

## MEMORANDUM

To: Weber County Planning Commission  
From: Steve Burton, Planner  
Date: March 3, 2021  
Subject: Proposal to amend an open space preservation plan in Sunset Equestrian Cluster Subdivision Phase 1.

Planning Commissioners,

The Planning Division has recently received a request to amend an open space preservation plan within Sunset Equestrian Cluster Subdivision. The owner of lot 17 is currently in the process of constructing a single-family dwelling on the lot. The owner has also applied for a building permit for a building to be located within the agricultural parcel (AP-12) that is located behind the home.

During the county's review of this proposed structure, the applicant requested to be allowed a 3 foot side yard setback, on the basis that an 'accessory building' in the A-1 zone can have a 3 foot side yard setback under certain circumstances. The county's response to this request was that this building cannot be considered an accessory building, because of the existing Agricultural Preservation Plan (Exhibit A) that was approved by the Planning Commission and recorded to the property.

The existing preservation plan acts as a covenant that restricts the use of the open space as a means to preserve the open space in this subdivision. The existing preservation plan states that only buildings intended for agricultural endeavors are allowed in the preservation parcels (page 2, structures). The plan also states that structures within the preservation parcels shall not be used for permanent or residential purposes. The proposed building has not been permitted because it is not intended solely for agricultural purposes, therefore it is considered to be accessory to the residence. The Planning Division feels that this residential accessory building is not permitted based on the current language of the preservation plan.

Under the current cluster subdivision ordinance (Sec 108-3-5(a)), the following is listed as a means to amend an open space preservation plan:

*Open space preservation plan amendment. After submittal of a new application and application fee an open space preservation plan may be amended, from time to time in accordance with the standards of this chapter. If an amendment of an open space preservation plan affects any part of the recorded subdivision plat, or if an amendment to a subdivision plat affects any part of an approved open space preservation plan, then the two shall be amended together and final approval of the amended subdivision plat shall constitute final approval of the amended open space preservation plan. Otherwise, each may be amended independently. Submission for an independently amended open space preservation plan shall be in compliance with the open space plan submittal requirements of this chapter and shall require the approval of the planning commission.*

The applicant has not proposed an amendment to the subdivision plat, but rather, an amendment to the language of the preservation plan. The applicant's proposed amendment (Exhibit B), if approved, would allow him to construct a residential accessory building within the preservation parcel. This proposed amendment would only apply to AP-12, and not the other preservation parcels in this subdivision. This item will be on the agenda for the March 9<sup>th</sup>, 2021 Planning Commission meeting.

Feel free to reach out to me if you have any questions.

Thank you,

Steve  
sburton@webercountyutah.gov  
801-399-8766

Exhibit A: Original Open Space Preservation Plan

Exhibit B: Proposed Amended Open Space Preservation Plan

Exhibit C: Cluster Subdivision Open Space Preservation Plan Requirements

Section 108-3-5





"W2931562"

# SUNSET EQUESTRIAN CLUSTER SUBDIVISION – 180 RESIDENTIAL CLUSTER LOTS and 38 1-acres minimum Agricultural Parcels (see attached plat)

## Agricultural Preservation Plan

15-667-0021-0034 BK

BT

bst

DB

The best use of the common area is open space, as it will allow for the preservation of historic context and agricultural feel of the land. This action would allow for open space to be preserved and allow for the continued productive use of livestock and crops.

Open Space in the Sunset Equestrian Cluster Subdivision is divided into two types: Common Area and Individual Owned Agriculture Preservation Parcels. Details, permitted uses, and ownership are outlined below.

### 1. Common Areas (15 Parcels) ~~OS-1 to OS-15~~

*CA*  
*API- API 14 of sunset equestrian subdivision phase I*

Common Area Parcels within the Sunset Equestrian Cluster Subdivision are located throughout the subdivision. The 15 Common Area Parcels are accessible by road and total 7.80 acres.

### Permitted Uses

**Public Pathways:** There are to be public pathways installed throughout the common areas that will be open to the public and maintained by the HOA. Developer will install split rail fencing adjacent to agricultural preservation parcels. Other private parcels and open space parcels are not required to install said fencing. Agricultural parcel property owners will be responsible to ensure that their animals are restrained or contained at all times for the protection of people using the pathways.

