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**GRAND COUNTY**

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**OFFICE OF THE LAND USE APPEAL AUTHORITY  
IN AND FOR GRAND COUNTY, STATE OF UTAH**

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1187 MURPHY LANE, LLC,

Appellant

v.

GRAND COUNTY UTAH, GRAND  
COUNTY COMMISSION,

Respondents

**RESPONSE IN OPPOSITION TO  
ADMINISTRATIVE APPEAL**

Hearing Officer: Bruce Jenkins

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Respondents Grand County, Utah and the Grand County Commission (collectively, the “County”), by and through the County Attorney Christina R. Sloan, hereby respond to Appellant’s Administrative Appeal (the “Appeal”) and states in support the following:

**I. INTRODUCTION AND STATEMENT OF FACTS**

The Grand County Commission (the “Commission”), a Utah political subdivision, is an expanded commission form of government under Utah Statute § 17-52a-202. Accordingly, the Commission serves as both the county executive and the county legislative body. *Id. at 202(3)*;

*see also Grand County Ordinance No. 614 (Optional Plan),*

<https://www.grandcountyutah.net/DocumentCenter/View/9972/Ordinance-615---Amendments-to-the-Land-Use-Code---9-2020>.

On March 2, 2021, in adopting the Grand County Rules and Regulations for High Density Housing Overlay Developments (the “Rules and Regulations”), the Commission acted within its administrative capacity as the County executive to implement a law already in existence, Grand County Ordinance No. 591 (“HDHO Ordinance”), codified in Section 4.7 of the Grand County Land Use Code (“LUC”). *See County Exhibit A* (Rules and Regulations); *County Exhibit B* (LUC Section 4.7); *see also Suarez v. Grand Cty*, 2012 UT 72, ¶ 19, 296 P.3d 688, 694, quoting *Carter v. Lehi City*, 2012 UT 2, ¶ 32, 269 P.3d 141 (administrative acts are aimed at applying an existing law to particular individuals or groups).

Further, the Commission adopted the Rules and Regulations by vote alone; no formal resolution or ordinance citing policy considerations accompanied their adoption. *See Suarez*, ¶ 19 (legislative acts are formal in nature). In fact, the County Attorney explained to the Commission prior to its vote that it need not adopt the Rules and Regulations at all, which document she drafted at the request of Developers of High Density Housing Overlay (“HDHO”) Developments to answer questions regarding the County’s administration of the HDHO Ordinance.

Ultimately, the Commission adopted the Rules and Regulations by unanimous vote at a public meeting to build confidence in the HDHO program for local buyers, to help guide the administrator of the Program, the Housing Authority of Southeastern Utah (“Housing Authority” or “HASU”), and upon the recommendation of the Grand County Planning Commission. Specifically, the Rules and Regulations address temporary leaves of absences or lapses in local

employment; the treatment of familial financial partners and non-profit organizations; notification requirements; and procedures and timelines related to applications, renewals, unit/lot sales, appeal, and enforcement under LUC Section 4.7. *See County Exhibit A.*

Now, the Appellant (“Developer”), rich in density after County approval of its zoning map amendment and with much money to gain, seeks to invalidate the Rules and Regulations in an attempt to undermine the effectiveness of the HDHO Ordinance, the County’s award-winning workforce housing legislation. The Commission adopted the HDHO Ordinance on January 15, 2019 after more than eighteen months of public hearings, meetings, and comment and study of data and market research, all of which concluded that the County needed more housing for local workers that serve the tourism industry.<sup>1</sup>

Over a period of years predating the HDHO drafting process, County staff and elected officials had considered a number of legislative strategies for incentivizing workforce housing. Most affordable housing programs in comparable Western tourism economies, such as Aspen, Vail, and Jackson Hole, require sales price caps and income qualifications which are effective but administratively costly to the local government to implement and enforce. Accordingly, the Commission zeroed in on a simpler, progressive model - one that relied on a local ownership requirement to repress prices to levels supported by local wages. Price caps and income qualifications were unnecessary because, by deed restricting the ownership and rentals of the HDHO units and lots for the County’s essential workforce only, home prices would deflate to

