



WESTERN WEBER TOWNSHIP PLANNING COMMISSION  
MEETING AGENDA

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**Tuesday, November 18, 2014**  
**5:00 P.M.**

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- *Pledge of Allegiance*
- *Roll call*
- 1. **Minutes**
  - 1.1. **Approval of the October 14, 2014 meeting minutes**
- 2. **Legislative Items**
  - 2.1. **Consideration and action on an amendment to Title 108 (Standards), Chapter 3 (Cluster Subdivisions) and Title 106 (Subdivisions), Chapter 2 (Cluster Subdivisions; Special Provisions) of the Weber County Land Use Code**
- 3. **Public Comment for Items not on the Agenda**
- 4. **Planning Commission Remarks**
- 5. **Planning Director Report**
- 6. **Legal Counsel Remarks**
- 7. **Adjourn to a Work Session**

**Work Session Agenda**

- WS1. **Weber County Land Use Code Revision Process: What to Expect – Charles Ewert, A.I.C.P.**
- WS2. **Ordinance Revision Work Session: Title 108, Standards, Chapter 12, Noncomplying Structures and Nonconforming Uses/Parcels – Charles Ewert, A.I.C.P.**

**Adjourn**

*The meeting will be held in the Weber County Commission Chambers, Weber Center, 2380 Washington Blvd., Ogden UT  
The Work Session will be held in the Weber Center Commission Chambers Break-out Rooms  
No pre-meeting will be held.*



*(In compliance with the Americans with Disabilities Act, persons needing auxiliary services for these meetings should call the Weber County Planning Commission 24 hours in advance of the meeting at 801-399-8791)*

Minutes of the Western Weber County Township Planning Commission and the Weber County Board of Adjustment combined work session held on October 14, 2014 in the Weber County Commission Conference Room

Members Present:

Western Weber Planning                      Board of Adjustment

Jannette Borklund                              Douglas Dixon

Roger Heslop                                      Bryce Froerer

Andrew Favero                                   Nathan Buttars

Mark Whaley

Staff Present:                              Sean Wilkinson, Planning Director; Charles Ewert, Planner; , Sherri Sillitoe, Secretary

Jared Andersen, Weber County Engineer, indicated that there is a lot of work going on in the County and he wanted to inform the members of the many projects that are happening. The biggest project is the Emergency Watershed project, they are using emergency funds and it has taken awhile for the project to get up and running. They have almost finished everything in debris removal. Another project is bank protection sites and they are also close to being done. At Ogden Bay they upgraded many of their gates to get the storm water to get through. At the high flows, especially in 2011 they had to completely close down Willard Canal. They put in a new gate system so water can get through the gates. On the Little Weber Diversion project, the plan is to get a lot of water through there and control it. .

They have a couple of transportation projects. They are currently meeting with residents on 3500 W. Another project is on 4700 W. from 12<sup>th</sup> Street out to Little Mountain on 4700 W.

Andrew Favero indicated on the river going forward after the reconstruction is complete, is there a long-term plan to maintain the river? Jared Anderson indicated that he hopes so. The river has built up with sediment over time but nobody is cleaning and maintaining that. He hopes to have flood control system or group in place that would have the ability to get funds from everybody involved and then run with the project. This would involve all of the drainages in Weber County. Commissioner Favero indicated that he would hope that there will be a plan or group in place that would be the watch dog and coordinate to get things take care of.

On the 12<sup>th</sup> Street and 3500 W. project, are there any plans in place that they are sharing with the public outside of the property owners along the street. There is a lot of talk by the public without a lot of detail to the other project. They do not feel the need to adjust the right of way. Jared Andersen indicated that they are going with an 80 foot right of way. On 12<sup>th</sup> Street down to 4700 W there is a 100 ft. right of way which is a State road. They want to acquire the property along the right of way now although the road may not be needed for 20 years. They presented an initial design but they have probably ended up with a better design after receiving various input.

Commissioner Borklund asked if there will be a 66 ft. right of way on 3500 W. Jared Andersen indicated they had Hales Engineering assess the area; the zones in the area, to understand the build out would be in the next 40 years. They are estimating an 80 ft. right of way. In the past there were a couple of areas on 3500 W. where a 100 ft. right of way was indicated, however they will use the recommendation by Hales Engineering. The County Engineer presented an initial design, however after the input they will receive, he believes they will end up with a safer and better design than originally proposed.

Both 3500 W and 12<sup>th</sup> Street will have bicycle lanes. They will have a 6 ft. shoulder as the bike lane. They will do and extra 2 ft. of asphalt to that 6 ft. shoulder for the bicycle lane initially.

Andrew Favero asked if there was going to be any kind of conversation about another road or access that would accommodate emergency or a secondary access. Jared Anderson indicated that there has been a lot of conversation about that. Currently, there is a group that is doing a master transportation master plan for the County and discussing and including a secondary access will be included in that plan.

Roger Heslop asked if it will be a three-lane or four-lane road. Jared Anderson indicated that three lanes are proposed. They are evaluating the issue right now on how the lines will be painted and flow through the area.

Charles Ewert indicated that as part of the board's on-going training, staff has invited Brent Bateman who is a State Property Rights Ombudsman to make a presentation and give them training on various topics such as making land use decisions.

Brent Bateman indicated that his job is to help them not get involved with lawsuits from their citizens. He thanked the members for attending and wanting to receive additional education on land use decisions. Mr. Bateman indicated that he would discuss the following six topics unless the board members want to discuss other issues in addition to or instead of:

1. Different Roles
2. The Law of Property Rights
3. Takings
4. Decision Makers' Discretion
5. Conditional Uses
6. Other Land Use Decisions

1. Planning Commissioners Role:

1. Land Use Planning
2. Advisory on Land Use Decisions
3. Whatever Else the County Commission Designates

Under the State law, subdivisions and conditional uses are not part of the Planning Commissioner's job. If you make land use decisions based on politics, there will be problems. Land use law was created to make sure that the property rights were protected but also to make that things in the community are protected. Land use law is created to obtain a balance. For Planning Commissioners, the land use law is the law or the "bible" of what they need to follow.

Douglas Dixon asked what the process is then. Brent Bateman indicated that the process is if it is a Planning Commission issue, they discuss it and discuss what is best and they put together a recommendation and then they take it to the County Commission. The County Commission does not have to follow that recommendation.

County Commission Role

1. Improve their community/Get reelected
2. Make law
3. Try not to go mad with power

Bryce Froerer asked what the role of the public hearing is. Brent Bateman indicated that as part of the legislative process, the role of the public hearing by the County Commission is huge. When you are in the role of an administrative process, you are not allowed to make the decision based on public clamor and a public hearing may not be required or the public may not be allowed to speak.

Jannette Borklund indicated that you can listen and identify the impacts and make a recommendation based upon how to best mitigate those impacts. Brent Bateman indicated that occasionally the public will offer evidence and the Planning Commissioners can accept that evidence. Commissioner Borklund indicated that you cannot mail notice to everyone and an issue may have only been published in the newspaper one time and everyone may not have access to the newspaper. In that case, they often get the public who complain that they did not receive notice of the meeting. Mr. Bateman indicated that all you can do is make sure that the law says what you want it to say.

Appeal Authority Role:

1. Review whether the law correctly applied
2. Hear variances
3. Stay objective.

There is nothing in the State Code that requires a Board of Adjustment; however, it refers to an Appeal Authority. The Board of Adjustment should be further removed from the political process than the Planning Commission. Sometimes the Board of Adjustment will make decisions based on the sympathy they have for an applicant. Their job is to make sure that the law was applied correctly. The law is very specific and it should be tough and rare to get a variance.

Douglas Dixon indicated on a case they had, he thought that the process was short-circuited so that they could move forward. He believed that the case should have been heard by the Planning Commission or another body. Brent Bateman indicated that he has seen that scenario many times. Mr. Dixon indicated that often he has seen the decision favor the applicant. Brent Bateman indicated that when a variance goes to the Board of Adjustment they are looking for the reasons to say no, however the answer should be no until they applicant proves why a variance should be granted. A variance should be hard to get and should not be granted just because they do not like it.

Brent Bateman indicated that particularly in Utah, no one has the right to a particular zone. Zoning gets to change. If the zoning does not work, it can be changed. If the zoning is not the right thing for an area, why shouldn't it be changed? You don't give an exception to someone just because they do not like it.

There is also an ethic problem in Utah where people think it is better to follow the spirit of the law rather than the letter of the law.

The Board of Adjustment members have to make hard decisions. It is hard to be a Board of Adjustment member especially if they do not meet very often.

What are Property Rights?

1. What is Property Ownership?
2. The bundle of sticks:
  - a. The right to occupy the property
  - b. The right to exclude others
  - c. The right to use and enjoy
  - d. The right to control other's use
  - e. The right to alienate/convey

The rights are constitutionally protected. Takings are when the government takes away rights, which is the government's right if they give just compensation.

The Bills of Rights exist to protect us from government.

"The general rule, at least, is that while property may be regulated to a certain extent, if the regulation goes too far it will be recognized as a taking." Justice Oliver Wendell Holmes, *Mahan v. Penn. Coal* (1922)

Every time you make a decision you need to think about it and whether it could be a taking and also make sure it is within the amount of discretion that they have.

There are three types of decisions they make in this country:

Administrative, Legislative, and Quasi-Judicial Decisions.

The County Commissioners are the only body that can make Legislative Decisions.

The Board of Adjustment makes Quasi-Judicial decisions. They interpret the law.

When making a Land Use decision, you ask if it is Arbitrary, Capricious and Illegal.

If there is legislative discretion, ask if it is reasonably debatable that (the ordinance) is in the interest of the general welfare, and if it is, it will be upheld.

If there is administrative discretion, an administrative land use decision will be upheld if it is supported by substantial evidence in the record.

It is also helpful to make a case with substantial evidence but also with preponderance of evidence.

Douglas Dixon indicated that when the Board of Adjustment makes a decision, does it set precedence?

Brent Bateman indicated that they will draw a distinction between a legal precedence and practical precedence.

Legal precedence is where because you decided one way, you must decide that way in the future.

That does not exist for the Board of Adjustment. There is a limit to that. There are a couple of cases where they didn't receive due process.

There is practical precedence. You as a body decide what the law says they interpret the law. You are not obligated to follow the way you decided one way, but you can get in trouble if you don't follow the law and apply it the same to others. You should follow the law and the law should be your precedence.

If the first time you applied the law and it was wrongly applied, you can end up in trouble if you don't correct the problem. You have to correct the problem, and apply it correctly; don't continue to apply it incorrectly just because you allowed it once. You could amend the ordinance.

Conditional Use: Must be approved if reasonable conditions can be proposed to mitigate the negative impacts on the use. Conditions must relate to standards in the ordinance. Conditional Uses may only be denied if “the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards.”

Commissioner Borklund indicated that their ordinance provides for the revocation of a conditional use if the approved conditions were not followed so how you would make that judgment a second time? Brent Bateman indicated that you have to be very clear on the conditions you are approving and imposing. You cannot impose those conditional unless they relate to standards that you have in their ordinance. If you don't have any standards on noise, and an application comes to you that will be very noisy, you cannot impose noise standards. The more measurable the standards, the better; however, you just have to have a standard.

Roger Heslop indicated that on television last week one of the cities in Utah reported that they were looking on a Dark Sky Ordinance. What would the standard for such an ordinance? Brent Bateman generally related possible standards. You have to make sure that you don't go too far when you are regulating.

Brent Bateman's contact information is as follows:

Brent Bateman  
Attorney  
Office of Property Rights Ombudsman  
801-530-6391  
Fax (801) 530-6338  
[bbateman@utah.gov](mailto:bbateman@utah.gov)

There Being No Further Business, the meeting was adjourned at 6:55 p.m.

Respectfully Submitted,

Sheri Sillitoe, Secretary  
Weber County Planning Commission



# Staff Report to the Western Weber Planning Commission

Weber County Planning Division

## Synopsis

### Application Information

**Application Request:** Consideration and action on an amendment to Title 108 (Standards), Chapter 3 (Cluster Subdivisions) and Title 106 (Subdivisions), Chapter 2 (Cluster Subdivisions; Special Provisions) of the Weber County Land Use Code.

**Agenda Date:** Tuesday, November 18, 2014

**Applicant:** Western Weber Township Planning Commission

**File Number:** ZO-04-2009

### Property Information

**Approximate Address:** NA

**Project Area:** NA

**Zoning:** NA

**Existing Land Use:** NA

**Proposed Land Use:** NA

**Parcel ID:** NA

**Township, Range, Section:** NA

### Staff Information

**Report Presenter:** Scott Mendoza  
smendoza@co.weber.ut.us  
801-399-8769

**Report Reviewer:** SW

## Background

The Western Weber Township Planning Commission has requested that the existing Weber County Cluster Subdivision Code (Title 108 – Standards, Chapter 3 – Cluster Subdivisions) undergo a complete review to determine whether or not its standards provide for expected performance.

Since the adoption of the current Code, approximately three cluster subdivisions have been submitted for review (in the Western Weber Township) with one of these three being approved and recorded to date. The Western Weber Township Planning Commission, through experience and review of the current Code, has identified some concerns and ideas related to design and development flexibility.

Both, Western Weber and Ogden Valley Planning Commissions, have held and participated in many work-sessions where they have solicited, welcomed, and received public input. The work-sessions have resulted in the draft cluster code attached Exhibit A. A copy of the draft without strikethroughs has been attached as Exhibit B. Brief descriptions of the changes have been provided below:

### Title 108, Chapter 3 - Cluster Subdivisions:

#### Section 108-3-1 Purpose and Intent

This section has been rewritten to better reflect the vision and expectations of both County Planning Commissions. See page 1 of Exhibit A for this section.

#### Section 108-3-2 General Regulation

This section, in the existing code, states that lots in cluster subdivisions can have *“lot areas” that are reduced below the normal minimum lot area if the proposed cluster conforms to all applicable requirements and receives an approval from the planning commission.* This original language has been deleted; however, the one standard communicated through this section has been incorporated into the other sections of the code.

It is proposed that this section now describe and clarify what zones allow for a cluster subdivision to be developed. See page 2 of Exhibit A for this section.

### Section 108-3-3 Approval Procedure

This section exists in the current code but has been rewritten to better identify the procedural steps for an approval of a cluster subdivision. It also adds a new step that is referred to as a "Sketch Plan Endorsement". The sketch plan endorsement is intended to provide a potential cluster subdivision applicant with early planning commission input. The endorsement step has been created in a way that does not require a lot of cost or time. See pages 2 and 3 of Exhibit A for this section.

### Section 108-3-4 Cluster Subdivision Design and Layout Standards

This new section maintains some existing standards and provides new standards as listed below:

1. Minimum and maximum number of lots in a single cluster.
2. Minimum sizes for lots lying adjacent to a cluster subdivision's exterior boundary.
3. Buffer in between "small" lots and an exterior boundary. A building lot is considered small if it has an area less than 15,000 square feet.

See pages 3 and 4 of Exhibit A for this section.

### Section 108-3-5 Open Space Plan Approval, Ownership, Maintenance, Preservation, and Guarantee of Improvement Standards

This new section maintains some existing standards and provides new standards related to an open space preservation plan approval, open space parcel ownership and maintenance, open space conservation, and financial guarantees for certain improvements. A significant change in this section allows for more flexibility in open space ownership. Open space parcels that consist of 10 acres or more may be owned by anyone, including the original landowner. Open space parcels containing less than 10 acres may be individually owned, but the owner needs to be an owner of a lot in the subject cluster subdivision. See pages 5-7 of Exhibit A for this section.

### Section 108-3-6 Open Space Parcel Development Standards

This is an entirely new section that describes all of the development standards associated with an open space parcel. Examples are minimum parcel area, width, and parcel coverage. See pages 7-8 of Exhibit A for this section.

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

This is almost an entirely new section that describes all of the development standards associated with the residential building lots located within a cluster subdivision. Examples are minimum lot area and width, setbacks, and structure height. See pages 8-10 of Exhibit A for this section.

### Section 108-3-8 Bonus Density

This section, for the most part, exists in the current cluster subdivision code. Portions have been rewritten to provide clarity and reestablish new bonus density maximums. A new bonus density has been offered for streetscape beautification. Bonus densities, for cluster subdivisions lying within the Western Weber Township, remain at a maximum of 50% but more open space dedication is required at the point bonus densities are requested to exceed 30%. Bonus densities, for cluster subdivisions lying within the Ogden Valley Township, have been eliminated. See pages 10-13 of Exhibit A for this section.

### Section 108-3-9 Owner's Association Required

This section exists in the current cluster subdivision code; however, portions have been rewritten to provide clarity. See page 13-14 of Exhibit A for this section.

## **Title 106, Chapter 2 – Subdivision Standards:**

### Section 106-2-6 Cluster Subdivision Special Provisions

Also, as a part of the cluster subdivision review, it has been determined that all but one of the Cluster Subdivision Special Provisions (Sec. 106-2-6), located within the Subdivision Title, either conflict with or have already been accounted for in the new draft. It is recommended that the entire Cluster Subdivision Special Provisions section be removed from the Subdivision Title and place only one sub-section into the new cluster code. Section 106-2-6 (a)(4)(b) was added to Section 108-3-4 of the draft cluster subdivision code. See line 130 of the cluster subdivision draft for this addition. See Exhibit C for the entire Section 106-2-6.



## Summary of Planning Commission Considerations

The request has been made that Weber County make a policy decision; therefore, the Planning Commission should consider the following:

- Has the existing cluster subdivision code been performing as intended?
- Do the proposed amendments address the concerns that have been identified by the Planning Commission?
- Does the proposed ordinance amendment meet the goals and objectives of Weber County's General Plans?

## Conformance to the General Plan

The proposal to amend Title 108 (Standards), Chapter 3 (Cluster Subdivisions) of the Weber County Land Use Code, does conform to the Ogden Valley and Western Weber Township General Plans, due to its agreement with the following Plan statements:

- A vision described in the Ogden Valley General Plan is one that *"Maintains the Valley's rural atmosphere and rural lifestyle."* A prescribed objective, related to this vision, is to *"Encourage development that is compatible with cultural and historic resources."* To encourage a clustering-type development pattern that adds visual diversity and preserves open spaces is consistent with guidance given in the General Plan.
- The Ogden Valley General Plan directs Weber County to establish mechanisms that can preserve open space in the Ogden Valley. The cluster subdivision code provides one method of preserving open space and offers the opportunity to develop without impacting sensitive lands and cultural or historical resources.
- A vision described in the West Central Weber County General Plan is one that *"protects rural character, lifestyle, and atmosphere while striking a balance between preservation and development"*. To encourage a clustering-type development pattern that adds visual diversity and preserves open spaces is consistent with guidance given in the General Plan.
- The West Central Weber County General Plan directs Weber County to use the cluster subdivision code as a way to preserve open space and suggests several options for the ownership and maintenance of the open space, one of which is individual ownership (i.e., original landowner/farmer/rancher/dairyman).

## Staff Recommendation

Based on guidance found in the Ogden Valley and West Central Weber County General Plans, the Planning Division Staff is recommending that the Planning Commission approve and make a positive recommendation, to the Weber County Commission, for the adoption of the proposed amendments to the Cluster Subdivision Code.

## Exhibits

- A. Draft Cluster Subdivision Code in legislative style.
- B. Draft Cluster Subdivision Code as proposed with no strikethroughs.
- C. Section 106-2-6 Cluster Subdivision Special Provisions.

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WEBER COUNTY LAND USE CODE  
Title 108 - Chapter 3

**Cluster Subdivisions**

- Sec. 108-3-1. Purpose and Intent
- Sec. 108-3-2. General Regulations
- Sec. 108-3-3. Approval Procedure
- Sec. 108-3-4. Lot Area Regulations Cluster Subdivision Design and Layout Standards
- Sec. 108-3-5. Width, Yard and Height Regulations Open Space Plan Approval, Ownership, Maintenance, Preservation, and Guarantee of Improvement Standards
- Sec. 108-3-6. Additional Design Standards and Requirements Open Space Parcel Development Standards
- Sec. 108-3-7. Bonus Density Lot Development Standards
- Sec. 108-3-8. Open Space Preservation Bonus Density
- Sec. 108-3-9. Homeowner's Association Required
- Sec. 108-3-9. Procedure

**Sec. 108-3-1. Purpose and Intent**

The intent of this chapter is to encourage the creation and permanent protection of open space, to preserve the rural character and natural beauty of unincorporated Weber County, as called for by the county's general plans. It is not the intent of this chapter to create open space subdivisions with lots sprawled over large areas, or strung out along roadways.

