with the applicable general plan.
4. **Protection of the natural setting.** Uses, activity, and density that are consistent with protecting the natural setting in which the property is located.
5. **Other criteria.** Other criteria deemed appropriate to ensure that the purposes of section 19.13.010 are met.

**F. Previously Approved Master Planned Resort**

In the event that a previously approved master planned resort makes application to rezone its property to a Mountain Resort Zone, it shall submit an Area Plan in accordance with this section. However, in doing so, it shall retain all vested rights in a previously approved master plan.

**19.13.060 MRZ-VILLAGE DEVELOPMENT PLAN**

**A. Purpose.**

The purpose of an MRZ-Village Development Plan is to provide for an integrated master plan for the Village or phases thereof, which outlines the details of projects to be built in areas such as parking; pedestrian, bicycle, and transit facilities; building scale, design, architecture, and materials; public infrastructure and utilities; access and circulation; landscaping; lighting; common areas; phasing of projects; natural hazards; grading and drainage; etc.

**B. Process.**

A Development Plan shall be in the form of a development agreement. If the Development Plan contains any deviations from FCOZ design standards in section 19.72.170, the applicant shall identify those deviations in the Development Plan, and the planning commission has the authority to determine whether to approve, approve with modification, or deny the development agreement in accordance with subsection (C) below. The Mayor shall sign the approved Development Plan.

1. **Consolidation of Processes.** A Development Plan for the entire Village, or phases thereof, may be presented to the planning commission as part of an application to rezone and submittal of an Area Plan. A Development Plan may also be submitted in conjunction with a conditional use application.
2. **Staff Review.** Planning staff shall review the proposed Development Plan and identify deviations from FCOZ design standards in section 19.72.170, in addition to those

identified by the applicant, so that applicant can decide whether to retain those deviations and seek planning commission approval for the same.

3. **MRZ Standards for Adjusting FCOZ Design Standards.** The standards outlined in subsection (C) of this section for obtaining adjustments to the FCOZ Design Standards shall be in addition to those outlined in subsection 19.72.170(B), i.e., adjustments shall also be consistent with the purposes of FCOZ as stated in section 19.72.010.
4. **No Additional Conditional Use Permit Approval Required.** Once a Development Plan is approved, the applicant need not obtain separate conditional use permits when each component of that plan is developed, unless conditional use approval was not obtained at the same time as Development Plan approval.

### **C. Factors for Approval of A Development Plan.**

The planning commission shall consider the following factors, as it deems applicable, when determining whether to deny, approve, or approve with modifications a proposed Development Plan.

1. **Compliance with the General Plan.** Does the proposed development comply with the applicable general plan?
2. **Compatibility.** Is the Development Plan compatible with the context and visual character of the area? In considering this factor, the following criteria may be used:
  - a. Does the Development Plan respond to the site's natural characteristics and physical constraints such as steep slopes, vegetation, waterways, and any natural or man-made hazards and allow development to blend in with or enhance said features?
  - b. Does the project preserve important geologic features, mature vegetation, and structures or features of the site that have historic, cultural, visual, or ecological importance or contribute to the identity of the community?
  - c. Are buildings oriented to public streets and sited to reflect the neighborhood context? Are buildings and access ways arranged to allow effective emergency, maintenance, and service vehicle access?
  - d. Are the proposed building materials compatible with those typically seen in the immediate vicinity?
3. **Building Scale.** Is the proposed scale/mass of buildings within the proposed project compatible with or enhance the cohesiveness or distinctive identity of the neighborhood and surrounding development patterns, including the scale and massing of nearby historical or cultural resources?
4. **Pedestrian, Bicycle & Transit Facilities.** Does the proposed development improve pedestrian, bicycle, and transit facilities? Are these facilities and improvements prioritized over vehicular facilities and improvements? Are specific designs, mitigation techniques, and implementation timelines defined as part of the Development Plan?
5. **Public Infrastructure and Facilities.** Are public infrastructure and facilities upgrades necessary to serve the project? If so, improvements shall be at the sole costs of the developer. The County may require specific designs, mitigation techniques, and implementation timelines within the development agreement.
6. **Access and Circulation.** Does the proposed development provide adequate access and circulation?

7. **Site grading and snow removal.** Do buildings and site grading provide simple, at-grade entrances and minimize extensive grade-changes along building exteriors? Is adequate snow storage accommodated?

- D. Development Plan Application Contents.** The contents of the application for a Development Plan shall include the items listed below. Staff may recommend, and the planning commission may require, that any of these items be incorporated into a development agreement. The Director may waive any of these items if the applicant demonstrates that the information and materials required are not relevant to the proposed Development Plan.
1. A completed application on a form provided by the Director, a legal description of the property subject to the Development Plan, and a list of names and mailing addresses of all adjacent property owners.
  2. A description and depiction of the proposed development, including limits of disturbance and compliance with other FCOZ requirements, land uses, densities, natural features (including proximity of project improvements to wetlands or perennial streams), traffic and pedestrian circulation, parking, open space areas, landscaping, lighting improvements, and provision of services, such as water, sewer, gas, and electric. Issues resolved in the Area Plan stage may not be reconsidered at the Development Plan stage. Also, a statement of the objectives to be achieved by the Development Plan.
  3. An architectural character plan showing the use, massing, scale and orientation of the proposed buildings, and their orientation to public spaces and other buildings, and other attributes which may significantly represent the proposed development.
  4. A description, and depiction as needed, of deviations from FCOZ design standards in section 19.72.170 in the proposed development agreement, and justification for each deviation.
  5. Studies and reports required by section 19.75.030 of the Ordinance, Geologic Hazards.
  6. A statement prepared by a Utah registered professional engineer, and depiction or mapping as necessary, describing the potential infrastructure upgrades, alignment, design, and mitigation techniques that may be necessary for development of the site to be served by public infrastructure. The information shall be of sufficient detail to determine the acceptable location(s) and extent of development and to understand the necessary upgrades and the possible alignments, designs, or mitigation techniques that may be required.
  7. A written response to each of the Factors for Approval outlined in subsection C of this section, as applicable.
  8. A grading and drainage plan showing all grading and how drainage and stormwater is accommodated, which meets County requirements for grading, drainage, and stormwater.
  9. If proposed, a description, and depiction as necessary, for specific pedestrian, bicycle, and transit facility designs, mitigation techniques, and implementation timelines. These plans shall provide sufficient detail to determine if the design or mitigation concept addresses the standards outlined in Chapter 19.80, Off-Street Parking Requirements, but do not need to be detailed construction documents.

10. A description of any proposed project phasing detailing the specific improvements within each phase.
11. Other submittal requirements that the Director establishes for a Development Plan application. A complete list of such requirements shall be maintained by the Director and filed in the Salt Lake County Office of Township Services.

#### **19.13.070 REGULATIONS THAT APPLY TO BOTH MRZ-RECREATION AND MRZ-VILLAGE DISTRICTS**

##### **A. Limits of Disturbance**

Because of the unique nature of the topography and climatic conditions of the foothill and canyon areas, limits of disturbance for permitted uses shall be determined on a case-by-case basis by the Director. Limits of disturbance for conditional uses shall be as finally approved by the planning commission upon the recommendation of the Director (see Section 19.72.160). All determinations of limits of disturbance shall be subject to the conditions and criteria set forth in the foothills and canyons overlay zone, section 19.72.160.