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<sup>1</sup> One such study relied upon repeatedly by County staff in HDHO public hearings and meetings throughout 2018 was the BAE Urban Economics Phase I Assured Housing Feasibility Study for the City of Moab and Grand County, Utah (“BAE Housing Study”) which determined that in 2017 no homes sold were affordable to households earning up to 80% of Area Median Income (“AMI”) and only 7 homes sold were affordable to households earning up to 100% of AMI. *See BAE Housing Study*, page X, <https://www.grandcountyutah.net/DocumentCenter/View/5135/Phase-1---Economic-Feasibility-Report---Moab-Area-Assured-Housing-3-2-18?bidId=>.

what locals could afford. At public meetings throughout 2018, County staff in the Planning and Zoning Department assured the Commission repeatedly that since the ownership qualification happens early at sale, because the enforcement provision set forth in Section 4.7.11 of the HDHO Ordinance was express and strict, and due to the fact that the Housing Authority was willing to administer the program for the County, the HDHO Ordinance provided an effective and efficient solution to at least one aspect of the County's housing crisis.

Accordingly, the Commission approved the HDHO Ordinance on January 15, 2019 and amended the same on June 18, 2019 to expand the definition of "actively employed household" to include "a retiree with a work history required under subsections A.1 through 3 of this section for the five years prior to retirement" to ensure that retirees would not be forced to sell their HDHO units upon retirement. *See County Exhibit B* at Section 4.7.3.A(5).

The HDHO Ordinance creates an overlay whereby a developer can request increased density via a zoning map amendment, a legislative decision, in the County in exchange for deed restricting eighty percent (80%) of the lots or units within the development for local workforce ownership and housing under the terms of LUC Section 4.7. *Id.* at Section 4.7.8. From June 2019 through March 2021, the County rezoned eight properties with HDHO districts, which resulted in approval of 278 HDHO lots or units.

On November 19, 2019, the County approved the Developer's rezone request, Master Plan, and Development Agreement which rezoned 2 parcels of real property comprising 2.48 acres known as Murphy Flats from rural residential (1 lot/unit per acre) and large lot residential (2 lots/units per acre) to HDHO District 15 (15 lots/units per acre) via Ordinance No. 600.01.<sup>2</sup>

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<sup>2</sup> Note that Developer's statement that it "entered into a Development Agreement with the County on July 17, 2019" is incorrect. That is the date the Developer signed the Development Agreement and submitted it to the County for inclusion in its HDHO Application for consideration by the Commission.

*See Developer Exhibit A; County Exhibit B at Section 4.7.4.A (HDHO 25); County Exhibit C (LUC Section 5.4.1.A (rural residential)); County Exhibit D (Ordinance No. 600.01).* Thus, in so rezoning this property, the Commission agreed to increase the density by up to 15 times in exchange for home ownership for the local workforce and strict adherence to LUC Section 4.7, including the prohibition against selling lots or units to non-qualified households in LUC Section 4.7.11.

In October 2020, the Grand County Planning Commission approved the preliminary plat for the Murphy Flats subdivision, and the Developer’s final plat application is currently pending and in review by the County. On January 26, 2021, Developer created an online Facebook event in which it gave locals only 8 days to purchase HDHO units in Murphy Flats before it “open[ed] them on Zillow and Facebook to notify the masses” and encouraged “locals” to “get ‘em while you can!” *See*

[https://www.facebook.com/events/171120277721569/?acontext=%7B%22event\\_action\\_history%22%3A\[%7B%22mechanism%22%3A%22search\\_results%22%2C%22surface%22%3A%22search%22%7D\]%7D](https://www.facebook.com/events/171120277721569/?acontext=%7B%22event_action_history%22%3A[%7B%22mechanism%22%3A%22search_results%22%2C%22surface%22%3A%22search%22%7D]%7D).

As a result of the Facebook event, citizens and commissioners filed complaints with the Commission Administrator’s and County Attorney’s offices regarding Developer’s anticipated breach of Ordinance No. 600.01 and LUC Section 4.7. On March 2, 2021, the County adopted the Rules and Regulations. Then, on March 31, 2021, Developer filed its Appeal of the same.