The purpose of this chapter is to provide flexible development standards to landowners that are committed to developing safe, attractive, conservation oriented neighborhoods that are thoughtfully designed and arranged in a manner that considers, gives deference to, and ultimately protects natural topography, environmentally sensitive areas, wildlife habitat, and agriculturally productive lands. It is intended to benefit those that create cluster subdivisions by offering an inherent gain in the form of reduced infrastructure costs and the possibility for a substantial increase in residential density in the Western Weber Township. It is equally intended to benefit the residents of Weber County by promoting public welfare through the reduction of long-term infrastructure maintenance costs and the permanent preservation of the County's functional open spaces, picturesque landscapes, and rural character.

### 30 **Sec. 108-3-2. General Regulations**

31 Subject to the requirements of this chapter, cluster subdivisions are permitted in all classified Weber  
32 County zone areas except for the commercial, manufacturing, gravel, residential mobile home, open  
33 space, and shoreline zones.

34 ~~The planning commission may approve a reduction in the minimum lot area required for a lot in a~~  
35 ~~subdivision provided the provisions of this chapter and title 106, the Weber County subdivision~~  
36 ~~ordinance are met. A cluster subdivision shall meet the requirements of the Weber County Land Use~~  
37 ~~Code, and shall ensure proper use and maintenance of open space and open space facilities and shall~~  
38 ~~result in a development superior to a conventional development in terms of its benefits to future~~  
39 ~~owners of the subdivision, surrounding residents and the general public.~~

### 40 **Sec. 108-3-3. Approval Procedure**

41 ~~A preliminary plan of the cluster subdivision showing the areas within the subdivision to be permanently~~  
42 ~~reserved for recreation and/or open space, and plans showing the proposed use, improvements and~~  
43 ~~method of maintenance of such areas shall be approved by the planning commission and county~~  
44 ~~commission before the cluster subdivision proposal becomes a permitted use in the zone in which it is~~  
45 ~~proposed.~~

46 (a) The cluster subdivision approval procedure consists of four phases as follows: (1) a conceptual  
47 sketch plan endorsement from the appropriate township planning commission; (2) a preliminary  
48 approval by the appropriate township planning commission; (3) a recommendation from the  
49 appropriate township planning commission for final approval by the Board of Weber County  
50 Commissioners; and (4) a final approval and acceptance by the Board of Weber County  
51 Commissioners.

52 (b) An application for a conceptual sketch plan endorsement shall demonstrate compliance with all  
53 applicable standards contained within the Weber County Code. The completed application must  
54 be submitted at least 14 calendar days prior to the planning commission meeting at which the  
55 applicant wishes to be heard. The application is complete upon submission of the following:

56 1. Payment of a fee, as required by Title 16, Chapter 2 of the Weber County Code of  
57 Ordinances, and submission of a complete Sketch Plan Endorsement Application on a form  
58 provided by the Weber County Planning Department.

59 2. One 8.5"×11" vicinity map, underlain by an aerial photo, showing the subject property,  
60 surrounding streets, and relevant landmarks.

61 3. One 11"×17" conceptual plan, drawn at a reasonable scale, that demonstrates in a suitable  
62 manner compliance with all applicable codes. The plan shall include, but not necessarily be  
63 limited to, a north arrow and scale, subdivision boundary according to Weber County  
64 records, approximate locations of proposed streets, lots with approximate area calculations,  
65 common areas and open space parcels with approximate area calculations, easements,  
66 waterways, suspected wetlands, floodplains, existing structures, and contour lines.  
67 Information related to topography and contour lines may be submitted on a separate map.

68 Contour information may be omitted if the Planning Director or his designee determines  
 69 that the subject property lacks topographic characteristics that warrant representation.

70 4. An electronic copy of all forms, documents, materials, and information submitted as part of  
 71 the application.

72 (c) An application for preliminary approval by the appropriate planning commission,  
 73 recommendation for final approval, or final approval and acceptance by the Board of Weber  
 74 County Commissioners shall comply with all applicable standards of the Weber County Code,  
 75 including this chapter and Title 106, Subdivisions. The approval process shall proceed as directed  
 76 by Weber County Code Title 106, Chapter 1.

77 **Sec. 108-3-4. Lot Area Regulations Cluster Subdivision Design and Layout**  
 78 **Standards**

79 The Planning Commission and County Commission shall approve an application for a cluster subdivision  
 80 if the Planning Commission and County Commission find that the subject proposal meets all applicable  
 81 standards of the Weber County Code including the following:

82 1. A cluster subdivision's general design shall concentrate residential building lots, with their  
 83 adjoining road rights-of-way and any approved Access Exceptions, into separate and individual  
 84 clusters that are entirely surrounded by open space dedicated as common area, individually  
 85 owned preservation parcels, or both. The open space area in between one cluster of lots and  
 86 another shall not be less than 75 feet in width and the open space area in between lots and an  
 87 exterior subdivision boundary shall not be less than 50 feet in width. The open space required in  
 88 between lots and a subdivision's exterior boundary shall be waived if:

89 a. Lots sharing a common line with the subdivision boundary contain 15,000 square feet or  
 90 more;

91 b. Lots are located along an internal phasing line when that phasing line is acting as a  
 92 temporary external boundary;

93 c. The proposed cluster subdivision lies adjacent to an existing subdivision that contains at  
 94 least one lot that is smaller or not more than 5,000 square feet larger than the smallest  
 95 lot lying within the proposed cluster subdivision; or

96 d. Lots located along an external boundary lie adjacent to a parcel that:

97 i. does not contain an existing dwelling; or

98 ii. contains a single existing dwelling that lies further than 150 feet away from all  
 99 external boundaries of the proposed cluster subdivision.

100 2. In a subdivision consisting of 60 or more lots, each cluster shall contain ~~be clustered into groups~~  
 101 ~~of not~~ no less than three lots and no more than 20 lots. In a subdivision consisting of fewer than  
 102 60 lots, each cluster shall contain no less than three lots and no more than one-third of the total  
 103 number of lots in the subdivision. Weber County may approve up to a five lot increase in the  
 104 number of lots in a cluster if:

- 105 a. The total number of lots cannot be equally divided into thirds and leaves a remaining  
106 number of lots that does not meet the standard for the minimum number of lots in a  
107 cluster; or
- 108 b. There are unusual circumstances, such as complications involving topography,  
109 infrastructure, geotechnical, or geologic conditions, which warrant an increase.
- 110 3. To ensure that encourage quality open space a cluster subdivision reflects the characteristics of  
111 the zone in which it is located, that promotes the intent of the chapter, the a minimum  
112 percentage of a cluster subdivision's Adjusted Gross Acreage left in open space shall be  
113 preserved as open space and dedicated as described in Subsection (1) above. The minimum  
114 open space areas are as follows:
- 115 a. In the Forest (F-40) Zone F-40, a minimum of 90 percent of a cluster subdivision shall be  
116 preserved as permanent open space.
- 117 b. In the Forest (F-5) and Forest (F-10) Zones F-10 and F-5, a minimum of 80 percent of a  
118 cluster subdivision shall be preserved as permanent open space.
- 119 c. In the Agricultural Valley (AV-3), Zone AV-3 and the Forest Valley (FV-3), and the Ogden  
120 Valley Destination and Recreation Resort (DRR-1) Zones FV-3, a minimum of 60 percent  
121 of a cluster subdivision shall be preserved as permanent open space.
- 122 d. In all other zones where a cluster subdivision is an allowed development type a  
123 minimum of 30 percent of a cluster subdivision shall be preserved as permanent open  
124 space.
- 125 4. ~~Streets shall be designed to take advantage of and provide visual access to open space vistas~~  
126 ~~created by the subdivision's permanently preserved open space and the County's natural beauty~~  
127 ~~and rural ambiance.~~
- 128 5. ~~Areas designated as floodplain by the Federal Emergency Management Agency and within~~  
129 ~~required river and stream corridor setbacks shall be left as open space.~~
- 130 6. ~~The proposed common open space shall consist of land which under normal circumstances~~  
131 ~~could be considered for subdivision. Lands that can be mitigated such as floodplain and~~  
132 ~~wetlands are considered developable and shall be counted towards density. Floodways within~~  
133 ~~river corridors, lakes, and naturally occurring pond areas, and rivers which could not be~~  
134 ~~developed but provide an amenity may also be a part of the open space, with 25 percent of this~~  
135 ~~land credited towards the overall density of the development if this land is used to provide~~  
136 ~~amenities and is accessible to the development.~~
- 137 7. Areas designated as floodplain, as defined by the Federal Emergency Management Agency or  
138 other qualified professional determined appropriate by the County Engineer, rivers and streams,  
139 with and including their designated river or stream corridor setbacks, as defined by the Weber  
140 County Code, shall be located within a cluster subdivision's open space area.
- 141 8. ~~There shall be permanently reserved within the subdivision for recreation and/or open space,~~  
142 ~~parcels of land whose total "net developable area" is not less than the amount by which the~~  
143 ~~areas of the residential lots are reduced below the minimum area normally required in the~~  
144 ~~zone in which the cluster subdivision is located. The term "net developable area" is land that~~  
145 ~~is not excluded from use in density calculations or deemed undevelopable by this or any~~  
146 ~~other county, state, or federal law, ordinance or regulation. The area within existing and~~

147 ~~proposed public and private road right-of-ways shall not be counted as "net developable~~  
148 ~~area."~~

149 ~~9. Open space used in density calculations shall be a minimum of three contiguous acres in the RE-~~  
150 ~~20, RE-15, A-1, A-2, and A-3 zones, and five contiguous acres in all other zones where permitted.~~

151 **Sec. 108-3-5. Width, Yard and Height Regulations Open Space Plan Approval,**  
152 **Ownership, Maintenance, Preservation, and Guarantee of Improvement Standards**

153 Open space parcels and any improvements proposed thereon, shall be approved, owned, maintained,  
154 preserved, and financially guaranteed as follows:

155 1. Plan Approval.

156 a. An Open Space Preservation Plan shall accompany an application for preliminary and  
157 final approval of a cluster subdivision. The Plan shall include a narrative describing all  
158 proposed uses, phasing, and maintenance methods for all open space parcels, and a site  
159 plan that shows proposed common areas, individually owned preservation parcels, and  
160 the locations of existing and proposed future structures.

161 i. For open space dedicated as common area parcels, the site plan shall show the  
162 location of existing and future structures by identifying the structure's footprint.  
163 Structures housing a subdivision utility or serving as a subdivision amenity shall  
164 be subject to all applicable standards including all design review and applicable  
165 architectural standards found in Title 108 of the Weber County Land Use Code.

166 ii. For open space dedicated as individually owned preservation parcels, the site  
167 plan shall identify locatable building envelopes within which all existing and  
168 future buildings must be located.

169 2. Ownership.

170 a. Open space parcels dedicated as common area shall be commonly owned by an  
171 appropriate homeowner's association established under Utah Code Title 57, Chapter 8a,  
172 Community Association Act.

173 b. Other open space parcels may be owned individually.

174 i. Individually owned preservation parcels of ten acres or more in area may be  
175 owned by any person, regardless of whether the person owns a residential lot  
176 within the subdivision.

177 ii. Individually owned preservation parcels of less than ten acres in area may only  
178 be owned by an owner of a lot within the same cluster subdivision.

179 iii. The applicable ownership standard in Subsection (i) or (ii) shall be memorialized  
180 in the following manner:

181 1. An explanation of the applicable ownership standard and a perpetual  
182 restriction conforming thereto shall be written into all agriculture,  
183 forest, or other type of preservation easements granted pursuant to  
184 subsection (4); and

- 185 2. A note describing the applicable ownership standard shall be placed on  
186 the final recorded plat.
- 187 3. Maintenance.
- 188 a. ~~Open space shall be maintained in accordance with an open space preservation~~  
189 ~~maintenance and improvements plan submitted by the developer and approved plan by~~  
190 ~~the planning commission and county commission. The plan shall detail the intended use~~  
191 ~~of the open space and any proposed improvements to be placed in the open space.~~
- 192 b. The open space parcel owner, whether an individual or an association, shall use,  
193 manage, and maintain the owner's parcel in a manner that is consistent with the Open  
194 Space Preservation Plan approved under Subsection (1), and the agriculture, forest, or  
195 other type of preservation easement executed under Subsection (4).
- 196 4. Preservation.
- 197 a. Open space parcels are to be permanently ~~reserved~~ preserved and maintained in a  
198 manner that is consistent with the approved Open Space Preservation Plan.
- 199 b. ~~The developers/property owners~~ applicant, prior to recording or as part of recording the  
200 final cluster subdivision plat, shall of the proposed cluster subdivision grant and convey  
201 to the County, to each lot owner, and to the homeowner association if applicable, an  
202 open space easement over all areas dedicated as common area or individually owned  
203 preservation parcels. The open space easement shall incorporate and conform to the  
204 Open Space Preservation Plan approved under Subsection (1).
- 205 c. If a cluster subdivision contains open space intended to preserve ~~bonus density is~~  
206 ~~granted for the preservation of critical~~ substantial ~~or valuable~~ crucial wildlife habitat, as  
207 defined by the Utah Division of Wildlife Resources, a wildlife habitat easement meeting  
208 the requirements of the Utah Division of Wildlife Resources shall be offered to the  
209 ~~Division, state Division of Wildlife Resources. Bonus densities for critical or valuable~~  
210 ~~wildlife habitat shall be based on a review of the subdivision by the state division of~~  
211 ~~wildlife resources and there finding that the subdivision preserves critical or valuable~~  
212 ~~wildlife habitat.~~
- 213 ~~d. If a bonus density is granted for affordable housing, then the affordable housing lots~~  
214 ~~shall be identified on the subdivision plat. A deed restriction shall also be recorded on~~  
215 ~~these lots limiting the sale, or rental of the homes to a household with incomes at or~~  
216 ~~below 80 percent of the county median income.~~
- 217 ~~e. If an agricultural preservation easement is proposed, the agricultural parcel shall be a~~  
218 ~~contiguous parcel containing at minimum ten acres and a copy of an approved~~  
219 ~~agricultural preservation agreement shall be submitted and recorded with the final plat.~~
- 220 f. If a cluster subdivision contains an individually owned preservation parcel, the applicant  
221 shall:
- 222 i. Identify and label on the final plat each such parcel as an Agricultural, Forest, or  
223 other type of Preservation Parcel;
- 224 ii. Further identify each Preservation Parcel by placing a unique identifying letter  
225 of the alphabet immediately after the label.

- 226                   iii. Present an agricultural, forest, or other type of preservation easement to the  
227                   planning commission and gain their approval; and
- 228                   iv. Record an approved preservation easement on each parcel identified as an  
229                   Agricultural, Forest, or other type of Preservation Parcel.
- 230           g. ~~The required open space may be owned by up to two lot owners in the subdivision, in~~  
231           parcels of not less than ten acres each and provided that no structures or accessory  
232           structures be built in the open space with the exception of agricultural buildings  
233           approved as part of the agricultural preservation plan.
- 234           h. ~~Guarantee of common open space improvements. As assurance of completion of~~  
235           common open space improvements, the subdivider shall be required to file with the  
236           county commissioners an approved financial guarantee, guaranteeing completion in a  
237           manner satisfactory to the county commissioners, within two years of such filing.
- 238           i. The planning commission may ~~place~~ impose any additional conditions and restrictions it  
239           deems necessary to ensure development and maintenance of the ~~desired character,~~  
240           including plans for deposition or re-use of property if the open space and adherence to  
241           the Open Space Preservation Plan. Such conditions may include a plan for the  
242           disposition or re-use of the open space property if the open space use is not maintained  
243           in the manner agreed upon or is abandoned by the owners.
- 244   5. Guarantee of Open Space Improvements.
- 245           a. ~~As assurance of completion of common open space improvements, the subdivider shall~~  
246           be required to file with the county commissioners an approved financial guarantee,  
247           guaranteeing completion in a manner satisfactory to the county commissioners, within  
248           two years of such filing
- 249           b. The County shall not require an applicant to deposit a financial guarantee for open  
250           space improvements (e.g., clubhouse, pool, pergola, gazebo, etc.) that require a  
251           Certificate of Occupancy and that remain incomplete at the time of final approval and  
252           acceptance of the proposed cluster subdivision from the Board of Weber County  
253           Commissioners. The applicant or developer shall complete the improvements according  
254           to the approved phasing component of an Open Space Preservation Plan. If the  
255           applicant fails to complete improvements as presented in the Open Space Preservation  
256           Plan, the County may suspend final plat approvals and record an instrument notifying  
257           prospective lot buyers that future land use permits may not be issued for any  
258           construction.
- 259           c. The County shall require an applicant to deposit a financial guarantee for all open space  
260           improvements (e.g., landscaping, trails, fencing, sheds, parking surfaces, etc.) that do  
261           not require a Certificate of Occupancy and that remain incomplete at the time of final  
262           approval and acceptance of the proposed cluster subdivision from the Board of Weber  
263           County Commissioners. The applicant or developer shall complete all improvements  
264           according to the approved phasing component of an Open Space Preservation Plan.



265 **Sec. 108-3-6. Additional Design Standards and Requirements Open Space Parcel**  
266 **Development Standards**

267 Unless otherwise provided for in this Section, open space parcels shall be developed in a manner that  
268 meets all applicable standards, including but not limited to those found in the Weber County Land Use  
269 Code. Open space parcels shall adhere to the following specific site development standards:

270 1. Parcel Area.

271 a. Unless otherwise regulated by the Weber-Morgan Health Department or Weber County  
272 Code Title 108, Chapter 14, Hillside Development Review Procedures and Standards,  
273 the minimum area for an open space parcel located within a cluster subdivision is as  
274 follows:

275 i. Open space parcels dedicated as common area are not subject to  
276 minimum area requirements.

277 ii. Open space parcels dedicated as individually owned preservation  
278 parcels shall contain an area of not less than three acres.

279 A. The minimum area of an individually owned preservation parcel  
280 may be reduced to not less than one acre if the preservation  
281 parcel is part of a contiguous area of open space parcels  
282 consisting of not less than three acres in total. Open space  
283 parcels form a contiguous area if each open space parcel in the  
284 area shares a common boundary line with another open space  
285 parcel or lies directly across a road right-of-way, or other  
286 approved access, from another open space parcel.

287 B. Parcels containing less than five acres are not Agricultural  
288 Parcels for purposes of agricultural exemptions granted by the  
289 Weber County Land Use Code.

290 2. Parcel Width.

291 a. Notwithstanding Section 106-2-4(c) and Title 108, Chapter 14, Hillside Development  
292 Review Procedures and Standards, and unless otherwise regulated by the Weber-  
293 Morgan Health Department, open space parcels located within a cluster subdivision are  
294 not subject to frontage requirements and do not have a minimum width standard other  
295 than the standard described in Section 108-3-4(1).

296 3. Parcel Coverage.

297 a. Coverage of common area parcels by roofed structures shall not exceed ten percent of  
298 the total parcel area.

299 b. Coverage of individually owned preservation parcels by roofed structures shall not  
300 exceed five percent of the total parcel area.

301 **Sec. 108-3-7. Bonus Density Lot Development Standards**

302 Unless otherwise provided for in this Section, residential building lots shall be developed in a manner  
 303 that meets all applicable standards, including but not limited to those found in the Weber County Land  
 304 Use Code. The following specific site development standards apply to lots in cluster subdivisions:

305 1. Lot Area.