##### **B. Water Supply and Quality**

1. Salt Lake City Certification Required. Prior to planning commission or Director approval of a conditional use or site plan for all uses in the MRZ Districts, the plan shall be referred to Salt Lake City's Division of Public Utilities to ensure compliance with the City's applicable ordinances and watershed protection standards. If Salt Lake City's certification is not given within the time prescribed by County Ordinance for processing applications, the planning commission or Director may approve the application subject to Salt Lake City's certification.
2. Department of Health Approval Required. Prior to issuance of a conditional use permit or site plan approval for all uses in the MRZ Districts, the applicant shall receive the written approval of the health department certifying that all water quality and health requirements have been satisfied and that the proposed construction will not damage the natural watershed.
3. Applicable State Regulations and Standards. Developments shall be in compliance with applicable state regulations for individual wastewater disposal systems and culinary water supply.
4. Subsequent Changes in Site Plan. If, after health department or Utah Department of Environmental Quality approvals, a site development plan is modified such that the original limits of disturbance change, the applicant shall submit the modified site plan to the health department for retesting and new approval. Evidence of such retesting and approval shall be submitted prior to final approval of the site development plan.

##### **C. Utilities**

All utilities in the MRZ Districts shall be placed underground, except as may be provided for in State law.

**19.13.080 TRANSFER OF DEVELOPMENT RIGHTS (TDR) IN MRZ-VILLAGE DISTRICT****A. Purpose.**

The purpose of this section is to encourage development rights to be transferred from sensitive lands within the Salt Lake County Mountainous Planning District to higher density mixed use MRZ-Village Districts in order to consolidate development in the canyons within these Village Districts and to limit sprawl in the canyons. This section is also intended to encourage mountain resorts to rezone their property to the Mountain Resort Zone so that the purposes of that zone can be accomplished.

**B. Voluntary Program.**

The TDR program in the MRZ-Village District (“TDR Program”) is voluntary and not a requirement of the MRZ-Village District.

**C. Initial Transfer of Property Zoned F-1, FR or FM to the MRZ-Village District.**

To participate in the TDR program, an applicant shall make an initial transfer of development rights to the MRZ-Village District. This initial transfer will establish a base number of units, referred to as transferred base units (TBUs), which may be used in a request to receive additional transfer incentive matching units (TIMUs). These units, requested in addition to the TBUs, are an alternative source of development rights that may be awarded through a mountain resort’s voluntary participation in the transfer incentive described in this section.

**D. Transfer Incentive Matching Units.**

The County will match each qualifying TBU at a rate of 1.0 TIMU for each TBU, resulting in the applicant receiving two units for each unit transferred.

**E. Calculating Transferable density.**

1. The property for which development rights are applied to be transferred shall meet all of the following requirements:
  - a. The property shall be i) a lot of record, or ii) a parcel of land described in County records, which complied with the zoning requirements in effect at the time of its creation, but has not necessarily undergone or successfully completed the county subdivision process;
  - b. The property shall meet the net developable acreage definition in this Ordinance.
  - c. The property shall meet or exceed the minimum (single-family dwelling) area requirement for the zone in which it is located;
  - d. The property shall be located in the F-1, FM, or any of the FR zones within unincorporated Salt Lake County. The property may but need not be contiguous to an MRZ-Village District; and
  - e. The property shall have verified water availability.
2. The following property or portions of property do not qualify for a transfer of development rights:
  - a. Areas that do not meet the net developable acreage definition in this Ordinance.
  - b. Areas within a described parcel of land or lot of record restricted by conservation easement or similar instrument restricting residential or commercial development.
  - c. Areas or tracts of land owned by federal or state government agencies.

- d. Lot of record subject to the payment of fees for operation or maintenance of common areas, open space, amenities, or private facilities.
  - e. Fractional or noncontiguous portions of a lot of record or parcel of land that does not meet or fully exceed the minimum (single-family dwelling) area requirement for the zone in which it is located.
3. TBUs are calculated by determining the number of single family dwellings that can be built on the subject properties, within the limits in subsections (1) and (2) above. One TIMU is then added for each TBU transferred. Each transferred unit (both TBUs and TIMUs) can then be used for a single dwelling unit or 5,000 square feet of commercial development in an MRZ-Village District, subject to that District's zoning limitations.
  4. The following provides an example of calculating the development rights associated with a typical parcel of land that exceeds the minimum (single-family dwelling) area requirement.

	10 acres, as described by private survey or County record, lying within an FR-2.5 zone		
-	2 acres shown to exceed slopes of 30% and greater, or otherwise fail to qualify for TDR		
=	8 transferable development acres		
<hr/>			
÷	8 transferable development acres		
	2.5 acre minimum (single-family dwelling) area requirement		
=	3.2 transferable development units		
<hr/>			
-	3.2 transferable development units		
	.2 fractional portion of a transferable development unit		
=	3 Transferred Base Units (TBUs)		
+	3 Transfer Incentive Matching Units (TIMUs)		
=	6 Transferred Development Units, which can be used to develop 6 dwelling units within The MRZ-Village District, or 30,000 square feet of commercial space, or a combination of the two.		

**F. Purchase or Use of Transferred Development Units.**

Only an owner of property within an MRZ-Village District may use transferred development units. An owner may purchase those units from one who has obtained them from property outside of the District, or an owner may obtain them from property that he/she owns outside of the District. Salt Lake County will not maintain a bank of transferred development units; it will be the responsibility of the person who obtains those units to sell or use those units within an MRZ-Village District.

**G. Increased Density in MRZ-Village District.**

The maximum density of an MRZ-Village District may be increased by the amount of TIMUs that are transferred to the District. The maximum increased density from these transfers shall be 25% of the density allowed by the District without the transfers. So, if 3 TBUs and 3 TIMUs are transferred to the District, the 3 TBUs shall fit within the density of the District, and the 3 TIMUs may expand the density allowed by the District, up to the maximum increased density allowed by this paragraph. Increased density shall be subject to water availability for that density, as determined by Salt Lake City or service area as applicable.

**H. Transfer of Development Rights Procedure.**

A property owner or his representative who wishes to transfer development rights (“Applicant”) shall complete the following:

1. **Registration.** Applicant shall declare his/her intent and desire to transfer development rights on an official county registration form. The transfer of development rights register shall be maintained by the county planning division and shall be made available to any mountain resort upon request.
2. **Certification Request.** Applicant who has chosen/agreed to make a real transfer of development rights to an MRZ-Village District shall obtain a certificate of transfer of development rights by providing the Development Services Division with the following:
  - a. Payment of a certification fee.
  - b. Complete request to certify transfer of development rights form.
  - c. Map of the property for which rights are transferred, in the form of a county recorder’s plat or record of survey map filed in accordance with Utah Code Section 17-23-17.
  - d. Legal description, including total acreage, as it appears in the county recorder’s office or as it is described on a record of survey map on file in the county surveyor’s office.
  - e. Slope analysis, performed by a professionally licensed engineer or land surveyor, that identifies developable acreage, or slopes less than 30%. This requirement may be waived by the Director upon finding that the subject parcel of land (transferring parcel) is not affected by steep terrain, or slopes greater than 30%.
  - f. Preliminary title report demonstrating that the subject parcel of land (transferring parcel) has clear title; or a preliminary title report identifying any interested party making claim to the property and/or any beneficiary of an easement or encumbrance that exists in the form of a mortgage, deed of trust, or other instrument that either secures the property and its unrestricted value as collateral or restricts development in any manner.
  - g. Title report summary letter prepared by the property owner or his representative who has chosen/agreed to make a real transfer of development rights to an MRZ-Village District. The letter shall, in the form of an outline, list all interested parties and provide contact information and details describing and/or encumbrance types and order of subordination, if applicable.
  - h. Subordination agreement, provided by each and all interested parties with rightful claims and/or beneficiaries of existing encumbrances, which clearly states that the interested party and/or beneficiary acknowledges and agrees to a subordinate position to the grantee of an irrevocable transfer of development rights easement (ITDRE) and the enforcement of its terms. The letter shall also clearly state that the interested party and/or beneficiary, by exercising any right granted to them under a mortgage, deed of trust, or other instrument, cannot and will not modify, extinguish or affect the grantee’s right to enforce the terms of the ITDRE.
  - i. Proposed transfer of development rights easement meeting the requirements of subsection I of this section.
  - j. Proposed transfer of development rights deed.
3. **Certification.** The county planning division, after consideration of all relevant information, shall issue a certificate of transfer of development rights, based on an official request and its conformance to the standards of this section. The certificate shall state the number of transfer of development rights approved and available for transfer and shall be valid for a period of time not to exceed 60 days from the date of issuance.
4. **Transfer.** Prior to the expiration of a certificate of transfer of development rights and prior to or at the time of application for a specific land use (e.g., subdivision or site plan approval) within an MRZ-Village District, all transfer documents, including an approved

transfer of development rights deed and an approved transfer of development rights easement, shall be executed by appropriate signature and recordation in the office of the county recorder. Recording of the transfer of development rights deed and a transfer of development rights easement shall constitute a complete transfer, therefore enabling resort land use applications to be accepted and processed through the Development Services Division.

