SALT LAKE COUNTY CODE OF ORDINANCES
CHAPTER 19.72 – FOOTHILLS & CANYONS OVERLAY ZONE

EXECUTIVE SUMMARY/ANALYSIS

This outline provides a roadmap of the major changes made in the draft Foothills and Canyons Overlay Zone ("FCOZ") ordinance.[1] As outlined, the primary focus of the draft ("Rewrite") is to incorporate the six consolidated policy objectives of the Salt Lake County Blue Ribbon Commission in its Final Report of June 11, 2013 ("BRC").

BRC Objective 1: "Fairly balance property rights and environmental protection" consistent with the law. (BRC, pp. 6, 7,10, 15-16).

1. Balancing competing interests, as expressly stated in the BRC Executive Summary and throughout the Final Report, is the overriding theme of the BRC.
    a. This balancing approach was hidden in the opening sentence of the existing Purpose statement, 19.72.010. The Rewrite now highlights in the first sentence the need for balancing "the rights and long-term interests of property owners and those of the general public" and enumerates in 19.72.010, A-H summarized below (rather than in the opening statement) the important competing interests:
        A. Preserve visual and aesthetic qualities.
        B. Protect public health and safety.
        C. Provide efficient traffic circulation.
        D. Conform development to the contours of the land.
        E. Address private and commercial needs.
        F. Encourage clustering, TDRs and other zoning techniques.
        G. Reduce flooding.
        H. Protect property rights and commercial interests.
    b. To achieve "consistency" with the purpose statement of FCOZ, the BRC recommends that the Rewrite "refer back" to the purpose statement and "maintain the elements of the existing FCOZ ordinance that are working" (and presumably eliminate those that are not) (BRC, p. 12, 16).
        i. As outlined in Objective 5; variance, waiver, special exception, PUD, clustering, TDR techniques, and the creation of specialized zones are added or enhanced in the Rewrite to help regulators achieve this elusive balance.
        ii. Virtually every chapter of the Rewrite contains balancing language and at least one of the specific components of the purpose statement.
        iii. Example: The Rewrite balances the vested property rights and strict slope prohibitions for lots of record by inserting a waiver provision: "where strict compliance renders the site undevelopable or results in substantial

[1] The consulting firm *Camiros* of Chicago, Illinois was hired by Salt Lake County to reorganize Title 19 of the Salt Lake County Code of Ordinances (zoning) which includes the FCOZ section ("*Camiros* draft").

economic hardship not created by the applicant" yet the site "substantially conforms to all other development, site design, and environmental standards," a slope waiver may be granted.

iv. Example: As further explained in Objective 4(4), the Rewrite eliminates the argumentative, unworkable portions of the Wildlife Habitat Protection chapter, 19.72.140:

A. The Rewrite deletes the unworkable mandate in 19.72.140 that requires the County to obtain an outside inventory of critical habitat and physically buffer it from structures, roads, trails, and fencing.

B. The Rewrite deletes the unbalanced purpose statement of 19.72.140 that is prejudicial to current applications: "~~As a result of past development activities, many habitat areas have been significantly impaired, altered, fragmented, and in some cases destroyed.~~"

C. The Rewrite retains the more pragmatic features of the chapter that advance FCOZ goals, A, D, and G: to facilitate wildlife movement; encourage wildlife enhancing planting schemes; protect wetlands, streams, and stream corridors; and mimic features of the natural landscape.

2. The BRC recommends that the Rewrite "balance" competing interests rather than "regulate" them (BRC, p. 16) in a "one size fits all" approach. (BRC p. 9, 10, 12).
   a. A less regulatory, flexible approach requires greater **discretionary** powers among planning authorities.
   b. The Rewrite expands discretionary powers where such flexibility appears to be needed and lacking.
      i. Example: The Rewrite deleted in 19.72.070(I)(3) "The use of plain concrete retaining walls is prohibited" in favor of a more flexible standard that recognizes advances in the stamped concrete industry.
      ii. Example: The Rewrite changes the required finding for granting a modification of setback standards for ephemeral streams in 19.72.130(D)(4) from the modification "will have no adverse environmental impacts" to "is likely to cause minimal adverse environmental impact."
      iii. Example: The Design Guideline matrix provided in Table 19.72.1 has been reworked extensively to encourage voluntary compliance and greater discretion/options among designers and planners. The basic, aesthetic goals of the design guidelines remain intact, as recommended in the BRC, p. 12.
   c. A side benefit of a voluntary, balanced approach is it provides more options leading to an improved design and is less likely to result in legal challenges/appeals.
3. Recognizing the "evolving" state and federal cases and statutes (i.e. state "CLUDMA") that mandate a balancing between private property and police power interests, the BRC