- 306 a. ~~The minimum lot area in a cluster subdivision shall be 10,000 square feet unless~~  
 307 ~~approved as part of a planned residential unit development.~~
- 308 b. Unless otherwise regulated by the Weber-Morgan Health Department or Weber County  
 309 Code, Title 108, Chapter 14, Hillside Development Review Procedures and Standards, a  
 310 lot located within a cluster subdivision shall contain an area of not less than 15,000  
 311 square feet.
- 312 c. A lot's minimum area is reduced to 6,000 square feet if:
- 313 i. The lot is located 50 feet or more from its own cluster subdivision  
 314 boundary, not including those boundaries formed by existing streets or  
 315 internal phasing lines if the phasing lines act as a temporary external  
 316 boundary;
  - 317 ii. The lot lies within a cluster subdivision that is adjacent to an existing  
 318 subdivision that contains at least one lot that is smaller or not more  
 319 than 5,000 square feet larger than the smallest lot lying within the  
 320 subject cluster subdivision; or
  - 321 iii. The lot lies within a cluster subdivision that is adjacent to an  
 322 undeveloped parcel. A parcel is considered undeveloped if it:
    - 323 A. does not contain an existing dwelling; or
    - 324 B. contains an existing dwelling that lies further than 150 feet  
 325 away from all external boundaries of the proposed or subject  
 326 cluster subdivision.

327 2. Lot Width.

- 328 a. ~~Yard and height regulations shall be the same as for the zone in which the cluster~~  
 329 ~~subdivision is located except as noted below. The minimum lot width may be reduce~~  
 330 ~~below the width normally required in the zone in which the cluster subdivision is located~~  
 331 ~~as follow: Unless otherwise regulated by the Weber-Morgan Health Department or~~  
 332 ~~Weber County Code Title 108, Chapter 14, Hillside Development Review Procedures~~  
 333 ~~and Standards, the minimum lot width in a cluster subdivision is:~~
- 334 i. 100 feet in the Forest (F-40) Zone F-40, and the Forest (F-10) Zones.~~F-~~  
 335 ~~10, the~~
  - 336 ii. ~~In the Forest Zone F-5, the lot widths may be reduced to 100 feet.~~
  - 337 iii. 80 feet in the Forest Residential (FR-1), Forest (F-5), Agricultural Valley  
 338 (AV-3), and the Forest Valley (FV-3) Zones.
  - 339 iv. 60 feet in the Residential Estates (RE-15 and RE-20) and Agricultural (A-  
 340 1, A-2, and A-3) Zones.

- v. 50 feet in the Forest Residential (FR-3) and the Ogden Valley Destination and Recreation Resort (DRR-1) Zone.
- ~~vi. In the Residential Estates RE-20 Zone, a minimum frontage of 80 feet is required.~~
- ~~vii. In the Residential Estates RE-15 Zone, a minimum frontage of 70 feet is required.~~
- ~~viii. The lot width and yard reductions listed in this section are the maximum reduction allowed. Creating greater lot width reductions calculated by combining the reductions in this section with others permitted in the Land Use Code is not permitted.~~

3. Yard Setbacks for dwellings.

- a. Minimum yard setbacks for dwellings in a cluster subdivision are as follows:
  - i. Front: 20 feet.
  - ii. Side: 8 feet.
  - iii. Rear: 20 feet.
- ~~b. Where lots are reduced to 20,000 square feet or less, the front yard setback may be reduced to 25 feet and the side yard setback to a minimum of eight feet with the total of the two side yards not less than 18 feet.~~

4. Dwelling Height.

- a. The maximum height for dwellings in a cluster subdivision is 40 feet.

**Sec. 108-3-8. Open Space Preservation Bonus Density**

Weber County may, in its discretion, allow for an increased number of residential lots by awarding bonus densities to those cluster subdivisions developed within the Western Weber County Township. Cluster subdivisions within the Ogden Valley Township are not eligible for bonus densities. The following presents the bonus density opportunities that are available to cluster subdivisions located within specific zoning boundaries:

- 1. In the Forest (F-40) Zones F-40 and F-10, Weber County may award a maximum bonus density of 20 percent ~~approved and shall be~~ based on an accumulation of any combination of the following:
  - a. ~~If the cluster subdivision he planning commission determines~~ meets the purpose and intent section of this chapter, up to a five percent bonus may be granted.
  - b. If the cluster subdivision provides a minimum of one road stubs to an adjacent property where the planning commission determines that streets are needed to provide for current or future traffic circulation, up to a five percent bonus density may be granted.
  - c. If the cluster subdivision provides a minimum of one approved public access to public lands, up to a five percent bonus density may be granted.

- 379 d. The If the cluster subdivision provides common area that is open to the public and  
 380 provides offers easily accessible amenities, such as a trail, park, or community garden,  
 381 that are open for use by to the general public such as trails, up to a five percent bonus  
 382 density may be granted.
- 383 e. If the cluster subdivision dedicates and conveys to Weber County, the State Division of  
 384 Wildlife Resources, or both, an open space easement that permanently preserves  
 385 Protection of areas that are have been identified by the State Division of Wildlife  
 386 Resources as critical having substantial or crucial wildlife habitat value, up to a ten 15  
 387 percent bonus density may be granted.
- 388 2. ~~In the Agricultural Valley Zone AV-3, Forest Zone F-5 and the Forest Valley Zone FV-3: a~~  
 389 ~~maximum bonus density of 30 percent may be approved and shall be based on an accumulation~~  
 390 ~~of the following:~~
- 391 a. ~~Developing a cluster subdivision that the planning commission determines meets the~~  
 392 ~~intent of this chapter, a ten percent bonus may be granted.~~
- 393 b. ~~For each five percent of open space preserved in the subdivision in excess of the~~  
 394 ~~minimum required by this chapter, up to a five percent bonus density may be granted.~~
- 395 c. ~~Providing road stubs to adjacent property where the planning commission determines~~  
 396 ~~that streets are needed to provide for current or future traffic circulation; a five percent~~  
 397 ~~bonus density may be granted per stub up to a maximum of ten percent.~~
- 398 d. ~~Provides access to public lands; up to a five percent bonus density may be granted.~~
- 399 e. ~~The common area is open to the public and provides amenities to the general public~~  
 400 ~~such as trail; up to a ten percent bonus density may be granted.~~
- 401 f. ~~Ten percent of the lots and homes are permanently set aside for affordable housing (as~~  
 402 ~~outlined by the Affordable Housing Act of 1990), up to a ten percent bonus density may~~  
 403 ~~be granted.~~
- 404 g. ~~Preservation of an agricultural parcel with an agricultural preservation plan approved by~~  
 405 ~~the planning commission and a agricultural preservation easement recorded on the~~  
 406 ~~parcel:~~
- 407 i. ~~Between ten and 20 acres, up to a ten percent bonus density may be~~  
 408 ~~granted.~~
- 409 ii. ~~20 acres or larger; up to a 15 percent bonus density may be granted.~~
- 410 h. ~~Preservation of historical sites and buildings (barns, homes, trails, or other structures);~~  
 411 ~~up to a five percent bonus density may be granted.~~
- 412 i. ~~Development of excess sewage treatment capacity; up to a five percent bonus density~~  
 413 ~~may be granted.~~
- 414 j. ~~Preservation in open space of areas that are identified by the state division of wildlife~~  
 415 ~~resources as providing valuable wildlife habit; up to a ten percent bonus density may be~~  
 416 ~~granted.~~
- 417 k. ~~Preservation in open space of areas that are identified by the state division of wildlife~~  
 418 ~~resources as critical wildlife habit; up to a 15 percent bonus density may be granted~~
- 419 l. ~~Open space is contiguous to permanently preserved open space on an adjoining~~  
 420 ~~property; up to a five percent bonus density may be granted.~~

- 421                   m. ~~Preserving in open space a 300-foot setback from the high water mark of Pineview~~  
 422                   ~~Reservoir; up to ten percent bonus density may be granted.~~
- 423           3. In the Agricultural (A-1, A-2, and A-3) Zones, Agricultural Zones A-1, A-2 and A-3, up to a  
 424           ~~maximum~~ Weber County may grant a bonus density of ~~50~~up to 50 percent if the applicant  
 425           preserves an open space percentage above that required by Section 108-3-4(3)(d); otherwise  
 426           Weber County may grant a bonus density of up to 30 percent. Overall bonus density potential  
 427           shall be no greater than a percentage equal to the percentage of the subdivision's total area  
 428           preserved as open space. Weber County may award bonus densities based on an accumulation  
 429           of any combination of the following:
- 430           a. ~~If a cluster subdivision that the planning commission determines~~ meets the purpose and  
 431           intent of this chapter, up to a 15 five percent bonus may be granted.
- 432           b. If a cluster subdivision provides and implements an approved roadway landscape and  
 433           design plan that includes, but is not necessarily limited to, vehicle and pedestrian  
 434           circulation, lighting, and street trees of an appropriate species, size of at least a 2 inch  
 435           caliper, and quantity of not less than eight trees for every 100 feet of road length, up to  
 436           20 percent bonus density may be granted.
- 437           c. For each five percent increment of open space preserved ~~in the subdivision in over~~  
 438           ~~excess of the minimum required by this chapter~~ 50 percent: up to a five percent bonus  
 439           density ~~may~~ shall be granted up to the total bonus density allowed by subsection (3).
- 440           ~~d. Providing road stubs to adjacent property where the planning commission determines~~  
 441           ~~that streets are needed to provide for current or future traffic circulation: a five percent~~  
 442           ~~bonus density may be granted per stub up to a maximum of ten percent.~~
- 443           e. If a cluster subdivision provides a minimum of one approved access to public lands, up  
 444           to a ten percent bonus density may be granted.
- 445           f. ~~The~~ If a cluster subdivision provides common area ~~that is open to the public and~~  
 446           provides offers easily accessible amenities such as trails, parks, or community gardens,  
 447           that are open for use by to the general public, such as trail up to a 15 percent bonus  
 448           density may be granted.
- 449           g. If ten percent of the lots and homes in a cluster subdivision are permanently set aside  
 450           for affordable housing as outlined by the Affordable Housing Act of 1990, up to a ~~25~~ 20  
 451           percent bonus density may be granted.

452           If a bonus density is granted for affordable housing, the applicant shall:

- 453                   i. Present and gain Planning Commission approval of an effective plan and  
 454                   method for guaranteeing and enforcing perpetual affordability. Any  
 455                   method used, such as an affordable housing deed restriction, shall limit  
 456                   the sale or rental of the affected lots and homes to a household with an  
 457                   income at or below 80 percent of the County median income;
- 458                   ii. Identify and label, on the final plat, the lots set aside as Affordable  
 459                   Housing Lots; and

- 460                   iii. Provide a note on the final plat explaining the nature of the housing  
 461                   restriction on the lot and the method by which occupancy and  
 462                   affordability will be regulated.
- 463           h. If a cluster subdivision preserves an agricultural parcel with an agriculturally based Open  
 464           Space Preservation Plan approved by the planning commission and records an  
 465           agricultural preservation easement on the parcel, a bonus density may be approved as  
 466           follows:
- 467                   i. For a parcel containing at least ten acres but fewer than and 20 acres,  
 468                   up to a 15 percent bonus density may be granted.
- 469                   ii. For a parcel containing at least 20 acres but fewer than 30 acres, or  
 470                   more but less than up to a 20 percent bonus density may be granted.
- 471                   iii. For a parcel containing at least 30 acres but fewer than 40 acres, up to a  
 472                   30 percent bonus density may be granted.
- 473                   iv. For a parcel containing at least 40 acres but fewer than 50 acres, up to a  
 474                   40 percent bonus density may be granted if the parcel standing alone is  
 475                   greater than the minimum open space requirement for the subdivision.
- 476                   v. For a parcel containing at least 50 acres or more, up to a 50 percent  
 477                   bonus density may be granted if the parcel standing alone is greater  
 478                   than the minimum open space requirement for the subdivision.
- 479           i. If a cluster subdivision provides for the preservation of historical sites and buildings that  
 480           have been identified by the State Historic Preservation Office as having notable  
 481           historical value, up to a five percent bonus density may be granted.
- 482           j. If a cluster subdivision provides for the development of excess sewage treatment  
 483           capacity, up to a five percent bonus density may be granted.
- 484           ~~k. Preservation of open space of areas that are identified by the state division of wildlife~~  
 485           ~~resources as providing valuable wildlife habit: up to a ten percent bonus density may be~~  
 486           ~~granted.~~
- 487           ~~l. Preservation in open space of areas that are identified by the state division of wildlife~~  
 488           ~~resources as critical wildlife habit: up to a 15 percent bonus density may be granted.~~
- 489           m. If a cluster subdivision dedicates and conveys to Weber County, the State Division of  
 490           Wildlife Resources, or both, an open space easement that permanently preserves  
 491           ~~Protection of areas that are~~ have been identified by the State Division of Wildlife  
 492           Resources as critical having substantial or crucial wildlife habitat value, up to a ten 15  
 493           percent bonus density may be granted.
- 494           n. If a cluster subdivision includes an open space parcel that consistsing of five acres or  
 495           more and is contiguous to permanently preserved open space on an adjoining property  
 496           located outside of the cluster subdivision, up to a 20 percent bonus density may be  
 497           granted.

498 **Sec. 108-3-9. Homeowner's Association Required**

499 In order to provide for proper management and maintenance of commonly owned areas and private  
 500 improvements, all cluster subdivisions with such areas or improvements ~~As assurance of maintenance of~~  
 501 ~~the common open space and other improvements where so required, subdivider are~~ required to have a  
 502 cause to be formed, prior to the recording of the final plat, lot homeowner's association. The applicant,  
 503 prior to recording a final plat of the cluster subdivision, shall: and shall establish articles of incorporation  
 504 of the association, filed at the state department of commerce, bylaws and covenants outlining the  
 505 purpose, organization and operation of the association. Such articles of incorporation and covenants  
 506 shall among other things provide:

507

508 1. Establish a homeowners association and submit for Weber County review the necessary articles  
 509 of incorporation, bylaws, and declaration of covenants, conditions, and restrictions that provide  
 510 for:

- 511 a. Compliance with Utah State Code;  
 512 b. The reason and purpose for the association's existence;  
 513 c. Mandatory membership for each lot or home owner and their successors in interest;  
 514 d. The perpetual nature of the easements related to all dedicated open space parcels;  
 515 e. Responsibilities related to liability, taxes, and the maintenance of recreational and other  
 516 infrastructure and facilities;  
 517 f. Financial obligations and responsibilities, including the ability to adjust the obligations  
 518 and responsibilities due to change in needs;  
 519 g. Association enforcement remedies; and  
 520 h. A notification of the County's ability to enforce the terms of the owner's dedication on  
 521 the subdivision dedication plat.  
 522 i. ~~That membership shall be mandatory for each lot purchased and each successive~~  
 523 ~~buyer~~  
 524 j. ~~That common open space restrictions must be permanent, not just for a period of~~  
 525 ~~years.~~  
 526 k. ~~That the association shall be responsible for liability, local taxes and the maintenance~~  
 527 ~~of recreational and other facilities.~~  
 528 l. ~~That lot owners must pay their pro rata share of the costs.~~  
 529 m. ~~That the assessment levied by the association can become a lien on the property.~~  
 530 n. ~~That the association shall be able to adjust the assessment to meet changed needs.~~  
 531 e. ~~That in the event the lot owners' association does not maintain the common open~~  
 532 ~~space and improvements as proposed and indicated at the time of subdivision, the~~  
 533 ~~county may at its option, do or contract to have done the required maintenance and~~  
 534 ~~recover the costs incident thereto by means of a lien against the involved properties~~  
 535 ~~of the lot owners' association members.~~

536 2. Register the homeowners association with the State of Utah, Department of Commerce.

537 **Sec. 108-3-9. Procedure**

538 ~~A preliminary plan of the cluster subdivision showing the areas within the subdivision to be permanently~~  
539 ~~reserved for recreation and/or open space, and plans showing the proposed use, improvements and~~  
540 ~~method of maintenance of such areas shall be approved by the planning commission and county~~  
541 ~~commission before the cluster subdivision proposal becomes a permitted use in the zone in which it is~~  
542 ~~proposed.~~ *(Moved this Section to 108-3-3 above; Approval Procedure.)*



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**WEBER COUNTY LAND USE CODE**  
**Title 108 - Chapter 3**

**Cluster Subdivisions**

- Sec. 108-3-1. Purpose and Intent
- Sec. 108-3-2. General Regulation
- Sec. 108-3-3. Approval Procedure
- Sec. 108-3-4. Cluster Subdivision Design and Layout Standards
- Sec. 108-3-5. Open Space Plan Approval, Ownership, Maintenance, Preservation, and Guarantee of Improvement Standards
- Sec. 108-3-6. Open Space Parcel Development Standards
- Sec. 108-3-7. Lot Development Standards
- Sec. 108-3-8. Bonus Density
- Sec. 108-3-9. Homeowner’s Association Required

**Sec. 108-3-1. Purpose and Intent**

The purpose of this chapter is to provide flexible development standards to landowners that are committed to developing safe, attractive, conservation oriented neighborhoods that are thoughtfully designed and arranged in a manner that considers, gives deference to, and ultimately protects natural topography, environmentally sensitive areas, wildlife habitat, and agriculturally productive lands. It is intended to benefit those that create cluster subdivisions by offering an inherent gain in the form of reduced infrastructure costs and the possibility for a substantial increase in residential density in the Western Weber Township. It is equally intended to benefit the residents of Weber County by promoting public welfare through the reduction of long-term infrastructure maintenance costs and the permanent preservation of the County’s functional open spaces, picturesque landscapes, and rural character.

**Sec. 108-3-2. General Regulation**

Subject to the requirements of this chapter, cluster subdivisions are permitted in all classified Weber County zone areas except for the commercial, manufacturing, gravel, residential mobile home, open space, and shoreline zones.

**Sec. 108-3-3. Approval Procedure**

- (a) The cluster subdivision approval procedure consists of four phases as follows: (1) a conceptual sketch plan endorsement from the appropriate township planning commission; (2) a preliminary approval by the appropriate township planning commission; (3) a recommendation from the

32 appropriate township planning commission for final approval by the Board of Weber County  
33 Commissioners; and (4) a final approval and acceptance by the Board of Weber County  
34 Commissioners.

35 (b) An application for a conceptual sketch plan endorsement shall demonstrate compliance with all  
36 applicable standards contained within the Weber County Code. The completed application must  
37 be submitted at least 14 calendar days prior to the planning commission meeting at which the  
38 applicant wishes to be heard. The application is complete upon submission of the following:

- 39 1. Payment of a fee, as required by Title 16, Chapter 2 of the Weber County Code of  
40 Ordinances, and submission of a complete Sketch Plan Endorsement Application on a form  
41 provided by the Weber County Planning Department.
- 42 2. One 8.5"×11" vicinity map, underlain by an aerial photo, showing the subject property,  
43 surrounding streets, and relevant landmarks.
- 44 3. One 11"×17" conceptual plan, drawn at a reasonable scale, that demonstrates in a suitable  
45 manner compliance with all applicable codes. The plan shall include, but not necessarily be  
46 limited to, a north arrow and scale, subdivision boundary according to Weber County  
47 records, approximate locations of proposed streets, lots with approximate area calculations,  
48 common areas and open space parcels with approximate area calculations, easements,  
49 waterways, suspected wetlands, floodplains, existing structures, and contour lines.  
50 Information related to topography and contour lines may be submitted on a separate map.  
51 Contour information may be omitted if the Planning Director or his designee determines  
52 that the subject property lacks topographic characteristics that warrant representation.
- 53 4. An electronic copy of all forms, documents, materials, and information submitted as part of  
54 the application.

55 (c) An application for preliminary approval by the appropriate planning commission,  
56 recommendation for final approval, or final approval and acceptance by the Board of Weber  
57 County Commissioners shall comply with all applicable standards of the Weber County Code,  
58 including this chapter and Title 106, Subdivisions. The approval process shall proceed as directed  
59 by Weber County Code Title 106, Chapter 1.