#### **I. Irrevocable Transfer of Development Rights Conservation Easement.**

To ensure consistency and the perpetual protection and preservation of a parcel's conservation values, a parcel that is the subject of a proposed development right transfer shall be encumbered by an irrevocable transfer of development rights conservation easement that meets the requirements described in Utah Code Section 57-18-1 et seq., as well as the following:

1. **Title/form.** The easement shall be entitled "Irrevocable Transfer of Development Rights Conservation Easement." The easement shall be in a form considered appropriate and acceptable to the office of the Salt Lake County Recorder.
2. **Grantor/grantee.** The easement shall name Salt Lake County and one other qualified conservation organization, which is authorized to hold interest in real property, as the grantees. The qualified conservation organization named as grantee shall meet the requirements described in Utah Code Section 57-18-3 and shall require the approval of the county.
3. **Recital.** The easement shall recite and explain all matters of fact, including a parcel/boundary description, which are necessary to make the transaction intelligible.
4. **Nature of Easement.** The easement shall explain its perpetual, irrevocable, inheritable, and assignable nature.
5. **Purpose.** The easement shall explain its purpose in terms of how it is intended to protect, preserve, enable the creation or continuation of an anticipated use, and prevent certain conditions or uses upon the land that may diminish the open space qualities. It shall be acknowledged in the Purpose section of the easement that the statements of purpose are intended to be a substantive provision of the easement, and that any ambiguity or uncertainty regarding the application of the terms of the easement will be resolved so as to further its purpose.
6. **Permitted Uses and Activities.** The easement shall list the property rights that have been retained by the grantor, including the right to allow or restrict public access, and shall acknowledge that these rights are consistent with the applicable zoning for the area in which the parcel is located.
7. **Prohibited Uses and Activities.** The easement shall list the property rights that have been voluntarily relinquished by the grantor and acknowledge that any exclusion does not constitute an approved use or imply that uses may be inconsistent with the applicable zoning for the area in which the parcel is located.
8. **Monitoring and Enforcement.** The easement shall state that the grantee will have the right to enforce the terms of the easement by entering the property, provided that an advance notice of 24 hours is provided to the grantor, for the purpose of inspecting the property for suspected/reported violations. Additionally, it shall state that the grantee shall have the right to enter the property at least once a year, at a mutually agreed time for the purpose of inspection and compliance monitoring regardless of whether grantee

has reason to believe that a violation of the easement exists. In order to establish a monitoring baseline, the easement shall reference an exhibit that inventories, graphically demonstrates, and photo documents relevant features and the existing condition of the parcel.

For the purpose of correcting any violation, condition or circumstance that is not consistent with the terms of the easement, the easement shall state that the grantee or assigns may, at their discretion, use any available legal or equitable remedy to secure and restore compliance with the standards set forth in the easement. Legal and/or equitable remedies may include, but not be limited to, injunctive relief, entering the property to perform restorative activities and/or record a lien on the property.

- 9. Termination and Extinguishment.** The easement shall state under which conditions or circumstances that the easement may be terminated, such as for grantee consent, court action, or eminent domain.
- 10. Costs and Liabilities.** The easement shall state that the grantor will continue to be responsible for and bear all costs and liabilities of any kind related to ownership, operation, upkeep and maintenance of the subject property (transferring parcel).
- 11. Conveyance or Transfer of Property.** The easement shall state that any document intended to transfer or convey the subject property (or any interest in the subject property) will specifically refer to the easement and disclose its perpetual nature and the fact that it runs with the land. It shall also state that any failure to comply with this requirement shall not adversely affect the grantee's right to enforce the terms of the easement in any way.
- 12. Subordination.** The easement shall state that the subject parcel of land (transferring parcel) has clear title and is not encumbered by a mortgage, deed of trust, or other instrument securing the property and its unrestricted value as collateral. If the subject property has been encumbered by such an interest, the easement shall state that interest(s) and reference an exhibit to the easement, wherein all such interest holders acknowledge and agree to their subordinate position as it relates to the easement and the enforcement of its terms. This acknowledgement/agreement/exhibit shall also clearly state that the interest holder, by exercising any right granted to it under a mortgage, deed of trust, or other instrument, cannot and will not modify, extinguish or affect the grantee's right to enforce the terms of the easement.

#### **19.13.090 DEFINITIONS**

For the purposes of this Chapter, the following terms shall have the following meanings:

##### **Conservation Activity**

A process to restore, enhance, protect, and sustain the quality and quantity of ecosystems and natural resources.

##### **Driveway**

A private area used for ingress and egress of vehicles, which allows access from a street or road to a building, structure, or parking spaces.

##### **Fence**

A structure erected to provide privacy or security, which defines a private space or is used to constrain domestic animals.

**Grading**

Any change of existing surface conditions by excavating, placing of any soils or rocks, or stripping of vegetation.

**Limits of disturbance**

The area(s) in which construction and development activity are to be contained, including development and construction of the principal building, accessory structures, recreation areas, utilities, services, driveways, septic tank drain fields and related system requirements, storm drainage, and other similar services or improvements. However, up to ten (10) feet of paved or unpaved shoulders for driveways are not included in the limits of disturbance.

**Lot of Record**

A lot or parcel of land established in compliance with all laws applicable at the time of its creation and recorded in the office of the county recorder either as part of a recorded subdivision or as described on a deed, having frontage upon a street, a right-of-way approved by the Land use hearing officer, or a right-of-way not less than twenty feet wide.

**Minor ski resort improvements**

Construction activities associated with the ongoing operation and maintenance of previously approved facilities, ski runs, ski trails, ski lifts and related resort appurtenances, equipment, recreational access corridors, pedestrian or non-motorized trails, non-snow related activities and accessory uses, or vehicular maintenance roads constructed or used in connection with the construction, operation, or maintenance of a resort.

**Mountain resort or Ski resort**

- A. Any publicly or privately developed recreational use permitted by relevant local, state, and federal authorities, for snow-related activities, accessory year-round or non-snow related activities, and associated facilities and improvements.
- B. Such uses, activities, and facilities may be conducted on a commercial or membership basis, whether solely on privately-owned property or on privately-owned lots or parcels interspersed with public land under a special use permit from the U.S. Forest Service or other public agency, primarily for the use of persons who do not reside on the same lot or parcel as that on which the recreational use is located.
  1. Snow related activities include but are not limited to: downhill skiing, cross-country skiing, snowboarding, snow shoeing, snowmobiling, or other snow related activities.
  2. Accessory year-round and non-snow related activities include but are not limited to: alpine recreational activities; cultural events and festivals; and conference events.
  3. Associated facilities and improvements include, but are not limited to: lodging; food, retail, and support services; recreational and fitness facilities; parking accommodations; and other uses of a similar nature specifically authorized in conjunction with the operation of a year-round resort.

**Net Developable Acreage**

Land with all of the following:

1. Average slope less than thirty percent;
2. Soils of a suitable depth and type based on soil exploration and percolation tests in accordance with the regulations of the Utah Department of Environmental Quality in order to ensure against adverse impacts on surface water and groundwater quality;

3. Minimum distance from any stream corridor of one hundred feet; and
4. Free from any identified natural hazard such as flood, avalanche, landslide, high water table, and similar features. See Chapter 19.74, "Floodplain Hazard Regulations," and Chapter 19.75, "Natural Hazard Areas."