requested staff and legal counsel to review FCOZ for conformity with current law (BRC, p. 15-16).

a. Example: 19.72.060 (D)(3) of the Rewrite attempts to state the proper legal nexus (*Nolan* reasonable relationship) between the regulation and the object of the regulation.
b. Example: Original FCOZ, 19.72.090 (A), misstates the *Bam III*, *Dolan* proportionality test and grants the County the power to select private lands for dedication. The Rewrite incorporates state exaction law from CLUDMA, 17-27a-507(1).
c. Example: The Rewrite deletes the reference to obtaining a release for dedicated lands under the State Landowner Liability Act of 1987 because, among other reasons, a Utah appellate court overturned it (as applied to a dedication to the County) in *Jerz v. S.L. County*, 822 P.2d 770 (1991).

BRC Objective 2. Create a separate, all season "Mountain Resort Zone" (MRZ) for residential, commercial, mixed use, and recreational activities that "meshes" with FCOZ. (BRC, p. 6,9,10,14,15).

1. This is perhaps the second most pervasive theme in the BRC. Because of the need for steep, deforested slopes for ski resorts, which according to the BRC serve a valuable public purpose, and the historical difficulty in applying cumbersome FCOZ waiver standards for "a range of diverse recreational uses across all seasons including opportunities for the less able-bodied," (BRC p. 6) the BRC recommended adoption of an MRZ.
    a. Consistent with the BRC request, a companion MRZ ordinance is drafted, establishing two very different but compatible district concepts based upon models from Park City, Aspen, Vail, etc.--Recreation and Village.
    b. MRZ Recreation provides increased flexibility for summer uses consistent with approved uses on Forest Service land, previously requiring an FCOZ waiver. Compatibility with the regulations of overlapping jurisdictions is addressed in Objective 4.
2. To avoid conflicts with the new MRZ districts, FCOZ Rewrite 19.72.040 provides that the underlying base zoning district (i.e. MRZ) may, in specific instances, prevail over conflicting FCOZ requirements.
    a. Since some MRZ Recreation uses provide for steep slope and ridgeline development, FCOZ standards on the same subject are preempted. Thus, an FCOZ waiver is no longer required for certain structures in a mountain resort zoned MRZ Recreation.
    b. Since mountain resorts are covered under MRZ, FCOZ waiver provisions on the same subject have been deleted for mountain resorts only.
    c. Eliminating the waiver provisions solves the problem of conflicting legal thresholds between joint conditional use permit and FCOZ slope waiver applications.
    d. Existing ski resorts grandfathered under an FR (Forest and Recreation) or FM (Forest Multifamily) Zone do not have slope and ridgeline protection standards

specified in the underlying zone and can no longer apply for an FCOZ waiver for new development. For an expansion, such a resort has two options:

i. comply with current FCOZ slope and ridgeline protection standards or
ii. apply to rezone the resort to MRZ.

e. FCOZ provisions for grading, vegetation removal, development and construction, etc. remain intact for all mountain resorts including those in MRZ zones; however, increased discretion and flexibility is provided as stated in BRC Objective 1.

BRC Objective 3: "Simplify and clarify the zoning, application and development process to improve the objectivity, predictability and transparency of the process" (BRC p. 12).