## **ARGUMENT**

### **II. THE RULES AND REGULATIONS ARE NOT UNLAWFUL, ARBITRARY OR CAPRICIOUS**

Developer’s argument that the “Qualified Household” and “Continuing Obligation”

sections of the Rules and Regulations conflict with the HDHO Ordinance's plain language and constitute an unlawful attempt to amend the HDHO Ordinance in violation of Utah law is without merit. Adopting the Rules and Regulations is well within the County's administrative authority to interpret and implement its ordinances. "The legislature may grant an agency discretion, either explicitly or implicitly, to interpret specific statutory terms." *LPI Servs. v. McGee*, 2009 UT 41, ¶ 8, 215 P.3d 135. Moreover, "[t]he time honored rule of law is that the construction of statutes by governmental agencies charged with their administration should be given considerable weight however, if it is made clearly to appear that a statute has been misconstrued or misapplied it is the duty of the court to correct the same." *Wells Fargo Armored Serv. Corp. v. Pub. Serv. Comm'n of Utah*, 626 P.2d 450, 451 (Utah 1981).

Because the Rules and Regulations do not contradict the HDHO Ordinance's plain language prohibiting the sale of HDHO units and lots to a household not qualified under LUC Section 4.7.3, the Rules and Regulations are not unlawful, arbitrary or capricious. *See County Exhibit B* at Section 4.7.11.

**A. The HDHO Ordinance's Plain Language Prohibits the Sale of HDHO Units/Lots to Households Not Qualified under the Actively Employed Household Standard**

Under Utah law, "[courts] read the plain language of the statute as a whole, and interpret its provisions in harmony with other statutes in the same chapter and related chapters." *Bryner v. Cardon Outreach, LLC*, 2018 UT 52, ¶ 10, 428 P.3d 1096 (quoting *State v. Barrett*, 2005 UT 88, ¶ 29, 127 P.3d 682). Statutory ambiguity exists if there are multiple reasonable interpretations. *Id.* However, "a statute susceptible to competing interpretations may nevertheless be unambiguous if the text of the act as a whole, in light of related statutory provisions, makes all but one of those meanings implausible." *Id.* (quoting *Utah Pub. Emps. Ass'n v. State*, 2006 UT 9,

¶ 60, 131 P.3d 208 (Parrish, J., concurring)).

Here, when read as a whole, the HDHO Ordinance clearly intends to limit ownership to “actively employed households.” Despite Developer’s argument to the contrary, the HDHO does not omit an ownership requirement, but instead indisputably prohibits “sell[ing] or rent[ing] an HDHO lot or unit to a household not qualified under this section.” LUC Section 4.7.11 (emphasis added). In addition, the HDHO Ordinance is precise in using the terms “owner” or “renter” instead of occupant, a distinction to which we must give effect. *See County Exhibit B* at Sections 4.7.3 and 4.7.4; *Turner v. Staker & Parson Cos.*, 2012 UT 30, ¶ 12, 284 P.3d 600 (wherever possible, we must give effect to every word, avoiding any interpretation which renders parts or words in a provision inoperative or superfluous); *Boyle v. Christensen*, 2011 UT 20, ¶ 27, 251 P.3d 810, 819 (we must presume the precise language used is purposeful and read each term according to its ordinary and accepted meaning); *Marion Energy Inc. v. KFJ Ranch Partnership*, 2011 UT 50, ¶ 14, 267 P.3d 863, 868 (we must presume omissions purposeful) (omissions are as equally important as express language).

Developer’s attempts to ignore the HDHO Ordinance’s plain language, and specifically its prohibition on selling HDHO units to non-actively employed households, run directly counter to statutory construction principles. Developer even admits “[t]his interpretation of the Enforcement section of the HDHO Ordinance is also the only way to harmonize all of the terms of the HDHO Ordinance.” *Appeal* at 11. Harmonizing all the HDHO Ordinance’s sections is the only way to “constru[e] enactments [ ] to give effect to the legislature’s intent.” *LPI Servs. v. McGee*, 2009 UT 41, ¶ 11, 215 P.3d 135. “We read the plain language of the statute as a whole[ ] and interpret its provisions in harmony with other statutes in the same chapter and related

chapters.” *Id.*

Developer’s actions seek to circumvent the County’s legislative intent in enacting the HDHO Ordinance—to prevent non-local investors and second homeowners from purchasing HDHO properties at prices above those supported by the local incomes of County residents and driving up rents beyond what local county residents can afford. For this reason, Developer’s preferred interpretation of the HDHO Ordinance, and its attempts to invalidate the Rules and Regulations, cannot be permitted.