#### 60 **Sec. 108-3-4. Cluster Subdivision Design and Layout Standards**

61 The Planning Commission and County Commission shall approve an application for a cluster subdivision  
62 if the Planning Commission and County Commission find that the subject proposal meets all applicable  
63 standards of the Weber County Code including the following:

- 64 1. A cluster subdivision's general design shall concentrate residential building lots, with their  
65 adjoining road rights-of-way and any approved Access Exceptions, into separate and individual  
66 clusters that are entirely surrounded by open space dedicated as common area, individually  
67 owned preservation parcels, or both. The open space area in between one cluster of lots and  
68 another shall not be less than 75 feet in width and the open space area in between lots and an  
69 exterior subdivision boundary shall not be less than 50 feet in width. The open space required in  
70 between lots and a subdivision's exterior boundary shall be waived if:

- 71 a. Lots sharing a common line with the subdivision boundary contain 15,000 square feet or  
72 more;
- 73 b. Lots are located along an internal phasing line when that phasing line is acting as a  
74 temporary external boundary;
- 75 c. The proposed cluster subdivision lies adjacent to an existing subdivision that contains at  
76 least one lot that is smaller or not more than 5,000 square feet larger than the smallest  
77 lot lying within the proposed cluster subdivision; or
- 78 d. Lots located along an external boundary lie adjacent to a parcel that:  
79 i. does not contain an existing dwelling; or  
80 ii. contains a single existing dwelling that lies further than 150 feet away from all  
81 external boundaries of the proposed cluster subdivision.
- 82 2. In a subdivision consisting of 60 or more lots, each cluster shall contain no less than three lots  
83 and no more than 20 lots. In a subdivision consisting of fewer than 60 lots, each cluster shall  
84 contain no less than three lots and no more than one-third of the total number of lots in the  
85 subdivision. Weber County may approve up to a five lot increase in the number of lots in a  
86 cluster if:
- 87 a. The total number of lots cannot be equally divided into thirds and leaves a remaining  
88 number of lots that does not meet the standard for the minimum number of lots in a  
89 cluster; or
- 90 b. There are unusual circumstances, such as complications involving topography,  
91 infrastructure, geotechnical, or geologic conditions, which warrant an increase.
- 92 3. To ensure that a cluster subdivision reflects the characteristics of the zone in which it is located,  
93 a minimum percentage of a cluster subdivision's Adjusted Gross Acreage shall be preserved as  
94 open space and dedicated as described in Subsection (1) above. The minimum open space areas  
95 are as follows:
- 96 a. In the Forest (F-40) Zone, a minimum of 90 percent of a cluster subdivision shall be  
97 preserved as open space.
- 98 b. In the Forest (F-5) and Forest (F-10) Zones, a minimum of 80 percent of a cluster  
99 subdivision shall be preserved as open space.
- 100 c. In the Agricultural Valley (AV-3), Forest Valley (FV-3), and the Ogden Valley Destination  
101 and Recreation Resort (DRR-1) Zones, a minimum of 60 percent of a cluster subdivision  
102 shall be preserved as open space.
- 103 d. In all other zones where a cluster subdivision is an allowed development type a  
104 minimum of 30 percent of a cluster subdivision shall be preserved as open space.
- 105 4. Lands that can be mitigated such as floodplain and wetlands are considered developable and  
106 shall be counted towards density. Floodways within river corridors, lakes, and naturally  
107 occurring pond areas, which could not be developed but provide an amenity may also be a part  
108 of the open space, with 25 percent of this land credited towards the overall density of the  
109 development if this land is used to provide amenities and is accessible to the development.
- 110 5. Areas designated as floodplain, as defined by the Federal Emergency Management Agency or  
111 other qualified professional determined appropriate by the County Engineer, rivers and streams,

112 with and including their designated river or stream corridor setbacks, as defined by the Weber  
113 County Code, shall be located within a cluster subdivision's open space area.

114 **Sec. 108-3-5. Open Space Plan Approval, Ownership, Maintenance, Preservation,**  
115 **and Guarantee of Improvement Standards**

116 Open space parcels and any improvements proposed thereon, shall be approved, owned, maintained,  
117 preserved, and financially guaranteed as follows:

118 1. Plan Approval.

119 a. An Open Space Preservation Plan shall accompany an application for preliminary and  
120 final approval of a cluster subdivision. The Plan shall include a narrative describing all  
121 proposed uses, phasing, and maintenance methods for all open space parcels, and a site  
122 plan that shows proposed common areas, individually owned preservation parcels, and  
123 the locations of existing and proposed future structures.

124 i. For open space dedicated as common area parcels, the site plan shall show the  
125 location of existing and future structures by identifying the structure's footprint.  
126 Structures housing a subdivision utility or serving as a subdivision amenity shall  
127 be subject to all applicable standards including all design review and applicable  
128 architectural standards found in Title 108 of the Weber County Land Use Code.

129 ii. For open space dedicated as individually owned preservation parcels, the site  
130 plan shall identify locatable building envelopes within which all existing and  
131 future buildings must be located.

132 2. Ownership.

133 a. Open space parcels dedicated as common area shall be commonly owned by an  
134 appropriate homeowner's association established under Utah Code Title 57, Chapter 8a,  
135 Community Association Act.

136 b. Other open space parcels may be owned individually.

137 i. Individually owned preservation parcels of ten acres or more in area may be  
138 owned by any person, regardless of whether the person owns a residential lot  
139 within the subdivision.

140 ii. Individually owned preservation parcels of less than ten acres in area may only  
141 be owned by an owner of a lot within the same cluster subdivision.

142 iii. The applicable ownership standard in Subsection (i) or (ii) shall be memorialized  
143 in the following manner:

144 1. An explanation of the applicable ownership standard and a perpetual  
145 restriction conforming thereto shall be written into all agriculture,  
146 forest, or other type of preservation easements granted pursuant to  
147 subsection (4); and

148 2. A note describing the applicable ownership standard shall be placed on  
149 the final recorded plat.

150 3. Maintenance.

151 a. The open space parcel owner, whether an individual or an association, shall use,  
152 manage, and maintain the owner's parcel in a manner that is consistent with the Open  
153 Space Preservation Plan approved under Subsection (1), and the agriculture, forest, or  
154 other type of preservation easement executed under Subsection (4).

155 4. Preservation.

156 a. Open space parcels are to be permanently preserved in a manner that is consistent with  
157 the approved Open Space Preservation Plan.

158 b. The applicant, prior to recording or as part of recording the final cluster subdivision plat,  
159 shall grant and convey to the County, to each lot owner, and to the homeowner  
160 association if applicable, an open space easement over all areas dedicated as common  
161 area or individually owned preservation parcels. The open space easement shall  
162 incorporate and conform to the Open Space Preservation Plan approved under  
163 Subsection (1).

164 c. If a cluster subdivision contains open space intended to preserve substantial or crucial  
165 wildlife habitat, as defined by the Utah Division of Wildlife Resources, a wildlife habitat  
166 easement meeting the requirements of the Utah Division of Wildlife Resources shall be  
167 offered to the Division.

168 d. If a cluster subdivision contains an individually owned preservation parcel, the applicant  
169 shall:

170 i. Identify and label on the final plat each such parcel as an Agricultural, Forest, or  
171 other type of Preservation Parcel;

172 ii. Further identify each Preservation Parcel by placing a unique identifying letter  
173 of the alphabet immediately after the label.

174 iii. Present an agricultural, forest, or other type of preservation easement to the  
175 planning commission and gain their approval; and

176 iv. Record an approved preservation easement on each parcel identified as an  
177 Agricultural, Forest, or other type of Preservation Parcel.

178 e. The planning commission may impose any additional conditions and restrictions it  
179 deems necessary to ensure maintenance of the open space and adherence to the Open  
180 Space Preservation Plan. Such conditions may include a plan for the disposition or re-  
181 use of the open space property if the open space is not maintained in the manner  
182 agreed upon or is abandoned by the owners.

183 5. Guarantee of Open Space Improvements.

184 a. The County shall not require an applicant to deposit a financial guarantee for open  
185 space improvements (e.g., clubhouse, pool, pergola, gazebo, etc.) that require a  
186 Certificate of Occupancy and that remain incomplete at the time of final approval and  
187 acceptance of the proposed cluster subdivision from the Board of Weber County  
188 Commissioners. The applicant or developer shall complete the improvements according  
189 to the approved phasing component of an Open Space Preservation Plan. If the  
190 applicant fails to complete improvements as presented in the Open Space Preservation  
191 Plan, the County may suspend final plat approvals and record an instrument notifying

- 192 prospective lot buyers that future land use permits may not be issued for any  
193 construction.
- 194 b. The County shall require an applicant to deposit a financial guarantee for all open space  
195 improvements (e.g., landscaping, trails, fencing, sheds, parking surfaces, etc.) that do  
196 not require a Certificate of Occupancy and that remain incomplete at the time of final  
197 approval and acceptance of the proposed cluster subdivision from the Board of Weber  
198 County Commissioners. The applicant or developer shall complete all improvements  
199 according to the approved phasing component of an Open Space Preservation Plan.

200 **Sec. 108-3-6. Open Space Parcel Development Standards**

201 Unless otherwise provided for in this Section, open space parcels shall be developed in a manner that  
202 meets all applicable standards, including but not limited to those found in the Weber County Land Use  
203 Code. Open space parcels shall adhere to the following specific site development standards:

204 1. Parcel Area.

- 205 a. Unless otherwise regulated by the Weber-Morgan Health Department or Weber County  
206 Code Title 108, Chapter 14, Hillside Development Review Procedures and Standards,  
207 the minimum area for an open space parcel located within a cluster subdivision is as  
208 follows:

- 209 i. Open space parcels dedicated as common area are not subject to  
210 minimum area requirements.
- 211 ii. Open space parcels dedicated as individually owned preservation  
212 parcels shall contain an area of not less than three acres.
- 213 A. The minimum area of an individually owned preservation parcel  
214 may be reduced to not less than one acre if the preservation  
215 parcel is part of a contiguous area of open space parcels  
216 consisting of not less than three acres in total. Open space  
217 parcels form a contiguous area if each open space parcel in the  
218 area shares a common boundary line with another open space  
219 parcel or lies directly across a road right-of-way, or other  
220 approved access, from another open space parcel.
- 221 B. Parcels containing less than five acres are not Agricultural  
222 Parcels for purposes of agricultural exemptions granted by the  
223 Weber County Land Use Code.

224 2. Parcel Width.

- 225 a. Notwithstanding Section 106-2-4(c) and Title 108, Chapter 14, Hillside Development  
226 Review Procedures and Standards, and unless otherwise regulated by the Weber-  
227 Morgan Health Department, open space parcels located within a cluster subdivision are  
228 not subject to frontage requirements and do not have a minimum width standard other  
229 than the standard described in Section 108-3-4(1).

230 3. Parcel Coverage.

- 231 a. Coverage of common area parcels by roofed structures shall not exceed ten percent of
- 232 the total parcel area.
- 233 b. Coverage of individually owned preservation parcels by roofed structures shall not
- 234 exceed five percent of the total parcel area.

**Sec. 108-3-7. Lot Development Standards**

235 Unless otherwise provided for in this Section, residential building lots shall be developed in a manner  
236 that meets all applicable standards, including but not limited to those found in the Weber County Land  
237 Use Code. The following specific site development standards apply to lots in cluster subdivisions:  
238

239 1. Lot Area.

- 240 a. Unless otherwise regulated by the Weber-Morgan Health Department or Weber County
- 241 Code, Title 108, Chapter 14, Hillside Development Review Procedures and Standards, a
- 242 lot located within a cluster subdivision shall contain an area of not less than 15,000
- 243 square feet.
- 244 b. A lot’s minimum area is reduced to 6,000 square feet if:
  - 245 i. The lot is located 50 feet or more from its own cluster subdivision
  - 246 boundary, not including those boundaries formed by existing streets or
  - 247 internal phasing lines if the phasing lines act as a temporary external
  - 248 boundary;
  - 249 ii. The lot lies within a cluster subdivision that is adjacent to an existing
  - 250 subdivision that contains at least one lot that is smaller or not more
  - 251 than 5,000 square feet larger than the smallest lot lying within the
  - 252 subject cluster subdivision; or
  - 253 iii. The lot lies within a cluster subdivision that is adjacent to an
  - 254 undeveloped parcel. A parcel is considered undeveloped if it:
    - 255 A. does not contain an existing dwelling; or
    - 256 B. contains an existing dwelling that lies further than 150 feet
    - 257 away from all external boundaries of the proposed or subject
    - 258 cluster subdivision.

259 2. Lot Width.

- 260 a. Unless otherwise regulated by the Weber-Morgan Health Department or Weber County
- 261 Code Title 108, Chapter 14, Hillside Development Review Procedures and Standards,
- 262 the minimum lot width in a cluster subdivision is:
  - 263 i. 100 feet in the Forest (F-40) and the Forest (F-10) Zones.
  - 264 ii. 80 feet in the Forest Residential (FR-1), Forest (F-5), Agricultural Valley
  - 265 (AV-3), and the Forest Valley (FV-3) Zones.
  - 266 iii. 60 feet in the Residential Estates (RE-15 and RE-20) and Agricultural (A-
  - 267 1, A-2, and A-3) Zones.
  - 268 iv. 50 feet in the Forest Residential (FR-3) and the Ogden Valley Destination
  - 269 and Recreation Resort (DRR-1) Zone.

- 270 3. Yard Setbacks for dwellings.
- 271 a. Minimum yard setbacks for dwellings in a cluster subdivision are as follows:
- 272 i. Front: 20 feet.
- 273 ii. Side: 8 feet.
- 274 iii. Rear: 20 feet.
- 275 4. Dwelling Height.
- 276 a. The maximum height for dwellings in a cluster subdivision is 40 feet.

277

### 278 **Sec. 108-3-8. Bonus Density**

279 Weber County may, in its discretion, allow for an increased number of residential lots by awarding  
280 bonus densities to those cluster subdivisions developed within the Western Weber County Township.  
281 Cluster subdivisions within the Ogden Valley Township are not eligible for bonus densities. The following  
282 presents the bonus density opportunities that are available to cluster subdivisions located within specific  
283 zoning boundaries:

- 284 1. In the Forest (F-40) Zones, Weber County may award a maximum bonus density of 20 percent  
285 based on an accumulation of any combination of the following:
- 286 a. If the cluster subdivision meets the purpose and intent of this chapter, up to a five  
287 percent bonus may be granted.
- 288 b. If the cluster subdivision provides a minimum of one road stub to an adjacent property  
289 where the planning commission determines that streets are needed to provide for  
290 current or future traffic circulation, up to a five percent bonus density may be granted.
- 291 c. If the cluster subdivision provides a minimum of one approved public access to public  
292 lands, up to a five percent bonus density may be granted.
- 293 d. If the cluster subdivision provides common area that offers easily accessible amenities,  
294 such as a trail, park, or community garden, that are open for use by the general public,  
295 up to a five percent bonus density may be granted.
- 296 e. If the cluster subdivision dedicates and conveys to Weber County, the State Division of  
297 Wildlife Resources, or both, an open space easement that permanently preserves areas  
298 that have been identified by the State Division of Wildlife Resources as having  
299 substantial or crucial wildlife habitat value, up to a 15 percent bonus density may be  
300 granted.
- 301 2. In the Agricultural (A-1, A-2, and A-3) Zones, Weber County may grant a bonus density of up to  
302 50 percent if the applicant preserves an open space percentage above that required by Section  
303 108-3-4(3)(d); otherwise Weber County may grant a bonus density of up to 30 percent. Overall  
304 bonus density potential shall be no greater than a percentage equal to the percentage of the  
305 subdivision's total area preserved as open space. Weber County may award bonus densities  
306 based on an accumulation of any combination of the following:



- 307 a. If a cluster subdivision meets the purpose and intent of this chapter, up to a five percent  
308 bonus may be granted.
- 309 b. If a cluster subdivision provides and implements an approved roadway landscape and  
310 design plan that includes, but is not necessarily limited to, vehicle and pedestrian  
311 circulation, lighting, and street trees of an appropriate species, size of at least a 2 inch  
312 caliper, and quantity of not less than eight trees for every 100 feet of road length, up to  
313 20 percent bonus density may be granted.
- 314 c. For each five percent increment of open space preserved over 50 percent: a five percent  
315 bonus density shall be granted up to the total bonus density allowed by subsection (3).
- 316 d. If a cluster subdivision provides a minimum of one approved access to public lands, up  
317 to a ten percent bonus density may be granted.
- 318 e. If a cluster subdivision provides common area that offers easily accessible amenities  
319 such as trails, parks, or community gardens, that are open for use by the general public,  
320 up to a 15 percent bonus density may be granted.
- 321 f. If ten percent of the lots and homes in a cluster subdivision are permanently set aside  
322 for affordable housing as outlined by the Affordable Housing Act of 1990, up to a 20  
323 percent bonus density may be granted.

324 If a bonus density is granted for affordable housing, the applicant shall:

- 325 i. Present and gain Planning Commission approval of an effective plan and  
326 method for guaranteeing and enforcing perpetual affordability. Any  
327 method used, such as an affordable housing deed restriction, shall limit  
328 the sale or rental of the affected lots and homes to a household with an  
329 income at or below 80 percent of the County median income;
- 330 ii. Identify and label, on the final plat, the lots set aside as Affordable  
331 Housing Lots; and
- 332 iii. Provide a note on the final plat explaining the nature of the housing  
333 restriction on the lot and the method by which occupancy and  
334 affordability will be regulated.
- 335 g. If a cluster subdivision preserves an agricultural parcel with an agriculturally based Open  
336 Space Preservation Plan approved by the planning commission and records an  
337 agricultural preservation easement on the parcel, a bonus density may be approved as  
338 follows:
- 339 i. For a parcel containing at least ten acres but fewer than 20 acres, up to  
340 a 15 percent bonus density may be granted.
- 341 ii. For a parcel containing at least 20 acres but fewer than 30 acres, up to a  
342 20 percent bonus density may be granted.
- 343 iii. For a parcel containing at least 30 acres but fewer than 40 acres, up to a  
344 30 percent bonus density may be granted.

- 345 iv. For a parcel containing at least 40 acres but fewer than 50 acres, up to a
- 346 40 percent bonus density may be granted if the parcel standing alone is
- 347 greater than the minimum open space requirement for the subdivision.
- 348 v. For a parcel containing at least 50 acres or more, up to a 50 percent
- 349 bonus density may be granted if the parcel standing alone is greater
- 350 than the minimum open space requirement for the subdivision.
- 351 h. If a cluster subdivision provides for the preservation of historical sites and buildings that
- 352 have been identified by the State Historic Preservation Office as having notable
- 353 historical value, up to a five percent bonus density may be granted.
- 354 i. If a cluster subdivision provides for the development of excess sewage treatment
- 355 capacity, up to a five percent bonus density may be granted.
- 356 j. If a cluster subdivision dedicates and conveys to Weber County, the State Division of
- 357 Wildlife Resources, or both, an open space easement that permanently preserves areas
- 358 that have been identified by the State Division of Wildlife Resources as having
- 359 substantial or crucial wildlife habitat value, up to a 15 percent bonus density may be
- 360 granted.
- 361 k. If a cluster subdivision includes an open space parcel that consists of five acres or more
- 362 and is contiguous to permanently preserved open space on an adjoining property
- 363 located outside of the cluster subdivision, up to a 20 percent bonus density may be
- 364 granted.

**Sec. 108-3-9. Homeowner’s Association Required**

365 In order to provide for proper management and maintenance of commonly owned areas and private  
366 improvements, all cluster subdivisions with such areas or improvements are required to have a  
367 homeowner’s association. The applicant, prior to recording a final plat of the cluster subdivision, shall:  
368

- 369 1. Establish a homeowners association and submit for Weber County review the necessary articles
- 370 of incorporation, bylaws, and declaration of covenants, conditions, and restrictions that provide
- 371 for:
  - 372 a. Compliance with Utah State Code;
  - 373 b. The reason and purpose for the association’s existence;
  - 374 c. Mandatory membership for each lot or home owner and their successors in interest;
  - 375 d. The perpetual nature of the easements related to all dedicated open space parcels;
  - 376 e. Responsibilities related to liability, taxes, and the maintenance of recreational and other
  - 377 infrastructure and facilities;
  - 378 f. Financial obligations and responsibilities, including the ability to adjust the obligations
  - 379 and responsibilities due to change in needs;
  - 380 g. Association enforcement remedies; and
  - 381 h. A notification of the County’s ability to enforce the terms of the owner’s dedication on
  - 382 the subdivision dedication plat.
- 383 2. Register the homeowners association with the State of Utah, Department of Commerce.