**Storm Drainage Detention Basins:** Common Area Parcels can be used for storm drainage detention basins serving the Sunset Equestrian Cluster Subdivision. No crops or animals are permitted in the HOA owned common areas.

**Ownership:** The parties agreeing that the Common Area Parcels shall be owned by the Sunset Equestrian HOA.

The Common Area Parcels are required at all times to conform to the use restrictions stated above.

DATED this 17<sup>th</sup> day of July, 2018

Sunset Equestrian HOA

## **INDIVIDUAL OWNED PRESERVATION PARCELS (38) AP-1 TO AP-38**

### **2. Individual Owned Agriculture Preservation Parcels (40 parcels) AP-1 to AP-38.**

Individual Owned Agriculture Preservation Parcels within the Sunset Equestrian Cluster Subdivision area located throughout the subdivision. Agriculture Preservation Parcels have letter designations A-NN and are 1-acre minimum.

Structures: Individual Owned Agriculture Preservation Parcel: no structures permitted within storm drainage retention ponds. The integrity of storm drainage retention ponds serving the Sunset Equestrian Cluster Subdivision must be preserved.

All other Individual Owned Agriculture Preservation Parcels: Structures for agricultural or associated purposes may be built on the Agriculture Preservation Parcels, but are limited to 5 percent of each parcel. This includes but is not limited to structures used for the purpose of housing crops, animals, equipment, vehicles, tools, feed, and implements to support agricultural endeavors. Structures shall not be used for permanent or residential purposes.

Crops and Animals: Individual Owned Agriculture Preservation Parcels: No crops permitted within storm drainage retention ponds. The integrity of storm drainage detention basins serving the Sunset Equestrian Cluster Subdivision must be preserved. Animals are permitted in accordance with Weber County Land Use Code currently in force.

All other Individual Owned Agriculture Preservation Parcels: Crops and animals are permitted in accordance with Weber County Land Use Code currently in force with exception that swine, mink and other nuisance animals will not be allowed.

Waste & Maintenance: All animal or agricultural waste must be regularly removed from the Individual Owned Agriculture Preservation Parcels. Waste may be used as fertilizer, provided the waster is tilled, churned, or otherwise integrated into the soil so as not to cause a nuisance to the residential properties.

Agricultural Uses: Except for items stored in appropriate containers or buildings, the Individual Owned Agriculture Preservation Parcels shall be maintained such that trash,

refuse, rubbish, inoperable or abandoned equipment, dead animals, scrap lumber, building materials, scrap material, grass clippings, plant waste, or other unsightly waste are not visible from the streets nearest the residential lots.

Storm Drainage Detention Basins: Agriculture Preservation Parcels can be used for storm drainage detention basins serving the Sunset Equestrian Cluster Subdivision. No crops are permitted in the common areas. Easements will be established for the construction and maintenance the detention basins.

Public Pathways: There are to be public pathways installed throughout the Individual Owned Agriculture Preservation Parcels that will be open to the public and maintained by the HOA. These pathways will be installed in easements within the Agriculture Preservation Parcels.

Ownership: Ownership of Individual Owned Agriculture Preservation Parcels within the Sunset Equestrian Cluster Subdivision is restricted to individuals owning a residential lot within the Sunset Equestrian Cluster Subdivision. Land-locked Agricultural Lots without road access are restricted to being owned only by individuals also owning a residential lot which shares a property line with the landlocked Agricultural Lot.

The Individual Owned Agriculture Preservation Parcels are required at all times to conform to the use restrictions stated above.

STATE OF UTAH)

SS:

COUNTY OF WEBER)

On the 17 day of July, 2018 personally appeared before me Chris Hoertel, Manager, and \_\_\_\_\_ the signer of the within instrument and who duly acknowledged to me that they executed the same.



Notary Public

Residing at:

*Angela Martin*  
Weber County

# Proposal to Amend Preservation Plan

## Sunset Equestrian Cluster Subdivision Lot 17/AP12

We have experienced an issue in applying for a building permit on our lot due to ambiguous language between the Preservation Plan and the specific county code for buildings within a cluster subdivision. We are asking to amend the language related to buildings allowed on the Preservation Parcel so that the building setbacks can be properly defined.