**B. The Legislative Intent of the Grand County Commission Is Relevant to Ensure the Statutory Interpretation Supports the Purpose of the Legislation**

Developer argues that the Grand County Commission’s legislative intent is irrelevant because the HDHO Ordinance’s statutory language is unambiguous. As discussed above, the County does not dispute the HDHO Ordinance’s plain language. However, the goal of any statutory interpretation is to “evince the true *intent and purpose of the Legislature*. We do so by looking at the best evidence of legislative intent, namely, the plain language of the statute itself.” *Olsen v. Chase*, 2011 UT App 181, ¶ 8, 270 P.3d 538 (emphasis added) (quoting *Archuleta v. St. Mark’s Hosp.*, 2009 UT 36, ¶ 8, 238 P.3d 1044). “But when statutory language is ambiguous—in that its terms remain susceptible to two or more reasonable interpretations after we have conducted a plain language analysis—we generally resort to other modes of statutory construction and ‘seek guidance from legislative history’ and other accepted sources.” *Marion Energy, Inc. v. KFJ Ranch P’ship*, 2011 UT 50, ¶ 15, 267 P.3d 863 (citing *Taylor ex rel. Taylor v. Ogden City Sch. Dist.*, 927 P.2d 159, 167 (Utah 1996) (Durham, J., dissenting)).

In making its argument, Developer selects a few statements in which the ownership requirement or enforcement mechanisms were not discussed. *Appeal* at p 12. However, these few

examples do not override the overwhelming legislative history that spans more than 18 months of public meetings, workshops, and hearings that supports the ownership requirement as a critical component of the success of the HDHO Ordinance. As discussed above, the Commission adopted the HDHO Ordinance, a workforce housing legislation requiring local ownership by qualified households, instead of the more traditional affordable housing legislation requiring income requirements and price caps, at least in part because staff promised that the ownership requirement ensured that the program was easy to administer and enforce:

Because the units built through the HDHO would not be restricted based on income, they would be restricted based on the *owner* or renter living and working in Grand County, there is not a proposed cap on appreciation or price . . . When that house turns over after the first owner or renter, they are still required to *sell* or rent to someone who lives and works in Grand County. So that market restriction on what price they can generate as a *sale* or in rent is going to be dictated by what wages are here in Grand County. In effect, you are achieving affordability in the same way you were *with the first buyer*. So, yes, it could appreciate but only if, say, wages are going up or there are more people living in Grand County earning wages that enable them to pay that price point.

PZ Staff (emphasis added), *October 16, 2018 Commission Workshop*,

<https://www.grandcountyutah.net/CivicMedia?VID=247>.

And of course, the repeated conversations with the Commission regarding the ownership requirement were intricately wrapped up in the purpose of the HDHO Ordinance, to enable the local workforce to buy homes and stay in Grand County long-term:

So when we talk about what [our essential workforce] can afford, this is really important when we start talking about having deed restrictions and having developers build to market or to these people that would be living and working here. When we look at an affordable *home price*, that gives you a better idea of the range of where these housing units would be *sold*. But again, that would be up to the developer to *price them at an adequate price* where people that actually live and work here can afford to pay for that.

*Id.* (emphasis added).

Similarly, an earlier conversation held at the June 5, 2018 Commission meeting regarding

how the ownership requirement would benefit the local workforce by repressing values was representative of many held while the Commission workshopped the HDHO Ordinance throughout 2018:

Commissioner Hawks: Will the HDHO Ordinance will put a cap on “how much [developers] can charge for [HDHO lots/units]?”

PZ Staff: “It does not. We are counting on the income level of people who live here to create the cap. Theoretically, if they were required to *sell* to people who live here full-time, then they would have to make it affordable to people who live here full-time or they wouldn’t be able to *sell* the units.”

Commissioner Wells: “How confident are you that . . . the economic viability is still intact for development in those areas. It just seems, back of the napkin, that’s a lot of units.”

PZ Staff: “All of the units will be developed to market rate. So ultimately it’s up to the developer or realtor to *sell* those units. We totally removed the affordability aspect of this and said: *as long as you aren’t selling to second homeowners.*”

Commissioner Wells: “You aren’t going to cap the value of the unit with a deed restriction?”

PZ Staff: “No, the market will kinda do what it does.”

Commissioner Wells: “So you are deed restricting it for certain criteria.”

PZ Staff: “Right.”

Commission Discussion (emphasis added), *June 5, 2018 Commission Meeting*,

<https://www.youtube.com/watch?v=MR34Ugv755E>.