**Sec. 106-2-6. Cluster subdivisions; special provisions.****(a) Design standards.**

(1) The design of the preliminary and final plats of the subdivision in relation to streets, blocks, lots, common open spaces and other design factors shall be in harmony with the intent of zoning regulations, elements of the general plan that have been adopted by the commission and design standards recommended by the planning commission and approved by the county commission.

(2) Streets shall be so designed as to take advantage of open space vistas and to create drives with a rural or open space character.

(3) Cluster subdivisions, in the mountain areas of the county shall be designed in a cluster of approximately 20 lots surrounded by and generally in the middle of the common open space with distances of approximately 1,000 feet or more or significant topographic barriers separating the clusters. A major portion of land designated as common open space shall serve a direct beneficial and usable purpose to the lots in the cluster subdivision and shall be reasonably accessible land.

(4) Cluster subdivisions, in areas of the county where year-round living is normally expected or proposed, shall use the following design elements in preparation of the preliminary plat of the cluster subdivision:

a. A majority of the proposed lots shall have direct access to the common open space. The remaining lots shall be connected to the common open space by a trail system or by a sidewalk system in urban type subdivisions.

→ b. The proposed common open space shall consist of land which under normal circumstances could be considered for subdivision. Lands that can be mitigated such as floodplain and wetlands are considered developable and shall be counted towards density. Floodways, lakes, and rivers which could not be developed but provide an amenity may also be a part of the common open space, with 25 percent of this land credited towards the overall density of the development if this land is used to provide amenities to the development.

c. The planning commission shall approve any density bonus and total number of units/lots. The design of the clusters shall generally be such that open space vistas or developed open space intercede between clusters.

(5) If a bonus density is granted for affordable housing, then the affordable housing lots shall be identified on the subdivision plat. A deed restriction shall also be recorded on these lots limiting the sale, or renting of the homes to a household with incomes at or below 80 percent of the area median income.

(6) If an agricultural preservation easement is proposed, the agricultural parcel shall be a contiguous parcel containing a minimum of ten acres. Roads may bisect the parcel and shall be approved by the planning commission. An agricultural preservation plan shall be submitted at the time preliminary subdivision plans are submitted for review, with a letter from the agricultural extension agency approving the plan, if bonus density is requested for agricultural preservation.

~~(b) Provision of common open space.~~

~~(1) The subdivider of a cluster subdivision shall submit plans of landscaping and improvements for the common open space at preliminary submittal. If the property is to remain agricultural, then a copy of the agricultural preservation agreement shall be recorded with the final plat. A cluster subdivision shall meet the requirements of the Weber County Land Use Code, and shall assure proper use, construction and maintenance of open space facilities and shall result in a development superior to conventional development in terms of its benefits to future owners of the subdivision, surrounding residents and the general public.~~

~~(2) The planning commission may place additional conditions or restrictions necessary to ensure development and maintenance of the common open space, including plans for deposition or re-use of property if the open space use is not maintained in the manner agreed upon or is abandoned by the owners.~~

~~(3) Guarantee of common open space improvements. As assurance of completion of common open space improvements, the subdivider may be required to file with the county commissioners an approved financial guarantee, guaranteeing such completion in a manner satisfactory to the county commissioners, within two years of such filing. Upon completion of the improvements for which a financial guarantee has been filed, the subdivider shall call for inspection by the planning commission, such inspection to be made within 14 days from the date of request. If inspection shows that landscaping and construction have been completed in compliance with the approved plan, the financial guarantee therefore shall be released within seven days from the time of inspection. If the financial guarantee is not released, refusal to release and reasons therefore shall be given the subdivider in writing, within 14 days from the time of inspection.~~

~~(4) Continuation of common open space. As assurance of continuation of common open space use in accordance with the plans approved by the planning commission the subdivider shall grant to the county, or an approved land trust, or another approved entity an "open space easement" on and over the common open space as part of the final subdivision plat. The final subdivision plat will provide that the common open space remains open. If a bonus density was given for critical wildlife habitat, then a wildlife habitat easement shall be given to the state division of natural resources.~~

~~(5) Maintenance of common open space, etc.~~

~~a. As assurance of maintenance of the common open space and other improvements where so required, the subdivider shall cause to be formed prior to the recording of the final plat, a lot owners' association and shall establish articles of incorporation of the association, bylaws and covenants outlining the purpose, organization and operation of the association.~~

~~b. Such articles of incorporation and covenants shall among other things provide:~~

~~1. That membership shall be mandatory for each lot purchased and each successive buyer.~~

~~2. That common open space restrictions must be permanent, not just for a period of years.~~

~~3. That the association shall be responsible for liability insurance, local taxes and the maintenance of recreational and other facilities.~~

~~4. That lot owners must pay their pro-rate share of the costs.~~

~~5. That the assessment levied by the association can become a lien on the property.~~

~~6. That the association shall be able to adjust the assessment to meet changed needs.~~

~~7. In the event the lot owners association does not maintain the common open space and improvements as proposed and indicated at the time of subdivision, the county may at its option, do or contract to have done the required maintenance and recover the costs incident thereto by means of a lien against the involved properties of the members of the lot owners association.~~



## Weber County Planning Division

To: Western Weber Planning Commission  
From: Charles Ewert, AICP  
Date: October 14, 2014  
Subject: Weber County Land Use Code Revision Process: What to Expect

Staff has determined that it is time to start making changes to the Weber County Land Use Code. The successful and defensible administration of land use ordinances is built on the framework of reasonable and clearly written ordinances. To the extent possible ordinances should be free of conflicting provisions. They should portray the intended expectations to the reader. Given their regulatory nature they should provide the citizens with a predictable and consistent approach to regulating. The current Land Use Code needs some fine-tuning to help provide for this.

**Background.** The current Land Use Code has endured many changes over time that were intended to help the County address specific issues, but due to the different nature of these types of changes (specific purpose of the change, different writing styles, different interpretations of the law, different eras of best management practices, etc.) we are left in some cases without clear and concise ordinances to function as a cohesive set of laws. This is typical over time and can be seen in various jurisdictions elsewhere. The continuous improvement to ordinances will help keep the County out in front of current legal issues and also help provide more meaningful implementation of the purpose of the law.

**Proposal.** There has been desire expressed by some members of both Planning Commissions as well as members of the public that we need to make the reconsideration of some of the allowed uses in each zone the highest priority for these changes. This will include re-evaluating by what review process they are allowed (permitted or conditional) or whether they should even be allowed in that zone. This is especially important given the relatively recent changes in the state law that requires permits for all land uses listed as allowed per zone, including conditional uses, to be approved if reasonable mitigating conditions based on existing ordinances can be applied.

The order in which certain ordinance sections are changed is important so as not to leave certain uses under-regulated while we are making changes. Reconsidering allowed uses in each zone will first require revisions in other code sections. If a problem arises during the change process that was not foreseen we have the option to enact a moratorium on development activities, but the plan at this time is to carefully change the code in phases in a manner that will avoid development moratorium.

It seems that addressing the deficiencies in the conditional use permit chapter is the most prudent place to start this process. This will be **Phase 1**. From there we can more effectively address who the land use authority is for certain types of decisions. This will be **Phase 2**. Following Land Use Authority clarifications we can more specifically address the uses allowed in each zone, which is **Phase 4**, but before doing so we need to consolidate and organize all known land uses currently in the code into one Land Use Table. The advent of a Land Use Table will assist us in providing a comparative analysis of each use as they are applied across zones. This will provide us with a clearer understanding of how uses are regulated in each zone and provide us with a clearer understanding of the relationships between zoning districts. The creation of the land use table is **Phase 3**.

Throughout the process we will also be bringing many other smaller ongoing edits, clarifications, and additions to



## Weber County Planning Division

various sections of the Land Use Code to the Planning Commission for consideration and recommendation. The proposals will come in pieces. It will not be uncommon for the Planning Commission to see two seemingly unrelated changes in one of these proposed text revisions. The Planning Commission may also see the same code section come forward with new changes at separate times. To avoid under-regulation of uses we may propose certain changes to a section as a “placeholder” until another section is better developed, then undo the changes in the first. We will do everything we can to avoid this, but it may be necessary at times.

**Planning Commission Consideration.** As the Planning Commission hears and considers each proposed change there are several things to be looking for:

1. Does the proposed change comply with the purpose and/or intent of the specific code section or relevant zone? Every change should comply with that purpose/intent OR that purpose/intent should be changed to more accurately reflect current needs and desires.
2. Does the proposed change comply with the goals and objectives of the General Plan? You will need to dust off those general plans and refresh your knowledge of what is in them. The General Plan should act as a guide to vet land use ordinance decisions.
3. Does the proposed change promote the health, safety, and welfare of the community?
4. Does the proposed change provide equitable balance between land use rights and the public good?

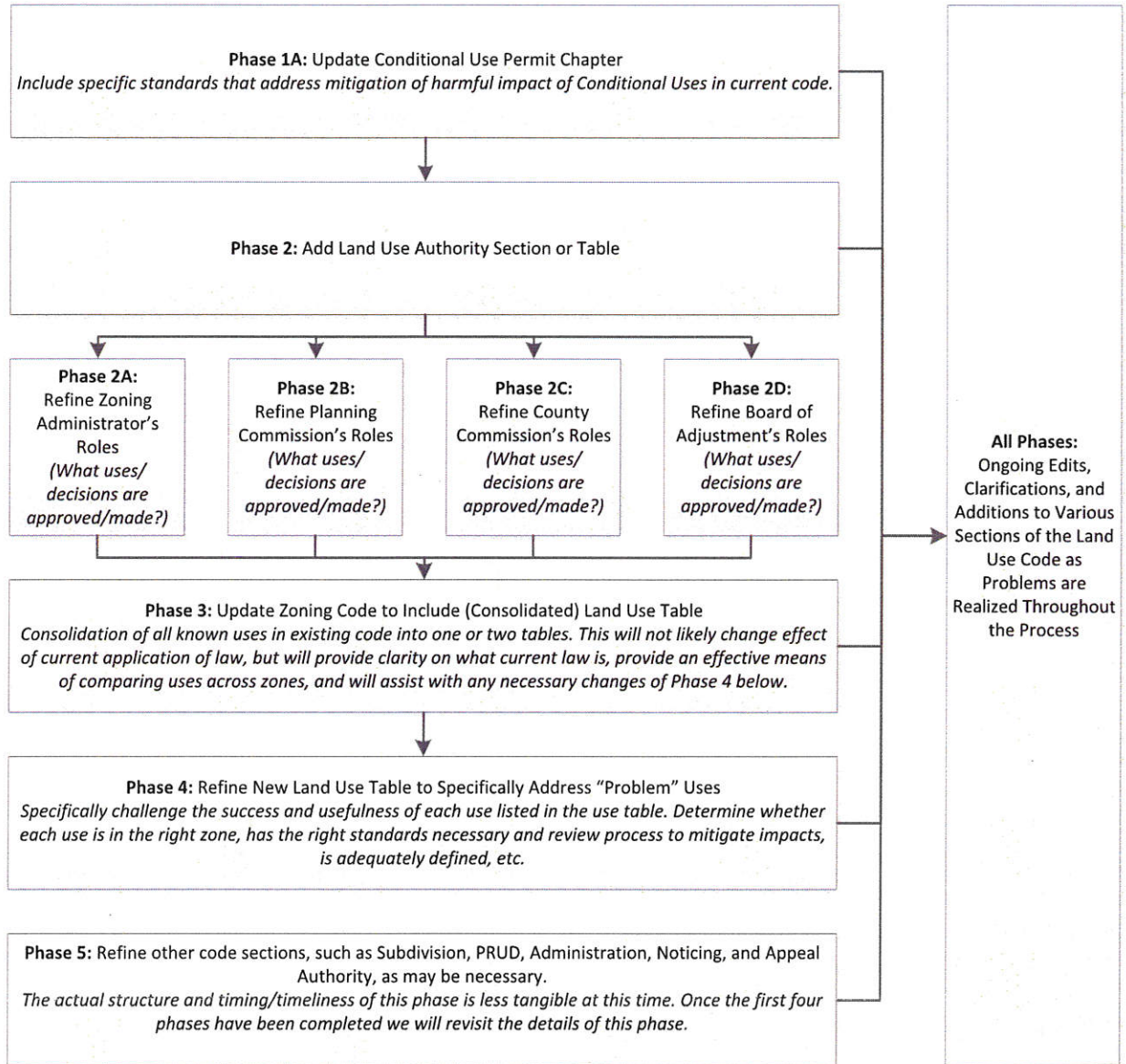
Attached are three Exhibits. The first, Exhibit A, is the workflow chart identifying the work process as detailed in the paragraphs above. Keep this as a guide to help you understand where we are in this process. The second, Exhibit B, is the current list of ordinances that staff has identified as trouble spots. It is updated regularly with new needed changes as problems are found. The third, Exhibit C, is a sample of a Land Use Table. It is not intended to be the final Weber County product, but the framework will likely be similar.

### Attachments:

- Exhibit A: Weber County Land Use Code Revision Process Workflow Chart
- Exhibit B: Ordinance Update Tracking List (Prioritized)
- Exhibit C: Sample Land Use Table

## Weber County Land Use Code Revision Process Workflow

This flowchart is intended to illustrate the intended course of the revision process. It is not an absolute plan, and deviations may occur as more information is gathered, but it will provide the Planning Commission with an idea where we are in the process at any given time. Staff will refer to this structure regularly.





Ordinance Update Tracking List

Priority	Who Added	Date Added	Title	Chap.	Sec.	Subject	Notes
						<i>Enter the subject of the change. If multiple code sections need to be changed list the most relevant to the change in the title/chap/sec columns</i>	<i>Include only enough information to explain the problem and all sections known involved in change</i>
1	Charlie	8/11/14	108	4		Re-write CUP code	Ombudsman says see South Salt Lake's Ordinance. Change all ties to a C/O in the land use ordinance to a land use permit. Require all but certain uses to obtain a land use permit.
1	Charlie	8/28/14	102	4		Remove C/O requirements from code	All zones. Provide clear description of the use. Shore up site plan standards.
2	Charlie	3/21/14	104			Consolidate similar uses by function; focus on form.	
2	Charlie	4/8/14	104	1	1	Table of zones is missing the DRR-1 zone.	
2	Charlie	4/17/14	104	11		Add residential uses to use table	There are not currently any non-commercial residential uses allowed in the CVR-1 zone, but the lot standards section include them, and past approvals have them.
2	Charlie	8/11/14	104			Accessory apartments should be listed in the use tables where allowed.	§108-19 allows accessory apartments. This allowance should not exist in the code in isolation. It should be included in the relevant land use tables.
2	Charlie	8/28/14				Create Use Table Matrix for all uses	
2	Charlie	9/2/14	104	4		Define what types of commercial, industrial, and institutional uses are allowed in agricultural and residential areas	Focus on providing qualitative descriptions of uses.
2	Charlie	9/4/14				Add Land Use Authority table	
3	Charlie	5/6/14	108	7	16	Architectural Considerations on Large Accessory Buildings	Need to find a different solution to the requirement that buildings in front of an imaginary line behind the main building requires architectural review. Maybe include pictures in the code.
3	Charlie	5/6/14	108	7	16	Architectural Consideration on Large Accessory Buildings	Should large accessory buildings significantly setback from public right of way require architectural considerations?
4	Charlie	5/15/14	101	1	7	Revise "Rear Lot Line" and Irregular Shaped Lot"	Difficult to understand. Difficult to administer
5	Charlie	7/1/14	108	17	4	Allow for certain exceptions from adopted pathways standards	Allow for modifications of adopted trails standards for topographic, access, drainage, etc. problems upon positive findings of County Engineer. Provided that construction meets best standards of practice.
5	Charlie					Flood Plain Administrator changed Co Engineer.	
	Charlie	4/15/14	110	2		Rewrite sign ordinance -- ALL	It has many unintelligible portions
	Charlie	4/15/14	101	1	7	Restricted Lots Definition	Move standards for restricted lots out of definitions and into standards section
	Charlie	4/17/14	104	11		Re-write "area" requirements	Current requirements are grammatically flawed. Needs clarification. Sec 104-11-6(a)(1)
	Charlie	4/17/14	101	1	7	Define three family and four family dwellings	Several sections identify three and four family dwellings as different uses than multi family (defined as more than four families).
	Charlie	4/18/14	108	3	7	Specify what authority releases open space easements	Open space easements are applied to a plat by administrative action, but to remove them there would need to be a legislative action. The code should specifically state that.
	Charlie	9/17/14				Nonconforming use addition	Add a special nonconforming provision that calls all properties created nonconforming due to the acquisition of a ROW by a public entity legal-nonconforming.
	Jim	9/17/14				Tiny Home	Tiny Homes are from 100 to 500 Sq. Ft.
	Charlie	9/24/14	106			Public vs. Private Roads	Need specific text that enables the County to require roads to be private. There needs to be objective reasons for this: relate it to economic viability of a new road in relation to the overall financial benefit/impact of the development.
	Ronda	9/24/14	106	1	6/8	Public Hearing Notice for Subdivisions	The code requires a public notice for public hearing to be sent out not less than seven days prior to the Planning Commission's meeting for PRELIMINARY PLAN APPROVAL; Notice for FINAL PLAT APPROVAL is only required on Minor Subdivisions-not large subdivisions. Should this be removed as a requirement of the Minor Subdivision and only hold the notice during the preliminary stage of the subdivision?

Dana	9/29/14			PRUD to have setback from "travel way".	Edgewater has a house garage that is 12 inches away from the travel way. This is dangerous. The car backing out cannot see traffic as it enters the road/drive out front of the house.
Charlie	10/6/14	106		Public or Private Streets	Streets can be required to be private if developer fails to demonstrate that the revenue from the development does not reasonable compensate for the County's O&M of such public infrastructure.
Charlie	10/6/14	102	4	LUP, BP, and Cofo may be withheld	Sure up code to say that land use permits, building permits, and certificates of occupancy may be withheld in order for the County to gain compliance with req'd regulations, including conditions of approval of the permit, as may be applicable.
Charlie	10/7/14	110	2	Signs in DRR zone	Allow for directional signs.

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Adopted by Ordinance 12-1204 on December 4, 2012. Effective January 1, 2013.

**APPENDIX A  
TABLE OF USES AND ACCOMPANYING USE DEFINITIONS**

Use Standards:

1. The Millard County Table of Uses identifies the uses allowed within each Zoning District and provides a definition for each use. The Table of Uses identifies uses allowed as a P-1 = Permitted Use; P-2 = Permitted Use; C-1 = Conditional Use; C-2 Conditional Use; X = Use Prohibited in the Zoning District (Zone). A Use that is not identified in the Table of Uses is determined to be a Prohibited Use in Millard County. See Section 10-17-8.
2. The Land Use Authority for all P-1 Uses is the County Planner/Zoning Administrator. The Land Use Authority for all P-2 Uses is the Commission. The Land Use Authority for all C-1 Uses is the Commission. The Land Use Authority for all C-2 Uses is the BOCC.
3. The Land Use Authority, as applicable, shall insure that all requirements of this Ordinance are met, particularly Chapter 17 and Chapter 18, as applicable, with all Land Use Application and Permit approvals.
4. The Land Use Authority, as applicable, in reviewing a Land Use Application shall determine if the requirements of Chapter 20 and Chapter 21 are applicable.
5. Major Utility Corridors. Any use, building, structure, or activity proposed to be located within a Major Utility Corridor, as defined and identified by the Millard County General Plan, as adopted, shall be reviewed and considered by the Millard County Planning Commission for Utility Corridor compatibility. If such use, building, structure, or activity is determined by the Planning Commission to conflict with the purpose(s) of the Major Utility Corridor, or to be incompatible in any way, such use, building, structure, or activity shall be a Prohibited Use, Building, Structure or Activity within the Major Utility Corridor.
6. Superscripts refer the Notes, provided immediately following the Table.