The current Preservation Plan explicitly allows structures with a size restriction to be built on the Individually Owned Agriculture Preservation parcels. The building should be an accessory to the residence as the preservation parcel ownership and ability to build on it are reliant upon ownership and establishment of a dwelling on the associated building lot. The language in the Preservation Plan, however, has an ambiguous definition for usage which contradicts the actual relationship of the parcel to the building lot and creates a building classification that is not in the cluster subdivision building setback definitions.

## Affected Code Sections

### Sec 108-3-7 Lot Development Standards

*Unless otherwise provided for in this section, residential building lots shall be developed in a manner that meets all applicable standards, including but not limited to those found in the Weber County Land Use Code and the requirements and standards of the Weber-Morgan Health Department, if applicable. The following specific site development standards apply to lots in cluster subdivisions:*

- 1. Lot area. Unless otherwise regulated by the Weber-Morgan Health Department, a lot located within a cluster subdivision shall contain an area of not less than 9,000 square feet, unless otherwise provided in section 108-3-8.*
- 2. Lot width. Unless otherwise regulated by the Weber-Morgan Health Department, the minimum lot width in a cluster subdivision is as follows:*

<b>Zone</b>	<b>Lot Width</b>
<i>F-40 and F-10 zones:</i>	<i>100 feet</i>
<i>FR-1, F-5, and AV-3 zones:</i>	<i>80 feet</i>
<i>RE-15, RE-20 zones:</i>	<i>60 feet</i>
<i>A-1, A-2, and A-3 zones:</i>	<i>60 feet</i>
<i>FR-3 zone:</i>	<i>50 feet</i>
<i>DRR-1 zone:</i>	<i>50 feet</i>

- 3. Yard setbacks. The minimum yard setbacks in a cluster subdivision are as follows:*

<b>Yard</b>	<b>Setback</b>
Front:	20 feet
Side:	
Dwelling:	8 feet
Accessory building:	8 feet; except one foot if located at least six feet from a dwelling
Accessory building over 1,000 square feet:	See section 108-7-16
Corner lot side facing street:	20 feet
Rear:	20 feet

4. *Building height. The maximum height for a building in a cluster subdivision is as follows:*

<b>Building</b>	<b>Height</b>
Dwelling	40 feet
Accessory building	30 feet

(Ord. No. 2018-6, Exh. A, 5-8-2018)

**Sec 108-7-16 Large Accessory Buildings (1,000 Square Feet Or Larger)**

1. *Accessory buildings 1,000 square feet or larger in area that accommodate uses meeting zoning requirements shall:*

1. *Be located at least six feet from the rear of a dwelling in the residential estates zones and at least ten feet from the rear of a dwelling in the agricultural and forest zones.*
2. *Have a side yard setback of at least ten feet on an interior lot and 40 feet on a corner lot where the side property line is adjacent to a street.*
3. *Have a maximum height of 25 feet.*

*Exceptions. The side yard may be reduced to three feet (except in a forest zone) and the height increased to 35 feet if the accessory building is located at least 100 feet from a property line adjacent to a street and at least 40 feet from a dwelling on an adjacent lot.*

2. *One accessory building which is subordinate to the dwelling in area and height may be located in front or to the side of the dwelling provided:*

1. *It is located not less than 40 feet from any property line adjacent to a street.*
2. *The large accessory building conforms to the dwelling in architectural style and materials on all sides of the building and the roof. Large accessory buildings on agricultural parcels containing at least 5.25 acres and a single-family dwelling shall be exempt from this requirement provided that the accessory building is located at least 100 feet from a property line adjacent to a street.*
3. *It meets the side yard requirement for a main building in the zone in which the building is located, and it is located at least 40 feet from a dwelling on an adjacent parcel.*