These express discussions were also framed by related topics including how the benefits of the local ownership requirement in the HDHO Ordinance outweighed the burden to rural residential neighborhoods which would be “forever changed” by the increased density of the

HDHO developments; presentations of studies and other data showing that the local workforce could not afford to buy homes in Grand County; and the rejection of traditional affordable housing programs with income requirements and price caps in favor of the local ownership requirement. *See e.g., id* (presentation of data showing market unaffordability and rejection of affordable housing models); *October 16, 2018 Commission Workshop* at <https://www.grandcountyutah.net/CivicMedia?VID=247> (presentation of data showing local wages have not kept up with housing market and discussion regarding the burden on rural residential neighborhoods); *December 4, 2018 Commission Workshop* at <https://www.youtube.com/watch?v=JTYtWjK1bGA> (presentation of data showing 1000 households in the City and County were cost-burdened in 2018 with an additional 400 households predicted to be cost-burdened by 2020 and robust discussion about how to protect local workforce upon retirement without forcing them to sell their units); *January 15, 2019 Commission Workshop* at <https://www.grandcountyutah.net/CivicMedia?VID=276> (additional discussion that benefits of HDHO program outweigh burden on rural residential neighborhoods because it helps the County's workforce buy homes and build equity).

Here, the HDHO Ordinance's plain language prohibiting sales of HDHO units and lots to non-actively employed households supports the County's clear legislative intent to prevent non-local investors and second homebuyers from purchasing HDHO properties at prices above those supported by the local wages and driving up rents beyond what local county residents can afford. For all these reasons, the HDHO Ordinance, as well as the Rules and Regulations, should be upheld.

### **III. THE HDHO ORDINANCE AND RULES AND REGULATIONS DO NOT VIOLATE DEVELOPER'S VESTED RIGHTS**

Contrary to Developer's assertions, the Rules and Regulations do not place new restrictions on ownership such that they run afoul of Developer's vested rights. "The vested rights doctrine is the body of law that addresses at what point development rights 'vest' such that subsequent zoning changes cannot be retroactively applied." *Keith v. Mountain Resorts Dev., L.L.C.*, 2014 UT 32, ¶ 30, 337 P.3d 213. "Until the rights vest on a particular piece of property, the city or state can change land-use and zoning regulations and apply the new laws to the development of the property." *Id.* Under Utah law, "rights in a development application vest upon submission of a completed application that conforms to the county land use and zoning ordinances in effect at the time." *Id.* at ¶ 31. However, submission of a development plan merely creates the "right not to have the county revoke approval of the development based on a change in the applicable zoning laws." *Id.* Thus, "[a] development approval does not create independent free-floating vested property rights—the rights obtained by the submission and later approval of a development plan are necessarily conditioned upon compliance with the approved plan." *Id.*

As previously discussed, the HDHO Ordinance encompasses both an ownership requirement and enforcement authority. Developer had actual notice of the HDHO Ordinance's prohibition on sales to non-actively employed households and its enforcement authority, via the express language of LUC Section 4.7, when it entered into the Development Agreement and accepted the benefits of the upzone and increased density under Ordinance No. 600.01. *See e.g. County Exhibit B* at Section 4.7.11

In addition, the Developer had constructive notice of the requirements of the HDHO Ordinance as the ownership requirement was discussed numerous times in public meetings,

workshops, and hearings before local residents for more than 18 months. Developer is a Utah company owned by Grand County residents, and Developer's principals often attended and participated in these public meetings during the HDHO drafting and adoption process. In addition, the intent and requirements of the HDHO Ordinance were also reported on by local media such as the *Moab Sun News*, a free weekly newspaper:

"This is really more of a 'workforce housing' incentive than an 'affordable housing' incentive," said Zacharia Levine, director of the County Department of Community and Economic Development.

Home prices in Moab are high in part due to second-home buyers and overnight rental developers willing to spend more capital than the average Grand County earner can afford.

"We anticipate these units to be more affordable than unrestricted market-rate units. Buyers and renters of restricted HDHO lots or units will not have to compete with the spending power of non-residents," said Levine, meaning that, at least in theory, the selling prices of those units will be limited by the incomes of Grand County residents.

There is not, however, Levine noted, an explicit income-based component to the deed restriction required in the HDHO . . . "While we suspect the restricted HDHO units will be cheaper than unrestricted market-rate units, due to the elimination of competition with second homeowners and non-residents and overnight lodging units, we don't know for certain if, or how much, cheaper they will be," Levine noted.