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USE												
	RF	AG -20	AG	AI	RI	HC	II	HI				
<b>Accessory Building/Structure.</b> A building or other customarily incidental and clearly subordinate to the existing primary building and located on the same lot as the primary building, and meeting all requirements of the adopted Building Codes, and Land Use Ordinances, as applicable. See Section 10-186.	P-1	P-1	P-1	P-1	P-1	P-1	P-1	P-1				
<b>Accessory Agricultural Sales.</b> The retail or wholesale sale of agricultural or horticultural products which are grown or raised on site not having been purchased from another location for the purpose of resale.	P-1	P-1	P-1	P-1	X	X	X	X				
<b>Accessory Dwelling Unit for an Employee.</b> An attached, or detached dwelling unit for the occupancy by the owner, or employee of the owner, and incidental and clearly subordinate to the existing primary building located on the same lot as the primary building and connected to the same utilities and utility meters as the primary building and meeting all requirements of the Land Use Ordinances and Building Codes, as adopted. See Sections 10-189 and 10-17-33.	C-1	C-1	C-1	C-1	X	C-1	C-1	C-1				
<b>Accessory Outside Storage.</b> The outside placement of items which is clearly incidental and subordinate to the existing primary use and customarily found in connection with the primary use and located on the same lot or in the same building as the primary use, and meeting all requirements of the adopted Building Codes, and Land Use Ordinances, as applicable.	P-1	P-1	P-1	P-1	P-2	P-2	P-1	P-1				
<b>Accessory Use.</b> A use clearly incidental and subordinate to the existing primary use and customarily found in connection with the primary use and located on the same lot or in the same building as the primary use,	P-1	P-1	P-1	P-1	P-1	P-1	P-1	P-1				

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USE	RF	AG -20	AG	AI	R1	HC	II	HI
	and meeting all requirements of the adopted Building Codes, and Land Use Ordinances, as applicable. See Section 10-18-6.							
<b>Agricultural Building</b> A structure used in conjunction with an allowed agriculture use, as defined herein, and not for human occupancy, and complying with the requirements of §58-56-4, Utah Code Annotated, 1953, as amended. To qualify as an agricultural building the structure must meet all requirements of §58-56-4(1), Utah Code Annotated, 1953, as amended and be clearly associated with and necessary to support an agricultural use.	P-1	P-1	P-1	P-1	P-1	X	X	X
<b>Agricultural Products Processing</b> The processing of agricultural products including but not limited to the processing, cleaning, sorting, grading, packaging, or milling of products which are intended for direct human or animal consumption or use. This use does not include the commercial slaughtering or the processing and packaging of meat and poultry. See Meat or Poultry Processing Facility.	C-1	C-1	X	C-1	X	X	X	C-1
<b>Agricultural Use</b> An area of five (5) contiguous acres, or more, which is used for the production, keeping, or maintenance for sale of plants and domestic animals, but excluding the keeping of exotic or prohibited plants or animals. Agricultural Use excludes Commercial Plant Nursery, as defined herein, and Concentrated Animal Feeding Operation, as defined by Utah Code Annotated, 1953, as amended, and similar activities. See also Animal Feeding Operation.	P-1	P-1	P-1	P-1	P-1	P-1	P-1	P-1
<b>Airport/Heliport</b> Areas used for the landing and takeoff of both fixed wing aircraft and helicopters and buildings or other facilities, including taxiways, aircraft storage and tie-down areas, hangars, servicing, and passenger and freight terminals and which may be designed or used by	C-2	X	X	X	X	X	X	C-2

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	both public carriers or private aircraft.							
<b>Animal Control Facility.</b> A public or publicly licensed facility to temporarily detain and/or dispose of stray dogs, cats and other animals.	C-1	X	X	X	X	X	X	C-1
<b>Animal Feeding Operation (AFO).</b> A facility that stables, confines, and feeds or maintains livestock in either an open or housed lot for a total of 45 days or more in any 12-month period. The open lot does not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season. Two or more animal feeding operations under common ownership are a single animal feeding operation if they adjoin each other (within one mile), or if they use a common area or system for the disposal of manure. An AFO may also be a Concentrated Animal Feeding Operation (“CAFO”). (See CAFO). An AFO may be subject to the requirements of the Utah Pollutant Discharge Elimination System (UPDES).	X	X	X	C-1	X	X	X	X
<b>Asphalt Batch Plant.</b> A facility where asphaltic materials are manufactured and including accessory asphalt materials storage and equipment.	X	X	X	X	X	X	X	C-2
<b>Automotive Care.</b> An establishment providing motor vehicle repair or maintenance services within completely enclosed buildings. Typical uses include businesses engaged in the following activities: electronic tune-ups, brake repairs (including drum turning), air conditioning repairs, generator and starter repairs, tire repairs, front-end alignments, battery recharging, lubrication, and sales, repair and installation of minor parts and accessories such as tires, batteries, windshield wipers, hoses, windows, etc.	X	X	X	X	X	C-1	C-1	P2
<b>Automotive Self-Service Station.</b> A place where flammable or	X	X	X	X	X	C-1	X	X

USE	RF	AG-20	AG	AI	RI	HC	II	HI
	combustible liquids or gases used as fuel are stored and dispersed from fixed equipment into the fuel tanks of motor vehicles. Such an establishment may offer the retail sale of convenience items as an accessory use. Automotive Self-Service Station specifically excludes and does not allow any servicing, repair or maintenance of motor vehicles, trailers, and similar mechanical equipment, including engine, brake, muffler, tire repair and change, lubrication and tune-ups.							
<b>Bed &amp; Breakfast Inn.</b> An owner-occupied dwelling located on a legal lot and offering transient lodging accommodations where meals may be provided. A Bed and Breakfast may have up to seven (7) guest rooms. A Bed & Breakfast Inn shall meet all applicable requirements of the Building Codes, Health Codes, and Land Use Ordinances, as adopted, and must be located so as to be served by adequate existing public services. See Sections 10-18-11 and 10-17-33	C-1	C-1	C-1	X	C-1	C-1	X	X
<b>Beer and Liquor License(s).</b> All licensees authorized to sell beer and liquor and/or consume beer and liquor on- or off the premises shall comply with all requirements of the Utah Alcoholic Beverage Control Act, as amended, for type of Beer and Liquor License, as applicable, and be conducted in compliance with all requirements for the issuance of such license. See Section 10-18-19.	X	X	X	X	X	C-2	C-2	X
<b>Campground.</b> An area of land upon which one (1) or more sites are established and maintained for occupancy by a tent or recreational vehicle.	C-1	C-1	C-1	X	X	C-1	X	X
<b>Car Wash.</b> A structure with machine- or hand-operated facilities used principally for the cleaning, washing, polishing, or waxing of motor vehicles. A facility of this type may be able to accommodate more than one	X	X	X	X	X	C-1	C-1	X

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USE	RF	AG-20	AG	AI	R1	HC	LI	HI
	vehicle at the same time.							
<b>Cemetery.</b> A place designated for the burial or keeping of human remains, including crematories and mausoleums.	C-1	C-1	C-1	X	C-1	X	X	X
<b>Child Care – Facility.</b> A facility that provides child care in a place other than the owner's residence for five (5) or more children for less than twenty-four (24) hours per day, having a regularly scheduled, ongoing enrollment, for direct or indirect compensation and licensed as required by the laws and rules of the State of Utah, A Fire Clearance shall be provided by the Fire Authority, as applicable, and this use shall comply with all business-licensing requirements of the County, as applicable.	X	X	X	X	X	C-1	X	X
<b>Child Care – Facility also includes Child Preschool</b> providing instruction for five (5) or more children for less than twenty-four (24) hours a day. See Section 10-183.								
<b>Child Care – Home Day Care.</b> The care of children who are family and non-family members in an occupied dwelling unit, and complying with all State standards and licensing, by a resident of the dwelling unit for more than five (5) children, but fewer than nine (9) children. The total number of children being cared for shall include children under the age of four (4) years residing in the dwelling unit, who are under the supervision of the provider during the period of time the childcare is provided. Of the allowed eight (8) children, only two (2) may be under age two (2). Home Day Care may use the entire residential living area and additionally may use yard space for play purposes. This use is required to comply with all business licensing requirements of the County. See Section 10-183.	X	P-2	P-2	X	P-2	P-2	X	X
<b>Child Care – Hourly.</b> A facility that provides child care in a place other than the owner's residence for five (5) or more children for less than	X	X	X	X	X	C-1	X	X



USE	RF	AG-20	AG	AI	RI	HC	II	HI
	<p>twenty four (24) hours a day, but not on a regular schedule; and receiving direct or indirect compensation and licensed as required by the laws and rules of the State of Utah, A Fire Clearance shall be provided by the Fire Authority; as applicable; and this use shall comply with all business-licensing requirements of the County, as applicable. Child Care - Hourly also includes Child Preschool providing instruction for five (5) or more children for less than twenty-four (24) hours a day. See Section 10-183.</p>							
<p><b>Child Care – Licensed Family.</b> (1) A person who provides child care in a residence for nine (9) to sixteen (16) children, unrelated to the licensee for less than twenty four (24) hours a day, with a regularly scheduled, on-going enrollment, for direct or in-direct compensation. A “Child Care - Licensed Family” must be licensed as a family group childcare program, as required by the laws and rules of the State of Utah. The Fire Authority, as applicable, shall provide a Fire Clearance and this use shall comply with all business-licensing requirements of the County, as applicable. (2) A person who provides child care in a residence for less than nine (9) unrelated children for less than twenty four (24) hours per day, having a regularly scheduled, ongoing enrollment, for direct or indirect compensation may be licensed as a family child care program, as required by the laws and rules of the State of Utah. The Fire Authority, as applicable, shall provide a Fire Clearance and this use shall comply with all business-licensing requirements of the County, as applicable. Child Care - Licensed Family also includes Child Preschool providing instruction in a residence for nine (9) to sixteen (16) children unrelated to the licensee for less than twenty-four (24) hours a day. See Section 10-183.</p>	X							
<p><b>Child Care – Residential Certificate.</b> The care of children in the</p>	X	P-2	P-2	X	P-2	P-2	X	X

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	residence of the provider for five (5) to eight (8) children and having a regularly scheduled, ongoing enrollment, for direct or indirect compensation and licensed as required by the laws and rules of the State of Utah. The Fire Authority, as applicable, shall provide a Fire Clearance and this use shall comply with all business-licensing requirements of the County, as applicable. Child Care - Residential Certificate also includes Child Preschool providing instruction in a residence for five (5) to eight (8) children unrelated to the licensee for less than 24 hours a day. See Section 10-18-3.							
<b>Church.</b> A facility primarily used for people to gather for worship, religious training, or other religious activities. One (1) accessory dwelling unit for the housing of the pastor or similar leader of the church and their family shall be permitted as an Accessory Use. See Section 10-18-5.	X	C-1	C-1	X	C-1	C-1	X	X
<b>Commercial Day Care/Preschool Center.</b> A facility, operated by a person qualified and licensed by the State of Utah, which provides children with day care and/or preschool instruction as a commercial business and complying with all applicable State standards and licensing and having regularly scheduled, ongoing enrollment for direct or indirect compensation that provides child care for less than twenty four (24) hours per day. Commercial Day Care/Preschool Center excludes the following: (a) Kindergartens or nursery schools or other daytime programs operated by public or private elementary or secondary schools or institutions of higher learning; (b) Facilities operated in connection with a fitness center, shopping center or other activity where children are cared for temporarily while parents or custodians of the children are occupied on the premises or are in the immediate vicinity and readily available; or (c) Special	X	X	X	X	X	C-2	X	X

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	activities or programs, including athletics, crafts instruction and similar activities, conducted on a periodic basis by civic, charitable, private, or governmental organizations; (d) or clearly identified as an Accessory Use. See Section 10-18-3.							
<b>Commercial Plant Nursery.</b> A use wholly or partially contained and conducted within one (1) or more greenhouses where trees, shrubs, flowers, or vegetable plants are grown and sold either retail or wholesale.	C-1	C-1	X	C-1	X	X	X	C-1
<b>Composting Facility.</b> A facility where organic materials are converted into a humus-like material under a process of managed biological decomposition or mechanical processes. Normal backyard composting and composting incidental to agricultural operations are exempted from this use.	X	X	X	X	X	X	X	C-2
<b>Concentrated Animal Feeding Operation.</b> An Animal Feeding Operation (AFO) is a "concentrated animal feeding operation" ("CAFO") if it meets the regulatory definition of CAFO or if it is designated as a CAFO. A CAFO is defined in 40 CFR 122.23 Appendix B as "an animal feeding operation where more than 1,000 'animal units' (as defined by the regulation) are confined at the facility; or more than 300 animal units are confined at the facility and either one of the following conditions are met: pollutants are discharged into navigable waters through a man-made ditch, flushing system or other similar man-made device; or pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation." ("Animal unit" means a unit of measurement for any animal feeding operation calculated as per the Utah Administrative Code (UAC) R317-8-3.5 and	X	X	X	C-2	X	X	X	X

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	used to determine if an operation meets the definition of a concentrated animal feeding operation). A CAFO is subject to the requirements of the Utah Pollutant Discharge Elimination System (UPDES).							
<b>Concrete Batch Plant.</b> A facility where sand, gravel, cement, water, and other materials are turned into concrete and may be either a drum mix plant or a batch plant, and including batchers and mixers and accessory materials storage and equipment.	X	X	X	X	X	X	C-2	C-2
<b>Construction and Contractor's Sales and Services.</b> An establishment engaged in the retail or wholesale sale of materials and services used in the construction of buildings or other structures, as well as the outdoor storage of construction equipment or materials. Typical uses include lumberyards, home improvement centers, lawn and garden supply stores, construction equipment sales and rental, electrical, plumbing, air conditioning and heating supply stores.	X	X	X	C-1	X	C-1	P-2	P-2
<b>Contractor's Office/Contractor's Storage Yard.</b> A facility providing building construction and maintenance, including carpentry, plumbing, roofing, electrical, air conditioning and heating, within a totally enclosed building, and which may include the open storage of any building materials, equipment, or vehicles.	X	X	X	C-1	X	C-1	P-2	P-2
<b>Convenience Store (Existing).</b> A retail establishment selling consumer products including prepackaged food, drink, and household items. A convenience store may also provide retail sales of gasoline and other petroleum products.	X	X	X	X	C-1	C-1	X	X
<b>Convenience Store (New).</b> A retail establishment selling consumer products including prepackaged food, drink, and household items. A	X	X	X	X	X	C-1	X	X

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	convenience store may also provide retail sales of gasoline and other petroleum products.							
<b>Correctional Facility.</b> A public or private facility providing confinement, housing, and care for individuals legally confined for violations of the law.	X	X	X	X	X	C-2	C-2	C-2
<b>Distribution Center:</b> A facility where the storage and distribution of goods and materials occurs which may include the parking and storage of distribution vehicles, and accessory activities.	X	X	X	X	X	C-1	C-1	C-1
<b>Dwelling Four-Family (4plex).</b> A building containing four (4) dwelling units, each unit designed to be occupied by one (1) family. See Section 10-17-33.	X	X	X	X	X	X	X	X
<b>Dwelling Manufactured Home.</b> A transportable factory built dwelling unit constructed on or after June 15, 1976, according to the Federal Home Construction and Safety Standards Act of 1974 (HUD Code), in one or more sections, which: (1) In the traveling mode, is eight (8) feet or more in width or forty (40) feet or more in length, or when erected on site, is four hundred (400) or more square feet; (2) Is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities; (3) Includes plumbing, heating, air-conditioning, and electrical systems; and (4) Is identified by the manufacturer's data plate bearing the date the unit was manufactured and a United States Department of Housing and Urban Development (HUD) label attached to the exterior of the home certifying the home was manufactured to HUD standards. See Sections 10-18-4 and 10-17-33.	P-1	P-1	P-1	C-1	P-1	C-1	C-1	C-1
	<b>Dwelling Mobile Home (Existing):</b> A transportable factory built dwelling	P-1	P-1	P-1	P-1	P-1	P-1	P-1

Millard County Zoning Ordinance - A Millard County Land Use Ordinance  
 Adopted by Ordinance 12-12-04 on December 4, 2012. Effective January 1, 2013.

USE	RF	AG-20	AG	AI	RI	HC	LI	HI
	unit built prior to June 15, 1976, in accordance with a state mobile home code that existed prior to the Federal Manufactured Housing and Safety Standards Act (HUD Code) and existing in the zoning district prior to the effective date of this Ordinance. See Section 10-17-33.							
<b>Dwelling Multiple-Family.</b> A building containing five (5) or more dwelling units, each unit designed to be occupied by one (1) family. See Section 10-17-33.	X	X	X	X	X	X	X	X
<b>Dwelling Single-Family.</b> A building containing one (1) dwelling unit, the unit designed to be occupied by one (1) family. See Note #3. See Section 10-17-33.	P-1	P-1	P-1	C-1	P-1	C-1	C-1	C-1
<b>Dwelling Single-Family (Existing).</b> A building containing one (1) dwelling unit, the unit designed to be occupied by one (1) family and existing in the zoning district prior to the effective date of this Ordinance. See Note #3. See Section 10-17-33.	P-1	P-1	P-1	P-1	P-1	P-1	P-1	P-1
<b>Dwelling Three-Family.</b> A building containing three (3) dwelling units, each unit designed to be occupied by one (1) family. See Section 10-17-33.	X	X	X	X	X	X	X	X
<b>Dwelling Two-Family (Duplex).</b> A building containing two (2) dwelling units, each unit designed to be occupied by one (1) family. See Section 10-17-33.	X	X	X	X	X	X	X	X
<b>Earth Station.</b> A communication facility that transmits and/or receives signals to and from an orbiting satellite using satellite dish antennas.	C-1	X	X	X	X	C-1	C-1	C-1
<b>Educational Facility.</b> Public schools, including charter schools, colleges or universities qualified by the State of Utah Board of Regents or State of Utah Board of Education to provide academic instruction. Privately	C-1	X	X	X	C-1	C-1	X	X

Millard County Zoning Ordinance – A Millard County Land Use Ordinance  
 Adopted by Ordinance 12-12-04 on December 4, 2012. Effective January 1, 2013.

USE										
	RF	AG-20	AG	AI	R1	HC	II	HI		
owned buildings and uses for educational activities that offers a curriculum similar to a public school, college, or university for technical or vocational training, kindergarten, elementary, secondary or higher education.										
<b>Electric Substation (Major).</b> A power regulating facility designed to regulate power for distribution at voltages of 140,000 volts (140kV) or greater and found by the County to conform to the General Plan, or has been considered by the Commission and the BOC C has approved the proposed location as an amendment to the General Plan.	C-2	X	X	X	X	X	X	X	C-2	
<b>Electric Substations (Minor).</b> A power regulating facility designed to regulate power for distribution to customers at voltages less than 140,000 volts (140 kV).	C-1	C-1	C-1	C-1	X	X	C-1	C-1	C-1	
<b>Electric Transmission Right of Way (Major).</b> A power transmission right-of-way designed to provide for the location of electric transmission lines designed to operate at voltages of 140,000 volts (140 kV), or greater, and that may provide for interstate power transmission, or to provide power to customers or areas located outside of the County and found by the County to conform to the General Plan, or has been considered by the Commission and the BOC C has approved the proposed location as an amendment to the General Plan.	X	X	X	X	X	X	X	X	X	
<b>Electric Transmission Right of Way (Minor).</b> A power transmission right-of-way designed to provide for the location of electric transmission lines designed to operate at voltages of less than 140,000 volts (140 kV), and that provides power transmission to customers or areas located within the County.	C-1	C-1	C-1	C-1	C-1	C-1	C-1	C-1	C-1	

Millard County Zoning Ordinance – A Millard County Land Use Ordinance  
 Adopted by Ordinance 12-12-04 on December 4, 2012. Effective January 1, 2013.