4. *In no case shall the front yard setback be less than the required front yard setback for a main building in the zone in which the building is located.*
3. *Accessory buildings that exceed the dwelling in area by more than double as measured by the footprint of the dwelling shall require approval by the planning commission as a design review.*
4. *Accessory buildings used for the keeping of animals and fowl shall also meet the requirements of section 108-7-8. Accessory buildings shall also meet the requirements of section 108-7-4.*

## **Specific Language from Preservation Plan**

### *Section 2. Individual Owned Agriculture Preservation Parcels*

*All other Individual Owned Agriculture Preservation Parcels: Structures for agriculture or associated purposes may be built on the Agriculture Preservation Parcels, but are limited to 5 percent of each parcel. This includes but is not limited to structures used for the purpose of housing crops, animals, equipment, vehicles, tools, feed, and implements to support agriculture endeavors. Structures shall not be used for permanent or residential purposes.*

The building we are proposing would be over 1000 sq ft and would meet all of the above code definitions to use a 3' side yard setback.

In the process of applying for a permit for the proposed building the permitting department believes that the specific language in the Preservation Plan would not allow them to classify the building as an accessory building to the residence. This would force the building to be classified as a 'main building' which has no setback definitions in the cluster subdivision code. This creates a scenario forcing the use of a 20' side yard setback for a 'main building'.

The 20' side yard setback is really meant for much large acreage and not a cluster subdivision where individually owned preservation parcels were allowed at just over an acre in size. 20' represents 25% or more of the total lot width in the scenario we are describing. Additionally, locating the building in this way would unnecessarily hinder the ability to make best use of the open space and agriculture use as space would be wasted for building access. The most efficient access from the road would be a straight path along the side of the residence to the building. A 20' side yard setback would place the building directly behind the house and make it necessary to use important agriculture space as access to the building.

We are requesting to amend the language of the Preservation Plan so that the building can appropriately be considered accessory to the residence. This would allow the agriculture space to be most efficiently utilized for the stated purpose of agriculture, while not hindering the allowance to have a structure. As to maintaining the agricultural preservation of the land area, the building footprint is already allowed within the preservation plan it is just a matter of setback definition for a location that makes best use of the agriculture space. The remaining preservation parcel area would still be over an acre in area.



## Proposed Amended Language

*All other Individual Owned Agriculture Preservation Parcels: Structures may be built on the Agriculture Preservation Parcels, but are limited to 5 percent of each parcel. This includes but is not limited to structures used for the purpose of housing crops, animals, equipment, vehicles, tools, feed, and equipment that is accessory to the residential parcel and dwelling.*

*Open space preservation plan procedure.*

*Initial open space preservation plan approval.* An open space preservation plan shall accompany an application for preliminary subdivision approval or an application for an open space preservation plan amendment. Preliminary subdivision approval constitutes approval of the open space plan. A final plat shall comply with the approved open space plan.

*Open space preservation plan amendment.* After submittal of a new application and application fee an open space preservation plan may be amended, from time to time in accordance with the standards of this chapter. If an amendment of an open space preservation plan affects any part of the recorded subdivision plat, or if an amendment to a subdivision plat affects any part of an approved open space preservation plan, then the two shall be amended together and final approval of the amended subdivision plat shall constitute final approval of the amended open space preservation plan. Otherwise, each may be amended independently. Submission for an independently amended open space preservation plan shall be in compliance with the open space plan submittal requirements of this chapter and shall require the approval of the planning commission.

Open space preservation plan submittal requirements. The open space preservation plan submittal shall include the following:

An overall cluster subdivision map identifying all open space areas and open space area amenities.

An open space site plan that:

Identifies the open space parcel ownership types specified in subsection (c)(9) of this section;

Identifies each proposed ownership type with a unique color;

Shows the locations of existing and proposed future structures and other open space amenities; structures housing a subdivision utility or serving as a subdivision amenity shall be subject to all applicable standards including all design review and applicable architectural standards found in title 108 of the Weber County Land Use Code; and

Includes all park improvements and is accompanied by a letter of approval from the local park district for open space that will be gifted as a park parcel to a local park district.

A narrative describing all proposed open space parcels, their proposed method of ownership, their proposed method of maintenance, their proposed uses, and any proposed building envelopes.

The phasing of open space parcels and their relationship to the overall subdivision phasing plan, if any.