1. The Rewrite, 19.72.030(B), encourages "joint applications" where a sophisticated process already exists for a related land use application in the foothills and canyons, such as a subdivision, conditional use or permitted use site plan, development agreement, or variance application.
    a. Folding the FCOZ process into a related site plan application process such as for a conditional use permit ensures reliable notice to the public and adjoining property owners, a full hearing, a complete public record and minutes, and a tried and consistent decision-making process before a trained, neutral planning authority as recommended by the BRC, p. 12,13.
        i. Technical FCOZ pre-application review, involving a one-stop meeting with all of the agencies with jurisdiction and expertise over the development (health department, county engineer, fire department, etc.) is provided in the Rewrite's expanded section 19.72.030 "Development Approval Procedures."
        ii. Combining the technical FCOZ pre-application review with the related land use application satisfies the BRC recommendation, p. 12, to "integrate the technical reviews on a development proposal into the review process so that an approval cannot be granted before technical reviews are complete."
    b. Less complex stand-alone FCOZ applications, for example a request for a permit for a building remodel, tree removal, or grading permit, are provided a simple, expedited FCOZ process facilitated internally by professional staff.
2. Lengthy procedures stated elsewhere in Title 19 or CLUDMA are deleted in the Rewrite.
    a. Example: FCOZ conditional use procedures are already provided in Title 19, chapter 84, "Conditional Uses," and are thus deleted from FCOZ in the Rewrite.
    b. Example: "Natural hazards" issues are simply handled in the Rewrite with a reference to 19.46.030 "Geological Hazards" and 19.46.040 "Floodplain Hazards."
3. Unless a procedure is uniquely tied to a specific subject in FCOZ where the procedure for such subject belongs, the Rewrite combines scattered procedural sections into one section 19.72.030, "Development Approval Procedures."
    a. Example: "Site Development Plan Application for FCOZ," isolated in a separate section, is imported in the Rewrite into "Development Approval Procedures."

b. Example: "Waiver of Slope Protection Standards for Lots of Record" previously at the rear of FCOZ are imported into paragraph D of 19.72.060 "Slope Protection."
c. Example: "Permitted Administrative Modification of Standards" stood alone as a separate section.
    i. Edited provisions on administrative modifications of limits of disturbance are moved into 19.72.160(E) "Limits of Disturbance."
    ii. Edited provisions authorizing administrative modifications of setback and related requirements for lots of record on perennial streams and wetlands are exported into 19.72.130(H), "Stream Corridor and Wetlands Protection."

BRC Objective 4: Recognize the authority of "overlapping federal, state, and local jurisdictions" and the "impacts on neighboring jurisdictions" (BRC, p. 12).

1. FCOZ recognizes the impact of development on Salt Lake City's watershed and the City's extraterritorial jurisdiction in the canyons east of the City.
    a. Section 19.72.020(D) of the Rewrite now provides that development "impacting surface water, wells, storage facilities, or aquifers located within Salt Lake City's watershed areas shall be referred to Salt Lake City's Division of Public Utilities to confirm compliance with the City's applicable ordinances and watershed protection standards."
    b. Section 19.72.130(D)(3) of the Rewrite also requires consultation with Salt Lake City Public Utilities prior to the zoning authority making a recommendation to modify the building setback on an ephemeral stream in the Salt Lake City watershed.
    c. Paragraphs (a) and (b) reflect the law prohibiting the County from delegating its constitutional police/land use powers. The Rewrite deletes the problematic FCOZ provision in 19.72.020(D): the County "must receive approval from Salt Lake City" before considering a land use application to develop on the City's watershed.
2. Edited 19.72.020 recognizes that FCOZ does not apply to properties owned by the state or federal government "except as authorized by statute, regulation, intergovernmental agreement, or other cooperative agreement."
3. As to the delineation of wetland boundaries, edited 19.72.130 recognizes the joint jurisdiction of the EPA, Fish and Wildlife Service, Army Corps and the Soil Conservation Service.
4. Prior FCOZ 19.72.140 delegates to the State Division of Wildlife Resources (DWR) "and other cognizant agencies" the responsibility to designate critical wildlife habitat and trails so the County may protect such habitat from the "adverse" impacts of development.
    a. Historically, no such designation process has ever occurred and it doubtful that DWR would assume such a role or liability for every FCOZ development application.
    b. The Rewrite deletes the delegation to DWR and unnamed outside agencies and, as explained in Objective 1 above, attempts to preserve only those wildlife

habitat standards that may be reasonably understood and lawfully enforced by the County.