USE								
	RF	AG-20	AG	AI	RI	HC	LI	HI
<p><b>Electrical Generating Facility.</b> A device or facility using fossil fuels to generate electrical energy by spinning wire coils in magnetic fields, inducing an electric potential in the coil. Electrical Generating Facility does not include Geothermal Energy System (Major), Geothermal Energy System (Minor), Solar Energy System (Major) Solar Energy System (Minor), Wind Energy System (Major), or Wind Energy System (Minor),</p>	X	X	X	X	X	X	X	C-2
<p><b>Exotic Animals and Poultry.</b> Any potentially dangerous animal not typically having its natural habitat located in central Utah and not customarily confined or cultivated by humans for domestic or commercial purposes.</p>	X	X	X	X	X	X	X	X
<p><b>Forestry/Forest Practice.</b> As provided by Section 65A-8a-102, Utah Code Annotated, 1953, as amended, means activities directly related to: (1) the harvesting of trees; (2) new road construction associated with harvesting or accessing trees; (3) site preparation for regeneration of a timber stand; (4) reforestation; or (5) the management of logging slash, such activities being conducted and managed under the authority of the United States Forest Service or the State of Utah Department or Natural Resources, Division of Forestry, Fire, and State Lands. Forestry/Forest Practice does not include: (1) the operation of a nursery or Christmas tree farm; (2) the harvest of Christmas trees; (3) the harvest of trees for the noncommercial, personal use by the owner of forested land from which the trees are harvested; or (4) a harvesting operation encompassing fewer than ten (10) contiguous acres of forested land.</p>	C-1	X	X	X	X	X	X	X
<p><b>Gas Pipeline Right of Way (Major).</b> A right-of-way designed to provide for the location of a gas transmission pipeline of fifteen (15) inches, or larger, diameter and that may provide for interstate gas transmission, or to</p>	X	X	X	X	X	X	X	X



USE	RF	AG-20	AG	AI	RI	HC	II	HI
	provide gas to customers or areas located outside of the County and found by the County to conform to the General Plan, or has been considered by the Commission and the BOCC has approved the proposed location as an amendment to the General Plan.							
<b>Gas Pipeline Right of Way (Minor).</b> A right-of-way designed to provide for the location of a gas transmission pipeline of less than fifteen (15) inches in diameter and that provides gas transmission to customers or areas located within the County.	X	X	X	X	X	X	X	X
<b>Geothermal Energy System (Major).</b> A system or facility using the thermal energy resources of the Earth (geothermal energy) to provide mechanical or electrical power or heating or cooling systems for commercial purposes which may or may not be located on the same site as the Geothermal Energy System (Major).	C-2	X	X	X	X	X	X	X
<b>Geothermal Energy System (Minor).</b> A system or facility using the thermal energy/resources of the Earth (geothermal energy) to provide mechanical or electrical power or heating or cooling systems for private, non-commercial purposes for use on the same site as the Geothermal Energy System (Minor).	C-1	C-1	C-1	C-1	C-1	C-1	C-1	C-1
<b>Group Home.</b> See Residential Facility for Persons with a Disability; Residential Facility for Persons with a Disability that are Substance Abuse Facilities and are Located within Five Hundred (500) Feet of a School; and Therapeutic School.	X	X	X	X	X	X	X	X
<b>Guest Ranch.</b> A facility, including either a single building or resort cabins, which serves as a destination for visitors and generally has accessory recreational facilities for the use of guests. A Guest Ranch shall maintain	C-1	C-1	C-1	X	X	X	X	X



## Weber County Planning Division

To: Western Weber Planning Commission  
From: Charles Ewert, AICP  
Date: November 3, 2014  
Subject: Ordinance Revision Work Session: Title 108, Standards, Chapter 12, Noncomplying Structures and Nonconforming Uses/Parcels

**Summary.** The County is working on expanding certain public rights of way to facilitate street improvements. The right of way expansions may cause some abutting lots that are at the minimum zoning standards to drop below adopted standards. The current Land Use Code does not provide these land owners appropriate protections from the County considering their lots “illegal.” The attached ordinance revisions began as a simple addition to the *Noncomplying Structures and Nonconforming Uses/Parcels* chapter, as can be seen in the attached proposed code change as the new Section 108-12-15. However, as staff reviewed the chapter in its entirety it became apparent that other changes could help for clarity and administration. Those changes are also being presented here.

**Background.** The Engineering Department is currently working with the public along 3500 West and 12<sup>th</sup> Street to initiate a public right of way expansion of both roads. The expansions will take the front portions of the parcels that front these streets. The amount taken depends on a myriad of factors, such as the current right of way width, necessary road appurtenances, and proximity to intersections of streets and canals. A special ordinance is necessary that allows lots made noncompliant to current zoning standards to be considered a legal, nonconforming status. This will help clarify in the law that the current occupancy, use, and the right to initiate new uses, as may be allowed by the zone, may be continued on properties that drop below the zoning standards.

In the process of vetting language to enable this, staff found other areas of the code related to nonconforming parcels that need additional clarity. Under historic best management practices, and in model ordinances used throughout the country, the nonconforming use and noncomplying structures ordinance is intended to ensure that the right to continue existing uses and structures are vested throughout time, and are protected from zoning changes or standards changes presented by new ordinances (often referred to as “grandfathered”). However, the original intent of such an ordinance is to make the changes or modifications of nonconforming uses and structures so restrictive that future land owners are more motivated to eliminate the nonconformity and comply with new ordinance standards (achieved by reconfiguring property and/or tearing down old structures). This intent was a method of advancing the purposes of new ordinances, which were presumably enacted to better the health, safety, and welfare of the public.



## Weber County Planning Division

In Weber County, such restrictiveness has not prevailed. Even though the framework of Chapter 108-12 *Noncomplying Structures and Nonconforming Uses/Parcels* appears to follow the framework of historic model ordinances, the chapter has been amended to be more permissive regarding the modification of noncomplying structures. It has also been amended with provisions on how to treat nonconforming lots, giving leniency to those lots created in a manner that did not comply with previous subdivision codes. Essentially, what this does is gives a grant of amnesty from subdivision requirements for these lots. The County does this for three reasons:

1. In some cases it is difficult to determine what laws were in effect at the time, and whether they complied with state laws of the time.
2. It is difficult to tell whether the County has consistently and fairly applied those laws to all people/properties.
3. It is politically unpalatable to penalize a successor for violations that were created by a prior owner.

These provisions are not proposed to be removed, but they are being revised to provide clarity.

**Proposal.** To provide for lots affected by the right of way expansion, Staff proposes the changes that can be found in the attached Exhibit A proposed code change, Section 108-12-15. Along with this new code section, a notice document has been created that will be recorded on the properties affected by right of way expansions. This notice will give current and future property owners notice of the new ordinance, and provide clarity in the record that their right to existing and new uses on the property will not be affected by the right of way expansion. This notice is provided in Exhibit B.

Regarding unplatted properties, the changes proposed in Exhibit A, under Section 108-12-11, maintain the flexibility of the current ordinance whilst also providing clarifications. One primary difference in the proposal that deviates from the historic standard of practice is the modified definition of "Lot, nonconforming." Current ordinance only lists that zoning area and zoning width standards may make a lot nonconforming. The new definition specifies that *all applicable standards* may make a lot nonconforming. The significance of this change is this: lot standards may be found in various places in the code, including the zoning ordinance and the subdivision ordinance. If a lot is legally created or modified under the standards of any land use code requirement at the time and any of those standards are later changed, then the lot is considered nonconforming as it relates to the changed standard, whatever that standard may be. The proposed definition is no longer limiting to zoning area and zoning width standards.



## **Weber County Planning Division**

Because this change parts ways with historic application of this ordinance, both within Weber County and elsewhere, staff consulted with the Weber County legal team and the Office of the Property Rights Ombudsman to ensure the philosophy is keeping with the goal of maintaining a supportable and defensible code.

This new distinction is only important inasmuch as nonconforming lots are treated differently from conforming lots. Staff has searched the code for all references to nonconforming lots and cannot find any reference that this change may negatively affect.

**Weber County Land Use Code Revision Workflow.** This change fits into the workflow of ordinance changes as ongoing edits, clarifications, and additions to various sections of the Land Use Code, as can be seen in Exhibit C.

**Planning Commission Consideration.** As the Planning Commission hears and considers this proposed change there are several things to be looking for:

1. Does the proposed change comply with the purpose and/or intent of the specific code section or relevant zone? Every change should comply with that purpose/intent OR that purpose/intent should be changed to more accurately reflect current needs and desires.
2. Does the proposed change comply with the goals and objectives of the General Plan? You will need to dust off those general plans and refresh your knowledge of what is in them. The General Plan should act as a guide to vet land use ordinance decisions.
3. Does the proposed change promote the health, safety, and welfare of the community?
4. Does the proposed change provide equitable balance between land use rights and the public good?

### **Attachments:**

- Exhibit A: Proposed Code Change – Right of Way Expansions Causing Nonconforming Lots
- Exhibit B: Sample Notice of Effect
- Exhibit C: Weber County Land Use Code Revision Process Workflow

**Exhibit A: Code Change – Right of Way Expansions Causing Nonconforming Lots.**

The following code changes are being proposed due to several planned public right of way expansion projects that may cause some lots to lose area and drop below the minimum lot standards of the applicable zone. During routine review of related code sections, staff found the need for greater clarity throughout, and are proposing such changes here.

This change addresses the following sections:

Sec 101-1-7. Definitions:

Lot, nonconforming

Lot of record (lawfully created lot)

Noncomplying structure

Nonconforming lot or parcel

Nonconforming sign

Sec. 108-12-10. Legal use of nonconforming lots

Related Additions, Corrections, and Clarifications:

Sec. 108-12. General Code Cleanup.

Sec. 108-12-11. Subdivision Plat Requirements for Nonconforming Lots

Sec. 108-12-13. Setback requirements for nonconforming lots.

Sec. 108-12-14. Parcels previously combined

Key to changes:

Language that has been added is shown in blue underline.

~~Language that has been moved to a new location is shown in green double strikeout.~~

~~Language that has been deleted is shown in red strikeouts.~~

Language that has been moved from an old location is shown in green double underline.

1 **PART II LAND USE CODE** <sup>[1]</sup>

2 Title 101 - GENERAL PROVISIONS

3 Title 102 - ADMINISTRATION

4 Title 103 - RESERVED

5 Title 104 - ZONES

6 Title 105 - RESERVED

7 Title 106 - SUBDIVISIONS

8 Title 107 - RESERVED

9 Title 108 - STANDARDS

10 Title 109 - RESERVED

11 Title 110 - SIGNS

12 **Title 101 GENERAL PROVISIONS** <sup>[2]</sup>

13 Sec. 101-1-1. Short title.

14 Sec. 101-1-2. Purpose.

15 Sec. 101-1-3. Interpretation.

16 Sec. 101-1-4. Conflict.

17 Sec. 101-1-5. Effect on previous ordinances and maps.

18 Sec. 101-1-6. Rules of construction.

19 Sec. 101-1-7. Definitions.

20 Sec. 101-1-8. Amendments to Code; effect of new ordinances; amendatory language.

21 Sec. 101-1-9. Supplementation of Code.

22 Sec. 101-1-10. Catchlines of sections.

23 Sec. 101-1-11. Altering Code.

24 Sec. 101-1-12. Severability of parts of Code.

25 Sec. 101-1-13. General penalty; continuing violations.

26 Sec. 101-1-14. Certain ordinances not repealed or affected by adoption of Code.

27 ...

28 **Sec. 101-1-7. Definitions.**

29 ...

30 *Lot, nonconforming.* The term "nonconforming lot" means a lot or parcel that complied  
31 with all applicable standards in effect at the time of the lot's creation and, because of subsequent  
32 changes to the Land Use Code, does not conform to the current applicable standards. Applicable

standards include standards of the zone in which the lot is located, standards of the subdivision ordinance, and other standards of this Land Use Code. ~~of land that has less than the required minimum area or width as established by the zone in which it is located and provided that such lot or parcel was of record as a legally created lot on the effective date of the ordinance from which this title is derived.~~

...  
*Lot of record (lawfully created lot).* A lot of record is defined as any one of the following circumstances:

- (1) A parcel of real property identified as a building lot on an unrecorded subdivision plat that has been approved by Weber County and is on file in the Weber County Planning Office; or
- (2) A parcel of real property identified as a building lot on a subdivision plat that has been approved by Weber County and recorded in the office of the Weber County Recorder; or
- (3) A parcel/lot described in a deed, sales contract or survey that was recorded in the office of the Weber County Recorder before January 1, 1966; or
- (4) A parcel/lot described in a deed, sales contract or survey that was recorded in the office of the Weber County Recorder in between January 1, 1966, and June 30, 1992, which complied with the zoning requirements in effect at the time of its creation and has undergone and successfully completed the Weber County subdivision process; or
- (5) A parcel/lot described in a deed, sales contract or survey that was recorded in the office of the Weber County Recorder in between January 1, 1966, and June 30, 1992, which complied with the zoning requirements in effect at the time of its creation and was shown to be the first or second division of a larger parent parcel; or
- (6) A parcel/lot that is the subject of a land division where Weber County, in compliance with Utah State Code, has expressly approved the division in anticipation of further land use approvals conditioned upon and as authorized by the Weber County Zoning Ordinance; or
- (7) A parcel/lot that does not fall within any one of the previously listed circumstances but has received a variance from the Weber County Board of Adjustment which has otherwise deemed a particular parcel/lot as a lot of record.

There are parcels/lots within Weber County that may have been created and subsequently recorded in the office of the Weber County Recorder, but were not lawfully created in accordance with Utah State Code or Weber County Ordinances/Policy as described herein. Weber County is not able to issue a land use permit and/or building permit for such parcels/lots.

~~*Noncomplying structure.*~~ The term "noncomplying structure" means a structure that legally existed before its current land use designation and because of one or more subsequent

**Comment [c1]:** What needs to be done to consolidate this definition with the one below?

71 land use ordinance changes, does not conform to the setback, height restrictions, or other  
72 regulations, excluding those regulations that govern the use of land.

Comment [c2]: Straight from State Code

73 ~~Nonconforming building or structure. The term "nonconforming building or structure"~~  
74 ~~means a building or structure or portion thereof, lawfully existing at the time of the effective date~~  
75 ~~of the ordinance from which this chapter is derived, which does not conform to all the height, area~~  
76 ~~and yard regulations herein prescribed in the zone in which it is located.~~

Comment [c3]: Provided for in "noncomplying structure" above. A search for both "nonconforming building" and "nonconforming structure" of current code did not yield any results.

77 Nonconforming lot or parcel. See "Lot, nonconforming."

78 Nonconforming sign. See "Sign, nonconforming."

79 Nonconforming use. The term "nonconforming use" means a use of land that legally  
80 existed before its current land use designation, has been maintained continuously since the time  
81 the land use ordinance regulation governing the land changed, and because of one or more  
82 subsequent land use ordinance changes, does not conform to the regulations that now govern  
83 the use of the land.

Comment [c4]: Straight from State Code.

84 ...

## 85 Title 108 STANDARDS

86 CHAPTER 1. - DESIGN REVIEW

87 CHAPTER 2. - OGDEN VALLEY ARCHITECTURAL, LANDSCAPE AND SCREENING DESIGN STANDARDS

88 CHAPTER 3. - CLUSTER SUBDIVISIONS

89 CHAPTER 4. - CONDITIONAL USES

90 CHAPTER 5. - PLANNED RESIDENTIAL UNIT DEVELOPMENT (PRUD)

91 CHAPTER 6. - TIME SHARE

92 CHAPTER 7. - SUPPLEMENTARY AND QUALIFYING REGULATIONS

93 CHAPTER 8. - PARKING AND LOADING SPACE, VEHICLE TRAFFIC AND ACCESS REGULATIONS

94 CHAPTER 9. - MOTOR VEHICLE ACCESS

95 CHAPTER 10. - PUBLIC BUILDINGS AND PUBLIC UTILITY SUBSTATIONS AND STRUCTURES

96 CHAPTER 11. - RESERVED

97 CHAPTER 12. - NONCOMPLYING STRUCTURES AND NONCONFORMING USES/PARCELS

Comment [c5]: Chapter of Focus

98 CHAPTER 13. - HOME OCCUPATION; SHORT TERM VENDORS; TEMPORARY OUTDOOR SALES; FARMER'S  
99 MARKETS

100 CHAPTER 14. - HILLSIDE DEVELOPMENT REVIEW PROCEDURES AND STANDARDS



- 101 CHAPTER 15. - STANDARDS FOR SINGLE-FAMILY DWELLINGS
- 102 CHAPTER 16. - OGDEN VALLEY LIGHTING
- 103 CHAPTER 17. - OGDEN VALLEY PATHWAYS
- 104 CHAPTER 18. - DRINKING WATER SOURCE PROTECTION
- 105 CHAPTER 19. - ACCESSORY APARTMENTS
- 106 CHAPTER 20. - FOREST CAMPGROUNDS
- 107 CHAPTER 21 - AGRI-TOURISM
- 108 ...
- 109 **CHAPTER 12. NONCOMPLYING STRUCTURES AND NONCONFORMING USES/PARCELS**

- 110 Sec. 108-12-1. Purpose and intent.
- 111 Sec. 108-12-2. Maintenance, repairs, and alterations.
- 112 Sec. 108-12-3. Additions and enlargements.
- 113 Sec. 108-12-4. Alteration where parking insufficient.
- 114 Sec. 108-12-5. Moving noncomplying structures.
- 115 Sec. 108-12-6. Restoration of damaged buildings.
- 116 Sec. 108-12-7. One-year vacancy or abandonment.
- 117 Sec. 108-12-8. Change of use.
- 118 Sec. 108-12-9. Expansion of nonconforming use.
- 119 Sec. 108-12-10. Legal use of ~~parcels~~nonconforming lots.
- 120 Sec. 108-12-11. Subdivision plat requirements for nonconforming lots, exceptions. ~~Parcels in areas subjected~~
- 121 ~~to change in zoning.~~
- 122 Sec. 108-12-12. ~~Combining~~ Enlarging nonconforming parcels.
- 123 Sec. 108-12-13. Setback requirements for nonconforming lots. ~~Small lots/parcels created prior to zoning.~~
- 124 Sec. 108-12-14. Parcels previously combined for tax purposes.
- 125 Sec. 108-12-15. Effect of Public Right of Way Expansion.

126 **Sec. 108-12-1. Purpose and intent.**

127           The purpose and intent of this chapter is to provide standards for the development  
 128           and use of noncomplying structures ~~and~~, nonconforming uses, ~~and nonconforming lots or~~  
 129           parcels. These structures, uses, and ~~lots or~~ parcels are considered legal, despite not  
 130           meeting the current requirements of the zone in which they are located.

131 **Sec. 108-12-2. Maintenance, repairs, and alterations.**

- 132 (a) Maintenance, repairs, and structural alterations may be made to noncomplying structures  
133 on lots of record.
- 134 (b) Dwellings or other structures built on lots or parcels which were once legal, but have  
135 since been ~~made illegal~~modified in a manner that is in violation of applicable laws, shall  
136 not be issued land use or building permits, unless the structure is being strengthened or  
137 restored to a safe condition, or the lot or parcel is made to conform to current zoning  
138 regulations. In restoring the structure to a safe condition, no expansion of the structure is  
139 allowed.

140 **Sec. 108-12-3. Additions and enlargements.**

- 141 (a) A structure which is occupied by a nonconforming use shall not be added to or expanded  
142 in any manner, unless such expansion is made to conform to all yard and use regulations  
143 of the zone in which the structure is located.
- 144 (b) A noncomplying structure (main or accessory) shall not be added to or enlarged in any  
145 manner, unless such addition or enlargement conforms to all the regulations of the zone  
146 in which it is located, or conforms to the reduced yard setbacks as allowed in section  
147 108-12-13
- 148 (c) A legally constructed dwelling or other structure on a lot of record, which has yard  
149 setbacks that are less than the required yard setbacks for the zone in which it is located,  
150 shall be allowed to have an addition, provided that:
- 151 (1) The addition does not encroach into the required yard setbacks further than the  
152 existing dwelling or other structure; and
- 153 (2) The addition is located completely on the same property as the existing structure  
154 and does not encroach into a road right-of-way or on to adjacent property.
- 155 (d) A legally constructed dwelling or other structure on a lot of record, which is located within  
156 a stream corridor setback (as defined by the Weber County Land Use Code  
157 sections 108-7-23 and/or 104-28-2, ~~shall be allowed to have an addition(s)~~may be added  
158 to or enlarged, provided that:
- 159 (1) The addition does not encroach into the stream corridor setback further than the  
160 existing dwelling or other structure; and
- 161 (2) The addition meets the yard setback requirements of the zone in which it is  
162 located or conforms to the reduced yard setbacks as allowed in section 108-12-  
163 13; or

164 (3) The addition does not encroach into the required yard setbacks further than the  
165 existing dwelling or other structure.