**Open Space**

Any area of a lot that is completely free and unobstructed from any man-made structure or parking areas.

**Outdoor Recreation Equipment**

Playground equipment and accessory park related amenities, such as swing sets, slides, jungle gyms, sand boxes, picnic tables, volleyball nets, baseball backstops, basketball standards, soccer goals, and similar amenities.

**Parking Area**

An unenclosed area or lot other than a street used or designed for parking.

**Parking Structure**

A fully enclosed structure designed and intended for parking.

**Passenger Tramway**

A mechanical device to transport passengers and cargo by means of chairs or enclosed compartments attached to a cable or to rails, including each of the devices described in Section 72-11-102 of the Utah Code Annotated, as amended. Includes ski tows and ski lifts.

**Resort Support, Commercial**

Use that is clearly incidental to, and customarily found in connection with, the principal building or use, and that is operated and maintained for the benefit and convenience of the owners, occupants, employees, customers, or visitors to the principal use or building.

**Site plan**

An accurately scaled plan that illustrates the existing conditions on a land parcel and the details of a proposed development, including but not limited to: topography; vegetation; drainage; flood plains; wetlands; waterways; landscaping and open space; walkways; means of ingress and egress; circulation; utility easements and services; structures and buildings; lighting; berms, buffers and screening devices; development on adjacent property; and any other information that may be required to make an informed decision.

**Slope**

The level of inclination from the horizontal, determined by dividing, in fifty (50) foot intervals, the average horizontal run of the slope into the average vertical rise of the same slope and converting the resulting figure into a percentage value.

**Trails**

A type of natural open space that is a system of public recreational pathways located within the unincorporated county for use by the public for purposes as designated.

**Vegetation**

Living plant material, including but not limited to trees, shrubs, flowers, grass, herbs, and ground cover.

# Advisory Opinion #120

Parties: Ciel Investment Co., Salt Lake County, and Salt Lake City

Issued: February 5, 2013

## TOPIC CATEGORIES:

E: Entitlement to Application Approval (*i.e.*, Vesting)  
K Compliance With Mandatory Land Use Ordinances  
Other Topics (v): Interpretation of Ordinances

The Utah Code grants extraterritorial jurisdiction to cities to protect watersheds and water sources. Salt Lake City, as a city of the first class, has authority over the watershed areas of the Wasatch Mountains which supply water for the City. The City is therefore authorized to regulate construction on parcels to minimize pollution of water sources.

## DISCLAIMER

The Office of the Property Rights Ombudsman makes every effort to ensure that the legal analysis of each Advisory Opinion is based on a correct application of statutes and cases in existence when the Opinion was prepared. Over time, however, the analysis of an Advisory Opinion may be altered because of statutory changes or new interpretations issued by appellate courts. Readers should be advised that Advisory Opinions provide general guidance and information on legal protections afforded to private property, but an Opinion should not be considered legal advice. Specific questions should be directed to an attorney to be analyzed according to current laws.



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GARY R. HERBERT  
*Governor*

GREG BELL  
*Lieutenant Governor*

# State of Utah Department of Commerce

## OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN

### ADVISORY OPINION

Advisory Opinion Requested by: Ciel Investment Company  
by its attorney, Matthew M. Nelson

Local Government Entity: Salt Lake City  
Salt Lake County

Applicant for the Land Use Approval: Ciel Investment Company

Type of Property: Residential Building Lot

Date of this Advisory Opinion: February 5, 2013

Opinion Authored By: Elliot R. Lawrence  
Office of the Property Rights Ombudsman

### Issues

May a City assert extraterritorial jurisdiction to regulate construction on wetland area within an area claimed by the City as a source of culinary water?

### Summary of Advisory Opinion

As provided in the Utah Code, cities have extraterritorial jurisdiction to protect contamination of water sources. In particular, Salt Lake City has jurisdiction over the watershed areas of the Wasatch Mountains that provide culinary water for the City. That statutory authority enables the City to impose regulations and conditions on buildings and other uses intended to eliminate or minimize pollution of water sources. The City may therefore require a setback from a wetland area, and conditions on the design of a driveway, if the requirements would reasonably be expected to limit or prevent contamination of water resources. The City's authority, however, does not extend to requirements intended to protect wetland habitat, particularly in light of federal and state authority over those areas.

### Review

A Request for an Advisory Opinion may be filed at any time prior to the rendering of a final decision by a local land use appeal authority under the provisions of UTAH CODE ANN. § 13-43-

205. An advisory opinion is meant to provide an early review, before any duty to exhaust administrative remedies, of significant land use questions so that those involved in a land use application or other specific land use disputes can have an independent review of an issue. It is hoped that such a review can help the parties avoid litigation, resolve differences in a fair and neutral forum, and understand the relevant law. The decision is not binding, but, as explained at the end of this opinion, may have some effect on the long-term cost of resolving such issues in the courts.

A Request for an Advisory Opinion was received from Matthew M. Nelson on August 6, 2012. A copy of that request was sent via certified mail to Christine Meeker, City Recorder for Salt Lake City, at 451 S. State Street, Salt Lake City, Utah. 84111. The City received that copy on August 21, 2012.

### **Evidence**

The following documents and information with relevance to the issue involved in this Advisory Opinion were reviewed prior to its completion:

1. Request for an Advisory Opinion, with attachments, submitted by Matthew M. Nelson, attorney for Ciel Investment Company, received by the Office of the Property Rights Ombudsman on August 6, 2012.
2. Response from the Salt Lake City, submitted by Lynn Pace, Deputy City Attorney, received October 2, 2012.

### **Background**

Ciel Investment Company owns an option to purchase property located in the Silver Lake area near Brighton in Big Cottonwood Canyon. The parcel is identified as “Lot 23” of Silver Lake Estates subdivision, and is owned by Spencer and Elizabeth Greer. (*hereafter* the “Ciel Parcel”) The subdivision was platted in 1972, but there has been no development on Lot 23. The lot is about 2/3 of an acre, with a small stream flowing across one side. The stream flows into Silver Lake, which feeds Big Cottonwood Creek, an important water source for the Salt Lake Valley. The stream and its accompanying wetlands cover about 4/5 of the lot, with only about 5000 square feet not considered wetland.<sup>1</sup>

For planning purposes, the Ciel Parcel is under the direct jurisdiction of Salt Lake County, which has adopted the “Foothills and Canyons Overlay Zone” (FCOZ) to govern development of the area. In addition to the County’s zoning ordinances, use of the parcel is regulated by the Salt Lake County Board of Health.<sup>2</sup> The stream and wetlands are subject to the Federal Clean Water

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<sup>1</sup> The property owners obtained a “Wetlands Delineation Study” from Granite Environmental. This study analyzed the property, and determined the boundary of the wetland area. It appears that all parties accept the study’s conclusions about the wetland boundary.

<sup>2</sup> Like Salt Lake County, the Board of Health restricts building within 50 feet of a wetland area, but allows for reduction of the setback when necessary. The Board of Health also regulates the placement of cesspools and septic tanks, and limits animals within the watershed. It is not clear, however, if the Board of Health has objected to the home on Lot 23.

Act, which is administered by the U.S. Army Corps of Engineers. The wetland areas are also subject to regulation by the State of Utah, through its Department of Environmental Quality.

The County's FCOZ ordinance requires a 50-foot setback from any wetland areas, but the County planning staff may reduce that setback to 25 feet, as long as no more than 500 square feet of the area between 25 feet and 50 feet is used for a building.<sup>3</sup> With this restriction, a 25-foot reduction would leave a possible building area of about 1,000 square feet on the Ciel Parcel. Another obstacle faced by the property owners is obtaining access across the wetland area to the parcel's buildable portion. Any disturbance of the wetlands, even temporary, requires permission from the Corps of Engineers.