BRC Objective 5: Use the best available "tools" to achieve the purposes of FCOZ and to balance competing interests on "constrained" properties; for example clustering, transfers of development rights ("TDRS"), purchases of constrained properties, variances or special exceptions, the creation of new zones, etc. (BRC p. 9,10, 11, 12,13)

1. Two new tools are added to the FCOZ toolbox to provide greater balance/flexibility and better protect the foothills and canyons environment.
    a. A separate **new MRZ ordinance,** described in Objective 2 and modeled after zoning ordinances governing major ski resorts in other jurisdictions, is created to address the unique nature and environmental constraints of recreational alpine development and to avoid the difficulties SLCO has experienced in administering cumbersome FCOZ waiver provisions.
    b. Another tool in the new MRZ zone is to provide for **a TDR process**, allowing densities to be transferred from sensitive, steeper slope lands in the MRZ Recreation district to more appropriate, flat, developable areas in the MRZ Village.
2. An edited FCOZ **clustering** section, 19.72.050 is retained in the Rewrite.
    a. As now defined in the Rewrite, 19,72.050(A), "Cluster development is the grouping of residential properties on lots smaller than allowed on the underlying zone to reduce infrastructure costs and environmental impacts and to reserve otherwise developable land for open space or recreation."
    b. Following are responses to BRC questions: "How should clustering provisions be applied?", and "What was the original intent of having a "density bonus?" (BRC, p. 16)
        i. Clustering is an option for a developer of property not just in mountain resorts but in all FCOZ districts to shift densities and to reserve parcels of land for open space and limited recreation within the same development.
        ii. The original intent of the "density bonus," allowing a density increase up to 25% over the base density of net developable acreage, is to encourage developers to cluster rather than develop every inch of a parcel, thereby preserving natural open space. However, since developers do not lose residential units by clustering and presumably save infrastructure costs and increases profits, it is debatable whether a density bonus is needed to encourage clustering.
3. In 2013, SLCO replaced its Board of Adjustment with a neutral, "Land Use Hearing Officer," authorized under chapter 19.92.030 to hear and decide **appeals, special exceptions, variances**, **and the expansion of certain nonconforming uses**. Such are additional tools available to balance competing interests, provide flexibility, and to fairly achieve the purposes of FCOZ.

BRC Objective 6. Make "the next generation FCOZ ordinance…strong and clear" and "provide more definitions and clearer definitions of terms."[2] (BRC, p. 6,12, 16)

1. The rewrite replaced, defined, or clarified the specific terms questioned in the BRC, p. 16.
    a. Vague terms, "natural character, economic viability, degradation" are deleted in the opening paragraph.
    b. A new definitions section is added in the Rewrite, 19.72.200 for unique FCOZ terms, such as "lot of record," "clustering," "natural open space," etc.
    c. "Protected ridgeline" is defined and clarified in 19.72.060(B).
2. In hundreds of instances, the Rewrite replaced the terms "will," "must," or "should," with the more exact terms, "may" or "shall."
3. Archaic language, such as the term, "cartway" is replaced by the plain meaning of the term, namely "the paved portion" of a road.
4. Needlessly verbose or confusing sentences and paragraphs were simplified in the Rewrite.
    a. Example: The Purpose Statement of 19.72.010 was rewritten from i. below to ii (Rewrite). "The general purpose of the Foothills and Canyons Overlay Zone is
        ~~i. to promote the health, safety and welfare of County residents while being cognizant of private property rights, and to preserve the natural character of the foothills and canyons by establishing standards for development in the unincorporated areas of the County. These standards for development are intended to accomplish the following purposes:"~~
        ii. <u>to promote safe, environmentally sensitive development that strikes a reasonable balance between the rights and long-term interests of property owners and those of the general public. Specifically, these standards are intended to:"</u>
    b. Example: The heading in 19.72.170(M) was shortened in the Rewrite as follows: Use <u>fire-resistant</u> roof surfacing materials that blend with the colors of the adjacent landscape ~~and that are composed of materials which reduce the risk of fire.~~
5. Sentences or paragraphs in multi-item sections were restructured to reflect parallel form.

[2] Some 1600 edits, mostly of form rather than substance, were performed in the Rewrite of the draft.