See Rachel Fixen, *Closing the Gap: New Developments May Aid Median-Income Homebuyers*

(Feb. 6, 2020),

[https://www.moabsunnews.com/news/article\\_1b8bf8a4-494f-11ea-a65b-d3f66d1b7a99.html](https://www.moabsunnews.com/news/article_1b8bf8a4-494f-11ea-a65b-d3f66d1b7a99.html).

Since Developer has no "vested right" to circumvent the County's objectives in passing the HDHO Ordinance or the express language of the HDHO Ordinance itself, as restated in the Rules and Regulations, Developer's arguments that the Rules and Regulations violate the vested rights doctrine must be rejected.

Moreover, Developer's argument that the Rules and Regulations create possible regulatory takings issues is meritless. Under Utah law, "for there to be a taking under a zoning ordinance, the landowner must show that he has been deprived of all reasonable uses of his land." *Cornish Town v. Koller*, 817 P.2d 305, 312 (Utah 1991). Here, Developer has not been denied all reasonable uses of its land despite the fact that it was disappointed it did not immediately sell dozens of HDHO units in the 8 days in which it opened the project to local buyers. In fact, Developer can sell HDHO lots or units to actively employed households, it can keep and rent HDHO lots or units to actively employed households, and it can sell the unrestricted 20% of HDHO lots and units allowed under the increased density of the HDHO-10 district to any buyer at great profit. Therefore, no regulatory takings issues exists.<sup>3</sup>

Based on the foregoing, the County has not violated Developer's statutory and constitutional rights, and the Rules and Regulations should apply to the Developer's Project.

#### **IV. APPLICATION OF THE RULES AND REGULATIONS DOES NOT BREACH THE DEVELOPMENT AGREEMENT**

Developer claims that the County breached the Development Agreement by amending it without Developer's consent in adopting the Rules and Regulations, which impose an ownership requirement not present in the HDHO Ordinance. The elements of breach of contract under Utah law are: "(1) a contract, (2) performance by the party seeking recovery, (3) breach of the contract by the other party, and (4) damages." *Bair v. Axiom Design, L.L.C.*, 2001 UT 20, ¶ 14, 20 P.3d 388.

*Tooele Associates Ltd Partnership v. Tooele City*, 2012 UT App 214, 284 P.3d 709, is

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<sup>3</sup> The County refutes Developer's argument that application of the Rules and Regulations will cause the County to breach its obligations under the Development in Section III, *infra*.

instructive. In *Tooele Associates*, the developer claimed that the city breached a series of agreements the parties entered into for development of a planned residential community. *Id.* ¶ 2. The agreements required the developer to construct certain public improvements and required the city to provide culinary water for the project. *Id.* However, the developer claimed that the city breached these agreements by misapplying the city’s “public improvements ordinances with respect to the [planned residential community], requiring the public improvements to meet standards not clearly set forth in any agreement and not required of other similarly situated developers, creating arbitrary and incomplete punch lists of items that needed to be fixed for the public improvements to be considered complete, slowing or refusing to make final inspections of the public improvements, refusing to recognize prior admissions that certain public improvements were complete, and ultimately refusing to accept certain public improvements as complete.” *Id.* at ¶ 4. The Court of Appeals affirmed the jury verdict in favor of the developer, holding that the city materially breached the agreements, including its covenant of good faith and fair dealing, in part by hindering the developer’s “completing of the public improvements and withholding approval of additional phases.” *Id.* at ¶¶ 34, 35.

In contrast to *Toole Associates*, the County has not hindered or interfered with Developer’s completion of the project. Indeed, the Developer does not dispute the Development Agreement is a reasonable requirement of the zoning map amendment application or that the HDHO Ordinance includes the prohibition from “sell[ing] or rent[ing] an HDHO lot or unit to a household not qualified under this section.” LUC Section 4.7.11. Therefore, Developer was aware of the HDHO Ordinance’s ownership restrictions at the time of signing the Development Agreement and approval of Ordinance No. 600.01, and the County’s enforcement of the Rules

and Regulations' ownership restrictions is not a breach of the Development Agreement.

Additionally, Developer fails to demonstrate it has suffered any damages as a result of enforcement of the Rules and Regulations' ownership restrictions. The Rules and Regulations do not interfere with Developer's ability to complete the project, sell or rent HDHO lots or units to actively employed households, keep and rent HDHO lots or unit to actively employed households, or sell the unrestricted 20% of HDHO lots and units allowed under the increased density of the HDHO-15 district to any buyer at great profit. Therefore, Developer's breach of contract claim fails.