For some time, the owners of Lot 23 have hoped to build a home on the parcel, but they have been prevented from developing the parcel due to concerns about the impact on the wetland area. In 2009, they applied for a variance to reduce the 50-foot setback to zero. The County objected to a variance which would completely eliminate the setback, but suggested a 10 foot setback, which would allow construction of a fair-sized building while still protecting the wetlands. The property owners submitted a revised building plan, which could be built with a minimum 12 foot setback.<sup>4</sup> The County's Board of Adjustment approved the setback in June of 2009.<sup>5</sup>

In May of 2012, the Army Corps of Engineers granted a permit to fill a small portion of the wetland area for a driveway to the proposed home. The permit would allow the permanent loss of .017 acres (740.5 square feet) of the wetland. The materials submitted for this Opinion do not explain the nature or extent of the driveway design. One of the conditions imposed on the permit require compliance with the Utah Department of Environmental Quality's water quality regulations.<sup>6</sup> The materials submitted for this Opinion did not include those regulations, or if any specific approval is required from the state.

In addition to county, state, and federal regulation, the parcel also falls under the jurisdiction of Salt Lake City. Although the upper part of Big Cottonwood Canyon is some distance from its boundaries, the City asserts regulatory authority over the mountainous areas within Salt Lake County, because the City receives most of its culinary water from the streams which flow from the canyons above the Salt Lake Valley's east side. The City asserts jurisdiction over the western slope of the Wasatch Mountains within Salt Lake County from City Creek Canyon to Little Cottonwood Canyon to protect its water resources and ensure clean water for the residents of the

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<sup>3</sup> This setback reduction is allowed under the FCOZ, and may be granted by the County's staff. It is not necessary for the property owner to obtain a variance. Without the reduction, no building is allowed in the 50-foot setback, reducing the potential building area on the Ciel Parcel to about 375 square feet. That area, however, would be further reduced by setbacks from the property boundaries, which are particularly necessary in the canyon to accommodate snow and stormwater runoff without burdening adjacent properties.

<sup>4</sup> Because the wetland boundary is irregular, one corner of the building would be 12 feet from the wetland boundary, with the majority of the building about 14 feet from the boundary.

<sup>5</sup> The materials submitted by the City indicate that the setback was reduced to 20 feet, not 12. The City also states that approval from the City was a condition imposed on the variance.

<sup>6</sup> The Corps of Engineers added 7 conditions to the permit, including recording covenants to protect the wetland area, before and after photos of the project area, compliance with state water quality regulations, inspection, and certification of compliance.

City.<sup>7</sup> The City bases its authority on § 10-8-15 of the Utah Code, which provides that cities may regulate uses around water sources, including entire watersheds. The City's jurisdiction is acknowledged by Salt Lake County, which provides for City approval in the FCOZ ordinance.<sup>8</sup>

After receiving the variance from Salt Lake County, the property owners sought permission from Salt Lake City.<sup>9</sup> In October of 2009, the City responded, and indicated that it would only agree to a setback of 25 feet from the wetland boundary. The City also objected to the driveway design, stating that it preferred a design with little or no impact on the wetland, suggesting that the driveway could be built on piers or culverts that would allow water to flow underneath the driveway, rather than permanently filling a portion of the wetland.<sup>10</sup> A third objection was raised to a proposed basement for the home, because of potential contamination of the water. However, it appears that the owners may have decided not to include a basement.<sup>11</sup>

The City notes that it has had no contact with the property owners since the autumn of 2009. According to the materials submitted for this Opinion, the City has not changed its position since then. It believes that the owners may build an acceptable home on the property if the setback were 25 feet from the wetland boundary. In addition, the City feels that its proposal for the driveway is a reasonable alternative to permanently filling the wetland.<sup>12</sup> The property owners feel that the City has overstepped its authority, and its conditions for the home unreasonably limit the uses for the property.

## Analysis

### I. The City Has Regulatory Authority Over the Big Cottonwood Canyon Watershed in Order to Protect its Water Resources From Contamination.

The City has authority to regulate building and other activities on the Ciel Parcel in order to protect water sources from becoming polluted or contaminated. Section 10-8-15 of the Utah Code grants cities authority over water sources used to supply culinary and irrigation water, including jurisdiction over territory outside of city limits:

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<sup>7</sup> Other communities in Salt Lake County also rely on the canyon streams for water. *See also* SALT LAKE COUNTY CODE OF ORDINANCES, § 19.72.020(B)(2) (Salt Lake City has jurisdiction over the canyons in the eastern part of Salt Lake County).

<sup>8</sup> SALT LAKE COUNTY CODE OF ORDINANCES, § 19.72.020(B)(2) ("Recognition of Salt Lake City Extraterritorial Jurisdiction").

<sup>9</sup> According to the City, this permission was sought in 2009. The Corps of Engineers granted its permit in May of 2012.

<sup>10</sup> The City's letter states that permanently filling the wetland would impact the downstream areas, leaving them dry. This letter was issued prior to the Corps of Engineers permit, so it is not clear if the approval granted by the Corps would allow water to flow past the obstruction.

<sup>11</sup> The materials submitted by the City, and the City's October, 2009 letter indicate that the owners had decided against a basement. However, the letter from the owner's attorney somewhat indicates that the owners may wish to include a basement. Since there was very little discussion of the basement in the materials submitted, this Opinion will presume that a basement is not an issue.

<sup>12</sup> The City simply proposed that the driveway be erected on piers or culverts, which would allow water to flow. The City did not submit an alternative design showing how these alternatives could be built, nor did it address the fill permit granted by the Corps of Engineers.

[Cities] may construct or authorize the construction of waterworks within or without the city limits, and for the purpose of maintaining and protecting the same from injury *and the water from pollution* their jurisdiction shall extend over the territory occupied by such works, and over all reservoirs, streams, canals, ditches, pipes and drains used in and necessary for the construction, maintenance and operation of the same, and over the stream or source from which the water is taken, for 15 miles above the point from which it is taken and for a distance of 300 feet on each side of such stream and over highways along such stream or watercourse within said 15 miles and said 300 feet; *provided, that the jurisdiction of cities of the first class shall be over the entire watershed*, except that livestock shall be permitted to graze beyond one thousand feet from any such stream or source; and provided further, that each city of the first class shall provide a highway in and through its corporate limits, and so far as its jurisdiction extends, which may not be closed to cattle, horses, sheep or hogs driven through any such city, or through any territory adjacent thereto over which such city has jurisdiction, but the board of commissioners of such city may enact ordinances placing under police regulations the manner of driving such cattle, sheep, horses and hogs through such city, or any territory adjacent thereto over which it has jurisdiction. *They may enact all ordinances and regulations necessary to carry the power herein conferred into effect, and are authorized and empowered to enact ordinances preventing pollution or contamination of the streams or watercourses from which the inhabitants of cities derive their water supply*, in whole or in part, for domestic and culinary purposes, and may enact ordinances prohibiting or regulating the construction or maintenance of any closet, privy, outhouse or urinal within the area over which the city has jurisdiction, and provide for permits for the construction and maintenance of the same. In granting such permits they may annex thereto such reasonable conditions and requirements for the protection of the public health as they deem proper, and may, if deemed advisable, require that all closets, privies and urinals along such streams shall be provided with effective septic tanks or other germ-destroying instrumentalities.

UTAH CODE ANN. § 10-8-15 (emphasis added). Since Salt Lake City is a “city of the first class,” it is entitled to assert jurisdiction over the entire watershed that supplies its water.<sup>13</sup> The statute allows the City to “enact ordinances preventing pollution or contamination of the streams or watercourses . . .” Like all municipal governments, the City may

pass all ordinances and rules, and make all regulations, not repugnant to law, necessary for carrying into effect or discharging all powers and duties conferred by this chapter, and as are necessary and proper to provide for the safety and preserve the health, and promote the prosperity, improve the morals, peace and

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<sup>13</sup> “A municipality with a population of 100,000 or more is a city of the first class” UTAH CODE ANN. § 10-2-301(2)(a). The population of Salt Lake City is approximately 190,000 people. Under the authority of § 10-8-15 the City’s jurisdiction includes the western slope of the Wasatch Mountains from City Creek Canyon to Little Cottonwood Canyon.

good order, comfort, and convenience of the city and its inhabitants, and for the protection of property in the city.