166 **Sec. 108-12-4. Alteration where parking insufficient.**

167 A structure lacking sufficient automobile parking space as required by this chapter  
168 may be altered or enlarged, provided additional automobile parking space is supplied to  
169 meet the requirements of the Weber County Land Use Code.

170 **Sec. 108-12-5. Moving noncomplying structures.**

171 A noncomplying structure shall not be moved in whole or in part to any other location  
172 on a lot or parcel, unless every portion of such structure is made to conform to all  
173 regulations of the zone in which it is located, or made to conform to the reduced yard  
174 setbacks as allowed in section 108-12-13.

175 **Sec. 108-12-6. Restoration of damaged buildings.**

176 A noncomplying structure which is damaged or partially destroyed by fire, flood,  
177 wind, earthquake, or other calamity, act of God, or the public enemy, may be restored and  
178 the occupancy or use of such structure or part thereof, may be continued or resumed,  
179 provided that such restoration is started within a period of one year, by obtaining a land use  
180 permit, and is diligently pursued to completion.

181 **Sec. 108-12-7. One-year vacancy or abandonment.**

182 (a) A legal structure, or portion thereof, which is occupied by a nonconforming use, and  
183 which is or hereafter becomes vacant and remains unoccupied for a continuous period of  
184 one year, except for dwellings and structures to house animals and fowl, shall not  
185 thereafter be occupied except by a use which conforms to the use regulations of the  
186 zone in which it is located. Wherever a nonconforming use has been discontinued for a  
187 period of one year, such use shall not thereafter be re-established and any future use  
188 shall be in conformance with the current provisions of the Weber County Land Use Code.

189 (b) Any building or structure for which a valid building permit has been issued and actual  
190 construction was lawfully begun prior to the date when the structure became  
191 noncomplying, may be completed and used in accordance with the plans, specifications  
192 and permit on which said building permit was granted. The term "actual construction" is  
193 hereby defined to be the actual placing of construction materials in their permanent  
194 position, fastened in a permanent manner, actual work in excavating a basement or the  
195 demolition or removal of an existing structure begun preparatory to rebuilding; provided

196 that in all cases actual construction work shall be diligently carried on until the completion  
197 of the building or structure involved.

198 **Sec. 108-12-8. Change of use.**

199 The nonconforming use of a legal structure may not be changed except to a  
200 conforming use. Where such a change is made to a conforming use, the use shall not  
201 thereafter be changed back to a nonconforming use.

202 **Sec. 108-12-9. Expansion of nonconforming use.**

203 A nonconforming use may be extended to include the entire floor area of the existing  
204 legal structure in which it was conducted at the time the use became nonconforming,  
205 provided, however, that a ~~certificate of occupancy~~ Land Use Permit is first obtained for such  
206 extension of use.

207 **Sec. 108-12-10. Legal use of nonconforming lots ~~parcels~~.**

208 ~~(a) — Any legally created lot and/or parcel of land, which existed prior to adoption of the  
209 Weber County Land Use Code/Zoning Map may apply to develop any of the permitted or  
210 conditional uses for which the lot and/or parcel qualifies, in the zone where the lot and/or  
211 parcel of land is located. In Western Weber County, the 1962 ownership plats are used as  
212 the legal reference point, and in the Ogden Valley, the 1966 ownership plats are used as the  
213 legal reference point.~~

214 ~~(b) — Any legally created lot and/or parcel of land which existed prior to the adoption of the  
215 Weber County Land Use Code or an amendment to the Land Use Code, but which may now  
216 require a different lot area or lot width/frontage, may apply to develop any of the permitted or  
217 conditional uses for which the lot and/or parcel qualifies, in the zone where the lot and/or  
218 parcel of land is located.~~

219 Development of any permitted or conditional use on a nonconforming lot, as defined  
220 in Section 101-1-7, shall be allowed subject to this Chapter, the zone of the property, other  
221 relevant sections of this Land Use Code, and other applicable local, state, and federal laws.

222 ...

223 **Sec. 108-12-11. ~~Parcels in areas subjected to change in zoning~~ Subdivision plat**  
224 **requirements for nonconforming lots, exemptions.**

225 All lots and parcels shall be platted as part of a subdivision in conformance with the  
226 requirements of Title 106 of this Land Use Code, unless otherwise exempted by State Code  
227 or this Land Use Code. The platting of nonconforming lots, and the amendment to a platted  
228 subdivision containing nonconforming lots are governed as follows:

229 (a) The following rules govern the treatment of unplatted lots that were created in  
230 conformance with the lot standards of the zone in effect at the time of the lots creation  
231 but not in conformance with the requirements of the subdivision code in effect at that  
232 time:

233 (1) If the existing lot can be defined as a Lot of Record, as defined in Section 101-1-7,  
234 the lot shall be exempt from subdivision platting requirements.

235 (2) If the existing lot was created prior to July 1, 1992, contained a single family dwelling  
236 unit, and complied with the standards of the zone in effect at the time of the lots  
237 creation, the lot shall be exempt from subdivision platting requirements, and is a  
238 nonconforming lot.

239 (3) If the existing lot does not qualify for the provisions of subsections (a)(1) and (a)(2),  
240 then the lot shall be platted in accordance with Title 106 of this Land Use Code. Lot  
241 standards for such subdivision may be reduced to meet the minimum standards of  
242 the zone in effect at the time of the lot's creation so long as it does not create any  
243 more lots than currently exist. All such platted lots that do not conform to current  
244 zoning standards shall thereafter be considered nonconforming lots. A lot that does  
245 not meet the minimum standards of the zone in effect at the time of the lot's creation  
246 may be reconfigured upon platting to comply with such standards as long as the  
247 reconfiguration does not cause any other lot to become nonconforming or more  
248 nonconforming. A lot platted pursuant to this subsection may be further reduced in  
249 size to accommodate any right of way dedication as may be required by Title 106 of  
250 this Land Use Code. No unplatted lot or parcel governed by this subsection shall be  
251 granted a land use permit prior to subdivision platting.

252 (b) Any lot legally platted within the bounds of a subdivision that was created pursuant to the  
253 standards of the zoning code and subdivision code in effect at the time of its creation, but  
254 no longer complies due to subsequent changes to these codes, may be amended  
255 pursuant to the minimum standards in effect at the time of its creation. The amendment  
256 shall not create any new lots. An amended plat shall be required.

257 Where lot area and/or frontage/width requirements have increased as a result of a change in  
258 zoning, the following shall apply:

259 (1) Parcels not meeting current zoning as to area and/or frontage/width  
260 requirements, but containing a single family dwelling which:

**Comment [c6]:** Initially I wrote this solely for lots that now no longer comply with zoning area, width, and frontage requirements of today's ordinances, however, it became apparent that such a narrow focus excludes lots that conform to today's zoning but were not properly platted.

**Comment [c7]:** Even if the lot complies with current zoning standards it does not comply with the current or former subdivision standards (otherwise, if it did, it would be defined as a "Lot of Record"), thus, it is nonconforming to subdivision standards.

- 261 a. — Were built on and created and recorded prior to July 1992 changes to  
262 the Utah Code, Subdivision Law and met area and frontage/width  
263 requirements for the zone in which they were created at the time they were  
264 created are considered nonconforming parcels; or  
265 b. — Were created and recorded with an existing single-family dwelling  
266 after July 1992 changes to the Utah Code, Subdivision Law but prior to the  
267 change in zoning, and met area and frontage/width requirements for the zone  
268 in which they were created at the time they were created shall submit an  
269 application for subdivision approval;  
270 c. — Were part of a legal subdivision, but were further divided, and met the  
271 requirements of subsections (1)a or b of this section shall be subject to the  
272 note below.

273  
274 **NOTE:** No lot within a subdivision approved by the Planning Commission  
275 and County Commission and recorded in the County Recorder's Office in  
276 accordance with the provisions of the Subdivision Ordinance, shall be further  
277 divided, rearranged, added to or reduced in area nor shall the boundaries of  
278 any lot be altered in any manner so as to create more lots than initially  
279 recorded without first obtaining the approval of the Land Use Authority.  
280 Therefore, an amended plat shall be required.

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282  
283 (2) — Parcels not meeting current zoning as to area and/or frontage/width  
284 requirements, containing a single-family dwelling which:

- 285 a. — Were created and recorded prior to July 1992 changes to the Utah  
286 Code, Subdivision Law;  
287 b. — Are able to obtain the additional area and frontage/width which would  
288 bring the lot into compliance with the area and frontage/width requirements  
289 for the zone in which they were created at the time they were created; and  
290 c. — Complied with all other county ordinances when built;  
291 may submit an application for subdivision approval provided they meet all other  
292 requirements of title 106, Subdivisions.

Field Code Changed

293 (3) — Parcels not meeting current zoning as to area and/or frontage/width  
294 requirements which:

- 295 a. — Were created and recorded prior to July 1992 changes to the Utah  
296 Code, Subdivision Law; and  
297 b. — Met area and frontage/width requirements for the zone in which they  
298 were created at the time they were created;

299 may submit an application for subdivision approval provided they meet all other  
300 requirements of title 106.

Field Code Changed

301 (4) — Lots/parcels which are subject to subsections (1), (2), or (3) of this section,  
302 and have boundary descriptions that fall within a roadway, shall be allowed to develop  
303 with the lot/parcel area that remains after dedicating land for the roadway, as required  
304 by the Weber County Land Use Code.

305 (5) — Parcels that have been combined by the county recorder's office for tax  
306 purposes shall be allowed to separate one or more of the combined parcels on an  
307 approved and recorded form provided:

308 a. — The parcels that are being separated were originally created prior to July  
309 1992 changes to the Utah Code, and Subdivision Law;

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310 b. — The properties as configured prior to the combination met area and  
311 frontage/width requirements for the zone in which they were created, or were  
312 considered nonconforming parcels;

313 c. — The combination was done by the current owner or same owner acting as  
314 trustee, and was done by a quit claim, combination form, or other instrument, which  
315 states the consolidation of parcels is for tax purposes;

316 d. — No new lots are being created;

317 e. — The separation of parcels results in a configuration consistent with the  
318 original parcels and conforms to the ordinance that was in place prior to the recording  
319 of the combination form; and

320 f. — The separation of combined parcels authorized under this subsection does  
321 not authorize a change in the configuration of an approved and recorded subdivision  
322 or lots within such subdivision. A subdivision plat cannot be changed unless an  
323 amended subdivision plat is prepared and recorded in accordance with Utah Code  
324 and title 106 of the Land Use Code.

Comment [c8]: Moved to new section 108-12-14 below.

325 **Sec. 108-12-12. ~~Combining~~ Enlarging nonconforming parcels.**

326 Nonconforming lots may be reconfigured in a manner that complies with the  
327 standards of the zone in effect at the time of the lot's creation if the reconfiguration does not  
328 create any more lots than currently exist. The reconfiguration shall not cause any other lot to  
329 become nonconforming or more nonconforming. If the nonconforming lot is part of a platted  
330 subdivision an amended subdivision plat is required. ~~Parcels not meeting current zoning as~~  
331 ~~to area and frontage/width requirements that were legally created or made legal through the~~  
332 ~~provisions of this chapter, may be enlarged by combining adjoining parcels provided that:~~

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- (1) ~~The combination is achieved by submitting a subdivision if any of the parcels were part of a recorded subdivision or by combining parcels if they have metes and bounds descriptions;~~
- (2) ~~All adjoining parcels under common ownership, or brought under common ownership after the date of the adoption of this section are merged to create the largest lot possible;~~
- (3) ~~The combination does not result in any illegal divisions of land; and~~
- (c) ~~Structures built on the newly created lot shall resemble the architectural style, height, size and mass of existing noncommercial structures on parcels within 500 feet of the newly created lot, and meet all current setback and height requirements of the zone in which the combination is made.~~

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**Comment [c9]:** Why? Will we require similar arch styles as adjacent parcels for all residences?

Also, the setbacks may still need to be reviewed under the provisions of 108-12-13 if the lot still does not meet current width and area requirements.

I recommend deleting this section.

**Sec. 108-12-13. Setback requirements for nonconforming lots. ~~Small lots/parcels created prior to zoning.~~**

A nonconforming lot ~~or~~ parcel that has a smaller width than is required for the zone in which it is located may be developed in a manner that does not exceed the following allowed reduction in side yard setbacks:

- (1) A nonconforming lot's/parcel's actual width (v) may be divided by the current required frontage/width (w) in order to formulate a ratio or proportional relation (x).
- (2) The ratio may then be multiplied by the current zone's side yard setback requirement (y) in order to establish a reduced setback (z).
- (3) The reduced side yard setback is subject to the conditions listed below.  
(Formula:  $v \div w = x$ .  $x \times y = z$ .)
  - a. Under no circumstances shall an interior lot/parcel be allowed to reduce the side-yard setback requirement below five feet on one side and eight feet on the other.
  - b. Under no circumstances shall a corner lot/parcel be allowed to reduce the side-yard requirement below ten feet when the side yard fronts on a street.

**Sec. 108-12-14. Parcels previously combined for tax purposes.**

**Comment [c10]:** This section was buried in 108-12-11, but was not relevant to the heading of that section. It has been placed in its own section, with a new section number and heading.



364 (a) Parcels that have been combined by the county recorder's office for tax purposes shall be  
365 allowed to separate one or more of the combined parcels on an approved and recorded form  
366 provided if:

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367 (a)(1) a. The parcels that are being separated were originally created prior to July 1,  
368 1992; changes to the Utah Code, and Subdivision Law;

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369 (b)(2) b. The properties as configured prior to the combination met area and  
370 frontage/width requirements for the zone in which they were created, or were considered  
371 nonconforming parcels;

372 (e)(3) e. The combination was done by the current owner or same owner acting as  
373 trustee, and was done by a quit claim, combination form, or other instrument, which  
374 states the consolidation of parcels is for tax purposes;

375 (d)(4) d. No new lots are being created; and

376 (e)(5) e. The separation of parcels results in a configuration consistent with the  
377 original parcels and conforms to the ordinance that was in place prior to the recording of  
378 the combination form, and the resulting lots conform with the provisions of Section 108-  
379 12-11; and

**Comment [c11]:** This is additional language to  
provide for the possibility that some lots were  
created illegally, then combined, and now being  
separated. Those lots need to be brought into  
conformance, and may need to be platted if the  
provisions of 108-12-11(a)(3) apply.

380 (f)(b) f. The separation of combined parcels authorized under this subSection does not  
381 authorize a change in the configuration of an approved and recorded subdivision or lots within  
382 such subdivision. A subdivision plat cannot be changed unless an amended subdivision plat is  
383 prepared and recorded in accordance with Utah Code and title Any change to the configuration  
384 of a subdivision must comply with Title 106 of the Land Use Code, and any applicable state  
385 law.

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### 386 Sec. 108-12-15. Effect of Public Right of Way Expansion.

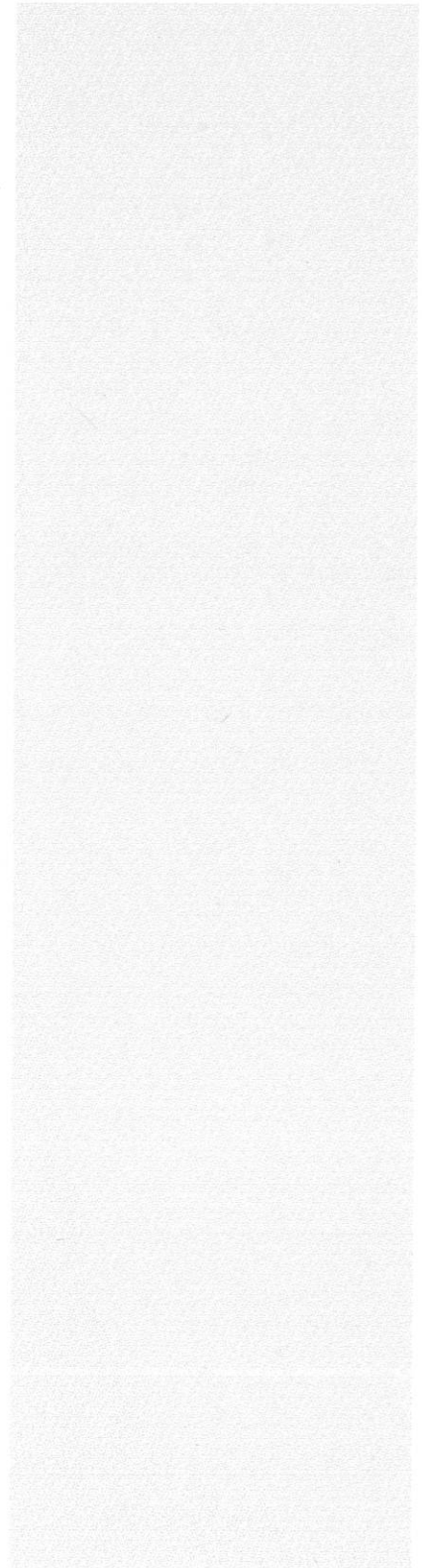
387 (a) Any structure that legally existed with conforming or nonconforming setback prior to the  
388 expansion of a public right of way where the expansion of such public right of way makes  
389 the structure noncomplying or more noncomplying to the setback requirements of this  
390 Land Use Code, shall be deemed a legal, noncomplying structure.

**Comment [c12]:** Intended to help lots reduced  
in size by ROW expansions.

391 (b) Any lot or parcel that legally existed in a conforming or nonconforming status prior to the  
392 expansion of a public right of way where the expansion of such public right of way makes  
393 the lot or parcel nonconforming or more nonconforming to the standards of this Land Use  
394 Code, shall be deemed a legal, nonconforming lot or parcel.

**Comment [c13]:** Intended to help lots reduced  
in size by ROW expansions.

395 (c) This section does not excuse or exempt any past or future action that creates or modifies  
396 a lot or parcel in a manner that is in violation of applicable laws.





**Weber County**

**Notice of Effect**  
**Public Right of Way Expansion of Street Name**

Legal Description

SEE EXHIBIT A

**RE: Potential Nonconformity on Land Due to the Expansion of the Street Name Right of Way, as part of Project Number and Description.**

The parcel of land with the Land Serial Number # \_\_\_\_\_ is currently zoned ZONE \_\_\_\_\_ (ZONE SYMBOL).

This notice is intended to document how the above specified right of way expansion project affects the subject property. If the property legally existed in a conforming or legal nonconforming status prior to the expansion of the public right of way, and the expansion of the public right of way has made the lot or parcel nonconforming or more nonconforming to the lot standards of the subject property's zone, the property shall be deemed legal, even though nonconforming. Any further development of it shall be allowed pursuant to and in compliance with Weber County Code §108-12, and other applicable local, state, and federal laws. The same consideration will be given for structures affected by the expansion of a public right of way; if the setbacks are made noncomplying or more noncomplying the structure shall be deemed legal, even though noncomplying.

Note: This notice does not excuse or exempt any past or future action that creates or modifies a lot, parcel, or structure in a manner that is in violation of applicable laws.

\_\_\_\_\_ Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Sean Wilkinson  
Planning Director

STATE OF UTAH    )  
                              :SS  
COUNTY OF WEBER )

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me \_\_\_\_\_ the signer(s) of the foregoing instrument, who duly acknowledged to me that he/she/they executed the same.

Notary Public

\_\_\_\_\_

Residing at \_\_\_\_\_

# Weber County Land Use Code Revision Process Workflow

The proposed edits fall here

This flowchart is intended to illustrate the intended course of the revision process. It is not an absolute plan, and deviations may occur as more information is gathered, but it will provide the Planning Commission with an idea where we are in the process at any given time. Staff will refer to this structure regularly.