## **V. CONCLUSION**

The Rules and Regulations are guidelines to help the County and its designee, HASU, implement the HDHO Ordinance, a critical workforce housing legislation. The Rules and Regulations are not: 1) arbitrary, capricious and unlawful as they were properly adopted to implement existing law; 2) an amendment to the HDHO Ordinance, which already prohibits sales of HDHO units and lots to non-qualified households; or 3) a violation of the Development Agreement which already integrates LUC Section 4.7 and prohibits sales of HDHO units and lots to non-qualified households.

DATED this 28th day of April 2021.

**GRAND COUNTY**

*/s/ CHRISTINA R. SLOAN*

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Christina R. Sloan  
Grand County Attorney

**GRAND COUNTY  
RULES and REGULATIONS  
for  
HIGH DENSITY HOUSING OVERLAY DEVELOPMENTS**  
*Effective March 2, 2021*

**WHEREAS**, the legislative body of Grand County has approved the application of the High Density Housing Overlay (“HDHO”) to those HDHO developments approved pursuant to Grand County Ordinance No. 591 (2019) as codified in the Grand County Land Use Code (“LUC”) in Section 4.7;

**WHEREAS**, Grand County created the HDHO to provide decent, safe and affordable housing in Grand County, Utah for local residents contributing to the workforce;

**WHEREAS**, as a condition of approval and subject to LUC Section 4.7.6(B), the Lots and Units particularly described in the attached *Exhibit A* are deed restricted for Primary Residential Housing for Actively Employed Households in perpetuity;

**WHEREAS**, Grand County has delegated management of the HDHO program to the Housing Authority of Southeastern Utah (“HASU”), a non-profit organization incorporated in 1994 to administer affordable housing programs for Grand County and San Juan County (as used herein, Grand County shall include its designee, HASU).

**SECTION 1. PURPOSE**

A. Rules and Regulations. These Rules and Regulations shall provide instructions and guidance to the County and HASU when applying the provisions of LUC Section 4.7 to HDHO Developments. All terms not defined herein shall have the meaning assigned them in LUC Section 4.7.

B. Qualified Ownership Required. LUC Section 4.7, and specifically 4.7.11, requires all HDHO Lots and Units to be sold to Households who qualify thereunder. Temporary lapses in local employment or leaves of absence shall be addressed pursuant to the provisions in Section 3 below.

C. Purpose. Subject to LUC Section 4.7 and these Rules and Regulations, the purpose of the HDHO is to facilitate housing for local residents working in Grand County who maintain their primary residence in Grand County. These Rules and Regulations shall be applied to HDHO Developments in a manner which supports this purpose.

**SECTION 2. QUALIFIED HOUSEHOLD**

A. Qualified Household. The ownership, use, and occupancy of HDHO Lots and Units shall be limited to qualified Actively Employed Households (hereafter "Qualified Household"), as set forth in LUC Section 4.7 and herein.

1. *Household, defined.*

i. The definition of Actively Employed Households shall not be construed to prohibit a familial financial partner who co-signs a loan with an adult who meets the criteria set forth in LUC Section 4.7.3.

ii. So long as the owner of a business or entity with a primary place of business in Grand County is approved as a Qualified Household, pursuant to LUC Section 4.7.3(A)(2), either the owner or the business or entity may own the HDHO Lot or Unit.

iii. The definition of "owner's representative" in LUC Section 4.7.3(A)(2) shall be construed to include Directors of a non-profit organization. Accordingly, so long as a majority of the Directors of a non-profit organization with a primary place of business in Grand County is approved as a Qualified Household, pursuant to LUC Section 4.7.3(A)(2), the non-profit organization may own the HDHO Lot or Unit.

2. *Continuing Obligation*. Once an Owner is approved as a Qualified Household, as required by LUC Section 4.7.11, the occupants of the HDHO Lot or Unit shall satisfy the definition of a Qualified Household at all times as required by LUC Section 4.7 and these Rules and Regulations.

3. *Duty of Notification*. Each Owner and renter shall notify the County prior to any change in ownership and occupancy of their HDHO Lot or Unit, which change shall be pre-approved by the County pursuant to Section 3 herein. Any failure to pre-qualify a new owner or occupant shall be the sole liability of the owner or renter.