*Id.*, § 10-8-84(1).<sup>14</sup> Furthermore, “[w]hen the State has granted general welfare power to local governments, those governments have independent authority apart from, and in addition to, specific grants of authority to pass ordinances which are reasonably and appropriately related to the objectives of that power.” *State v. Hutchinson*, 624 P.2d 1116, 1126 (Utah 1980). There is thus ample authority to support the City’s assertion that it has jurisdiction over the watershed of Big Cottonwood Canyon, so that it may protect its water supply from pollution and contamination. In order to carry out its specific power to protect water resources, the City’s authority encompasses the right to regulate placement and design of buildings and other improvements.

The regulatory authority to protect water resources has existed for some time. In 1915, the Utah Supreme Court upheld Salt Lake City’s authority to prevent a property owner from allowing his horses to graze near a stream that supplied the City’s water. The Court concluded that a statute similar to § 10-8-15 authorized the City to assert extra-territorial jurisdiction over the stream, and restrict activities on the property.<sup>15</sup> Fifteen years later, the Court again upheld a city’s extra-territorial jurisdiction over streams, which allowed regulation of private property.<sup>16</sup>

This does not mean, however, that the City’s authority is unlimited. In the first place, the City may only exercise those powers conferred by the state.

Local governments, as subdivisions of the State, exercise those powers granted to them by the State Legislature, . . . and the exercise of a delegated power is subject to the limitations imposed by state statutes and state and federal constitutions. A state cannot empower local governments to do that which the state itself does not have authority to do.

*Id.*, 624 P.2d at 1126. Secondly, while the general welfare provision is considered an extremely broad grant of authority, “personal and property rights recognized by general law and guaranteed by organic provisions cannot unreasonably be restrained . . .” *Id.*, 624 P.2d at 1125 (*quoting* 6 McQuillan, *Municipal Corporations* §§ 24.43-.44 (3d rev’d ed. 1969)). “Organic provisions” refers to constitutional protections, including protections against taking of private property for public purposes.<sup>17</sup>

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<sup>14</sup> Note that § 10-8-84 grants authority to carry out the powers conferred by Chapter 10-8, which includes the powers granted in 10-8-15.

<sup>15</sup> *Salt Lake City v. Young*, 45 Utah 349, 145 P. 1047 (1915). The statute cited was Comp. Laws 1907, subd. 15, section 206, which is very similar to § 10-8-84. *See id.*, 45 Utah at 350, 145 P. at 1049.

<sup>16</sup> *Bountiful City v. De Luca*, 77 Utah 107, 292 P. 194 (1930).

<sup>17</sup> *See Colman v. Utah State Land Board*, 795 P.2d 622, 630 (Article I, § 22 of the Utah Constitution (*i.e.*, the takings clause) is “self-executing,” meaning that it is not dependent upon specific legislation). The Utah Supreme Court in *DeLuca* explored the possibility that a regulation intended to protect water resources may be so restrictive as to constitute a taking of the affected property.

## **II. The Setback and Design Restrictions are Valid, If They are Reasonably and Appropriately Related to Protecting Water Sources from Contamination**

The City's regulations affecting the placement of buildings and the design of the driveway are valid, if they are reasonably and appropriately related to the City's objective of limiting contamination of its water resources. The required setback from the wetland boundary is an appropriate means to limit contamination, because it separates the building and other activities from the wetland itself. All parties seem to acknowledge, however, that a 50-foot setback would severely restrict a building on the property. Both Salt Lake County and Salt Lake City appear to accept a reduction in the setback, although the amount of the reduction is disputed.<sup>18</sup> That discrepancy in the setback reduction will need to be resolved, so that the property owner has an opportunity to present a building design that might work. The setback reduction may also include reasonable conditions on the building meant to protect the wetland area.

While the City has jurisdiction to approve the driveway design, that jurisdiction stems from the City's interest in protecting its water sources from pollution, and not protection of the wetland habitat. The state and federal governments have authority to protect wetlands. Cities do not. Section 10-8-15 of the Utah Code provides that cities are "authorized and empowered to enact ordinances preventing pollution or contamination of the streams or watercourses from which the inhabitants of cities derive their water supply . . . ." UTAH CODE ANN. § 10-8-15. This authority may be considered quite broad, but it nevertheless must be focused on preventing pollution or contamination.

The City objects to filling a portion of the wetland (not the stream) to support the driveway, because water could not flow through the filled area into the downstream wetland.<sup>19</sup> This objection is problematic if the City's concern is not to prevent pollution, but to preserve wetlands. Even if the wetland is filled for the driveway, the amount of water in the area would not change.<sup>20</sup> Other than some initial disturbance due to construction, the water would not necessarily be polluted if a portion of the wetland area were filled.<sup>21</sup> The City would be within its authority to impose conditions that would prevent contaminated runoff from the driveway, but for the purpose of protecting its drinking water source, not to protect the habitat.

In addition, the Army Corps of Engineers has already granted permission to fill a portion of the wetland for the driveway. The City has not explained how its authority includes power to

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<sup>18</sup> The materials submitted by Salt Lake City indicate that it would be willing to consider reducing the setback from 50 to 25 feet, but the City has not approved any reduction.

<sup>19</sup> See Letter from Jeffry T. Niermeyer to Scott Balling and Walter J. Plumb, dated October 1, 2009. The response letter from Salt Lake City, dated September 28, 2012, echoes this assertion.

<sup>20</sup> The water comes from naturally-occurring precipitation, which would not change if the home and driveway were built. The water would continue to flow downstream around the obstruction. It does not appear that the property owners intend to block the stream or divert water from the system and prevent the City from using it.

<sup>21</sup> It is not clear from the materials submitted for this Opinion whether the fill would completely dam the wetlands, or if there would still be an area beneath the driveway that would not be disturbed. It is also not clear that the downstream wetlands rely on flow from the upstream wetlands, or if the water comes from other sources. This Opinion presumes that the fill would not affect the flow of the stream itself, but only the wetland areas along the bank.

override a permit from the federal government. Along with the Federal Government, the state has regulatory authority, which is referenced in the permit from the Corps of Engineers. The City has also not explained how it may override any state approval for the anticipated work.<sup>22</sup>

While preservation of wetland habitat and prevention of water pollution are laudable objectives, the City's authority stems only from its interest in preventing pollution, and not habitat protection. The state and federal governments have asserted their authority over the wetlands, and have not conveyed that authority to cities. The City is within its authority to require conditions intended to eliminate or minimize pollution of the water, but that authority does not include habitat protection.

That being said, this Opinion suggests that the property owners consider the City's proposed alternatives to the driveway support. Using piers or culverts seems to be as practical as filling a portion of the wetland, and each alternative appears to be satisfactory to the City. In addition, either alternative seems to have less impact on the wetland habitat. It is not known if pursuing these alternative methods will affect the approval already granted by the Corps of Engineers, but if the impact on the wetland is less, it stands to reason that the Corps would not object.

## **Conclusion**

Salt Lake City has authority over the Wasatch Mountain watersheds that provide its water supply. The Utah Code provides that cities may assert jurisdiction over watershed areas to protect water sources, even if those areas are not within the limits of the city. This statutory authority is fairly broad, and empowers Salt Lake City to regulate building and other activities in order to protect its water resources from pollution and contamination.

The City's authority is not without limits, however. The City's jurisdiction stems from its interest in protecting water sources from pollution, not preserving wetland habitat. Thus, the City may impose regulations and conditions intended to eliminate or minimize pollution, but it should not be able to use its regulatory authority as a means of protecting wetlands, especially when federal and state authorities already have asserted jurisdiction.

The City's setback requirement is a valid means of protecting its water resources, and is harmonious with regulations imposed by Salt Lake County and the Salt Lake County Board of Health. The City has indicated that it will consider a reduction in the setback to allow a home to be built.

The City's objections to the driveway design, particularly permission to fill a small portion of the wetland to support the driveway, is more problematic. The objection does not appear to be based on the City's interest in preventing pollution. It has also not been shown that the City has authority to overrule federal and possible state authority over the wetland area. However, the

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<sup>22</sup> Other than the reference cited by the Corps of Engineers, there were no materials from the State of Utah submitted for this Opinion which concerned the proposed construction.

alternative designs proposed by the City should be considered by the property owner, as they appear to be practical approaches acceptable to the regulatory agencies involved.

Brent N. Bateman, Lead Attorney  
Office of the Property Rights Ombudsman

**NOTE:**

**This is an Advisory Opinion as defined in § 13-43-205 of the Utah Code. It does not constitute legal advice, and is not to be construed as reflecting the opinions or policy of the State of Utah or the Utah Department of Commerce. The opinions expressed are arrived at based on a summary review of the factual situation involved in this specific matter, and may or may not reflect the opinion that might be expressed in another matter where the facts and circumstances are different or where the relevant law may have changed.**

**While the author is an attorney and has prepared this opinion in light of the relevant law, he does not represent anyone involved in this matter. Anyone with an interest in these issues who must protect that interest should seek the advice of legal counsel and not rely on this document as a definitive statement of how to protect or advance his interest.**

**An Advisory Opinion issued by the Office of the Property Rights Ombudsman is not binding on any party to a dispute involving land use law. If the same issue that is the subject of an Advisory Opinion is listed as a cause of action in litigation, and that cause of action is litigated on the same facts and circumstances and is resolved consistent with the Advisory Opinion, the substantially prevailing party on that cause of action may be awarded reasonable attorney fees and court costs pertaining to the development of that cause of action from the date of the delivery of the Advisory Opinion to the date of the court's resolution.**

**Evidence of a review by the Office of the Property Rights Ombudsman and the opinions, writings, findings, and determinations of the Office of the Property Rights Ombudsman are not admissible as evidence in a judicial action, except in small claims court, a judicial review of arbitration, or in determining costs and legal fees as explained above.**

## MAILING CERTIFICATE

Section 13-43-206(10)(b) of the Utah Code requires delivery of the attached advisory opinion to the government entity involved in this matter in a manner that complies with Utah Code Ann. § 63-30d-401 (Notices Filed Under the Governmental Immunity Act).

These provisions of state code require that the advisory opinion be delivered to the agent designated by the governmental entity to receive notices on behalf of the governmental entity in the Governmental Immunity Act database maintained by the Utah State Department of Commerce, Division of Corporations and Commercial Code, and to the address shown is as designated in that database.

The person and address designated in the Governmental Immunity Act database is as follows:

Christine Meeker, City Recorder  
Salt Lake City  
451 South State, Room 415  
Salt Lake City, UT 84111

On this \_\_\_\_\_ day of February, 2013, I caused the attached Advisory Opinion to be delivered to the governmental office by delivering the same to the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the person shown above.

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Office of the Property Rights Ombudsman

Commissioners,

As a citizen of Utah and lover of the Wasatch, I ask you to please echo my sentiments for stringent, common sense governance for our delicate and irreplaceable natural environment. The Wasatch Range is a world class year round destination home to over 1,500 species of plants and animals, water source for millions of residents and a unique feature and boon to our statewide economy.

Paul and Penny Dalrymple

Dear Commissioners,

I wanted to write to add my name to a long list of those who support a strong Foothill Canyon Overlay Zone ordinance to limit development, protect our water quality, and ensure a healthy ecosystem that supports floral and faunal habitat, as well as diverse year-round recreation in and around the Wasatch Mountains, canyons and foothills. Please take these into consideration this evening. You represent us all, your constituency. Please represent us well. Thank you for the work you do.

Sincerely,

Wasatch Lover, Rachael Fisher

Commissioners,

As a citizen of Utah and lover of the Wasatch, I ask you to please echo my sentiments for stringent, common sense governance for our delicate and irreplaceable natural environment. The Wasatch Range is a world class year round destination home to over 1,500 species of plants and animals, water source for millions of residents and a unique feature and boon to our statewide economy.

Susan F Fleming

Commissioners,

As a citizen of Utah and lover of the Wasatch, I ask you to please echo my sentiments for stringent, common sense governance for our delicate and irreplaceable natural environment. The Wasatch Range is a world class year round destination home to over 1,500 species of plants and animals, water source for millions of residents and a unique feature and boon to our statewide economy.

Rob Osborne

Commissioners,

As a citizen of Utah and lover of the Wasatch, I ask you to please echo my sentiments for stringent, common sense governance for our delicate and irreplaceable natural environment. The Wasatch Range is a world class year round destination home to over 1,500 species of plants and animals, water source for millions of residents and a unique feature and boon to our statewide economy.

Charles Ayers

Commissioners,

Wilderness is something that, once lost, can never be regained. It is rare, precious, and our duty to protect. The resorts and housing developments have plenty of mountain space already. Let's preserve the little wilderness that's left.

As a citizen of Utah and lover of the Wasatch, I ask you to please echo my sentiments for stringent, common sense governance for our delicate and irreplaceable natural environment. The Wasatch Range is a world class year round destination home to over 1,500 species of plants and animals, water source for millions of residents and a unique feature and boon to our statewide economy.

Grant Sperry

Commissioners,

As a citizen of Utah and lover of the Wasatch, I ask you to please echo my sentiments for stringent, common sense governance for our delicate and irreplaceable natural environment. The Wasatch Range is a world class year round destination home to over 1,500 species of plants and animals, water source for millions of residents and a unique feature and boon to our statewide economy.

Tara Woodward

As a former member of the Blue Ribbon Commission, the following is my opinion of the newly drafted Mountain Resort Zone Ordinance, specifically with respect to the recommendations made by our commission.

We were assembled in 2012 by Mayor Corroon and the County Council as a group of diverse community interests intended to advise and update future development of the Foothill Canyon Overlay Zone Ordinance. Through a collective commitment of more than 400 shared volunteer hours, our commission published a report of our recommendations in 2013. Our overarching goal was the same as the goal of the original Foothills and Canyon Overlay Zone: *to preserve the natural character of the foothills and canyons of unincorporated Salt Lake County by establishing standards for development proposed in those areas.*

Throughout our research and discussion, we recognized that while the Foothill Canyon Overlay Zone was applicable to residential development, it was not well suited for the needs of resorts. For this reason, I am pleased that the ordinance realizes our vision of a Mountain Resort Zone. Our recommendation of a mixed-use designation within the zone is also defined in the ordinance via the Village and Recreation Districts. As in 2013, I identify this as a useful solution to accommodate the various development requests of resorts.

The Blue Ribbon Commission's support of a Mountain Resort Zone was foremost vested in our mission to protect the foothills and canyons. We agreed upon this solution to accommodate the components of resort development, not to enable environmentally compromising development. While we are approving of the overall format of the Mountain Resort Zone Ordinance, we are skeptical of the wide range of development that the zone would permit to resorts. For example, mountain bike terrain parks and skating rinks are listed as permitted uses in both districts. Uses such as these compromise the biology and geology of the mountains, and also contradict our collective environmental concern. Other major priorities of our report – public health, watershed protection, and aesthetic preservation – are undermined by the more extreme development permissions. Currently, the four resorts of Big and Little Cottonwood Canyons are operating quite successfully without these further recreational developments. As both a member of the Blue Ribbon Commission and citizen of Salt Lake County, I urge the commissioners to limit the most destructive of the listed permitted uses.

Our service on the Blue Ribbon Commission increased our appreciation for the foothills and canyons of Salt Lake County and our sense of responsibility for their preservation. We also understood and appreciated the concerns and contributions of the canyon resort areas. I am largely satisfied with the mission of the Mountain Resort Zone Ordinance, but find specifics of its permitted uses to be problematic. I hope that my perspective as both a Blue Ribbon Commissioner and concerned citizen will be taken into account.

Terry Wood

June 1, 2016

# Save Our Canyons

*"Dedicated to protecting the beauty and wildness of the Wasatch mountains, canyons and foothills."*

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June 2, 2016

Dear Commissioners,

Following the recently published staff analysis of the May 5, 2016 Mountainous Planning District public hearing Save Our Canyons would like to submit additional comments on the following topics:

- The Wasatch Cache National Forest Revised Plan of 2003
- Mountain Coaster
- Transfer of Development Rights
- Environmental Dashboard

### **Wasatch National Forest Plan**

At the previous public hearing Save our Canyons voiced the opinion that some of the proposed recreational uses were inconsistent with those allowed on adjoining Forest Service Lands. We maintain the position that these recreational uses are incongruent with the Wasatch Cache National Forest Revised Plan of 2003. The WCNF Revised Plan of 2003 states that "opportunities that build on the unique values of public land are featured over those that are focused on the constructed environment." The plan continues on page 4-161 to read, "Special attention will be given to the scenic integrity of views from backcountry and wilderness trails. Non-winter recreational opportunities provided in base areas will rely more heavily on constructed facilities, while those higher on the mountain will become increasingly oriented toward the natural setting."

As it has been discussed that the proposed MRZ - Recreation District would be away from the resort base and up the mountain sides it would seem that these areas would fall under the forest plan's category of areas where recreational opportunities would be increasingly oriented towards the natural setting with priority given to opportunities focused on the natural setting rather than the constructed environment. However, the proposed ordinance would allow in the Recreation Zone the following conditional and permitted uses: accessory buildings; outdoor recreation equipment - which includes in its definition baseball backstops, basketball standards and soccer goals; public and quasi public structures; solar farm; trail lighting; sports field; ski bridge; skating rink; skateboard park; resort support, commercial; parking area or structure with five or more spaces; restaurant; alpine slide and mountain coaster.

### **Mountain Coaster**

In part 4 of the Staff Analysis, a 2015 record of decision for Heavenly Mountain Resort was referenced as support for potential mountain coasters. The specific reference credited mountain coasters as an option for those not able to ski or snowboard "... to provide a range of activities for visitors of all abilities and skill sets." The same record of

decision, however, also addresses examples that are contrary to the potential of a mountain coaster in the Wasatch. The best example is listed in the Alternatives Eliminated from Detailed Study: Construction of Two Mountain Coasters. This section is immediately below the section quoted in the Staff Analysis. Here, Marsolais wrote, “[a] two-coaster alternative was also considered but eliminated from detailed study since a single coaster fully achieves the purpose and need”. While the proposed MRZ ordinance would allow ski resorts to build coasters within both the village and recreation zones, there is already a coaster existing within the region: the Snowbird mountain coaster.

Additionally, it is necessary to note that a record of decision is not treated as an explicit precedent for other Forest Service districts. As noted in the Forest Service’s National Environmental Policy Act Handbook chapter 20, section 26.2, “responsible official[s] shall coordinate and integrate NEPA review and relevant environmental documents with Agency decision making by...(2) Considering environmental documents, public and agency comments (if any) on those documents, and agency responses to those comments;...(5) Making a decision encompassed within the range of alternatives analyzed in the environmental documents” among other things. In no way does it establish other districts’ records of decision as precedent for other districts’ decisions. The decision for Heavenly Mountain Resort is ultimately in a different region with different environmental realities. For example, the watershed in Salt Lake County is much more sensitive due to its structure and near-immediate turnaround from the watershed to citizens.

If the County supports this use it will set the dangerous precedent that could influence our own Forest Service District.

### **Transfer of Development Rights**

SOC reviewed a series of TDR programs and after reviewing these other programs we firmly believe that the TDR currently written in the draft ordinance is not acceptable and should not be forwarded. The purpose of the TDR is transfer development rights out of sensitive areas and to other already disturbed areas. According to academic literature, the most successful program operating in circumstance similar to our own is that in Summit County, Colorado. Like our own canyons, the TDR program in Colorado operates in high alpine areas with nearby ski resorts with the purpose of transferring development rights out of the alpine areas and areas of critical wildlife habitat and to areas that have already seen significant impacts from development.

Compared with other TDR’s, most notably that of Summit County, Colorado, it would appear that the proposed TDR in the proposed Mountain Resort Zone Ordinance facilitates far more development than is acceptable. In the Colorado model a minimum of 20 acres in previously identified sending zones are required for 1 TDR. If less than 20 acres are available the difference can be made up using a TDR bank. In all but a very limited number of areas TDR’s are given at a one to one ration with no bonuses density award. The sole exception is for bonus density are for lands that have been declared of being Significant Wildlife Value, these areas are awarded a bonus density of 2 to 1. These sending areas occupy a very small percentage of all sending areas. Also worth noting, in Colorado 1 TDR allows for 1650 sq. feet of buildable area within receiving zones - some of which are located at ski resorts bases but most of which are located outside of the canyon area.

In contrast, the TDR section of the proposed MRZ ordinance always allows for a 2 to 1 bonus density and receiving areas are only at the resort base and not outside of the canyon area. Perhaps most significantly, contrary to the Summit County, Colorado model our TDR seems to significantly incentivize further development in the canyon by allowing for each Transferred Base Unit (based on current zoning) and accompanying Transfer Incentive Matching Unit to be exchanged for 5,000 sq. feet of commercial development. Combining the TBU and the bonus TIMU allows for each TDR to be exchanged for a minimum of 10,000 sq. feet of commercial development. Remember that in Colorado 20 acres of land yielded only 1650 sq. feet of buildable space, that only very few areas were offered 2 to 1 bonus density, and that much of the receiving areas are located outside of the canyons. Our program, when compared to what’s been

identified as one of the most successful programs in the country appears to be little more than a give away offering ski resorts significantly more buildable commercial space at their bases.

We are not suggesting that the Mountainous Planning Commission immediately set forth adopting the Summit County, Colorado model. We merely point this out to suggest that successful TDR programs are possible and that evidence suggests that a TDR can function without such significant, one might even say egregious, bonus density incentives.

### **Environmental Dashboard**

Save Our Canyons feels strongly that the Environmental Dashboard needs to be referenced in the ordinance and that specific language needs to be made to reference current environment data. Environmental Dashboard language specifically as detailed in Potential Motion #11 is inadequate and creates more problems than it solves. As worded, this motion would allow a project's consultant to reference any current environmental data available. Rather, what needs to be done is that we should explicitly require analyzing direct, indirect, and cumulative impacts at both the level of the project and that of the broader landscape.

Bob Bonar - Snowbird

## Key Priorities for MRZ & Revised FCOZ

### I. Mountain Resort Zone Ordinance

- A. Exemption from FCOZ slope protection & ridgeline restrictions for **slopes 31%-40%** with adequate mitigation/engineering techniques in MRZ districts.
- B. Exemptions from FCOZ slope protection & ridgeline restrictions should apply to **roads** in MRZ districts.
- C. Ski lifts and tramways should be "**permitted**" rather than "conditional" uses.
- D. **Stream setback flexibility** should be allowed upon finding that modification is not likely to cause material adverse environmental impact.
- E. **Restaurants** should be permitted in both MRZ districts.

*mountain coaster  
in village zone.*

### II. Revised FCOZ

- A. **Limits of disturbance** for non-residential properties should be decided on a case-by-case basis at the discretion of the Director.
  - B. **Stream or wetland disturbance** should be allowed for development if authorized by Utah Division of Natural Resources and/or U.S. Army Corp of Engineers.
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