4. *Ownership by Grand County*. Grand County may purchase and own the HDHO Lot and/or Unit.

### **SECTION 3. APPLICATION PROCEDURE**

A. Application Required. Each Owner and renter of an HDHO Lot or Unit shall apply for approval as a Qualified Household on written applications, kept on file with HASU, at least thirty (30) days prior to purchase or lease of an HDHO Lot or Unit.

B. Application Approval. Once HASU determines eligibility, it shall provide written acknowledgement of the same.

C. Notifications Required. Each Owner and renter shall notify HASU prior to any change in ownership or occupancy of their HDHO Lot or Unit or their employment status, which change shall be pre-approved by HASU.

1. *Lapses of Employment.*

i. Temporary lapses of employment of three (3) months or less do not require notification to HASU and shall not affect an owner or renter's status as a Qualified Household.

ii. Lapses of employment lasting more than three (3) months shall be reported to HASU by the owner or renter and require HASU approval to ensure continuing eligibility of the occupant.

2. *Leaves of Absence.*

i. Temporary leaves of absence of three (3) months or less do not require notification to HASU and shall not affect an owner or renter's status as a Qualified Household.

ii. Extraordinary leaves of absence for specialized education, care-giving of a family member, religious or charitable work, or military service, lasting not more than two (2) years, where the owner or renter can demonstrate a commitment to returning to Grand County and otherwise complying with LUC Section 4.7.3(M), may be granted by HASU in advance. In the event of approval, the owner may rent the HDHO Lot or Unit to a Qualified Household during the extraordinary leave of absence.

D. Renewal. HASU will contact each owner and renter on an annual basis to re-qualify the Household. Each owner and renter shall submit a written affidavit that attests to their qualifications and any additional requested documentation required by HASU that proves the same.

E. Denials or Revocation. HASU may deny an Application or revoke a prior determination of eligibility if the occupant does not continue to qualify as a Qualified Householder under LUC Section 4.7.3 and these Rules and Regulations. If HASU denies or revokes an Application or prior determination of eligibility, that determination shall be referred to the Grand County Planning and Zoning Director for Final Decision.

F. Change in Eligibility. Once an Owner is approved as a Qualified Household, a change in the owner's eligibility status shall not constitute a violation hereunder for the period of time the owner continues to own the HDHO Lot or Unit so long as the occupant continues to qualify as a Qualified Household.

## **SECTION 4. SALE OF UNITS**

A. Sale of Units, generally. An owner may sell an HDHO Lot or Unit For Sale By Owner or with a licensed Utah realtor. If an HDHO Lot or Unit is occupied during the Listing Period, the occupant must be a Qualified Household.

B. Notification upon Listing. The owner shall notify the County when an HDHO Lot or Unit is listed for sale, when it goes under contract, and when it sells for the purposes of qualifying the potential or new owner.

C. Prequalification of Owners. It is advisable for potential buyers of HDHO Lots and Units to request pre-approval as a Qualified Household pursuant to Section 3 above while a sale is pending, at least thirty (30) days and preferably sixty (60) days before closing.

## **SECTION 5. APPEAL AND ENFORCEMENT**

A. Conflict. In the event of conflict between these Rules and Regulations and LUC Section 4.7, LUC Section 4.7 shall control.

B. Appeal. A person adversely affected by a denial or revocation of the Grand County Planning and Zoning Director may appeal such Final Decision within thirty (30) days of the County's written decision pursuant to the process set forth in Chapter 1.16 of Grand County's General Ordinances.

C. Violation, Defined. Any default under LUC Section 4.7, the Deed Restrictions recorded against the HDHO Development, or these Rules and Regulations, including fraud or misrepresentation by an Owner of an HDHO Lot or Unit, shall constitute a violation of County Ordinance.

D. Investigation and Enforcement. Grand County shall oversee enforcement of LUC Section 4.7 and these Rules and Regulations. Possible violations of the same shall be investigated and enforced under Chapter 1.16 of the General Grand County Ordinances.

E. Grand County Remedies. An Owner shall cure a Violation or shall sell the HDHO Lot or Unit to a Qualified Household.

ADOPTED by the Grand County Commission on March 2, 2021 in open session of a public meeting.

**GRAND COUNTY COMMISSION**

  
\_\_\_\_\_  
Mary McGann, Chair

ATTEST:

  
\_\_\_\_\_  
Quinn Hall, Clerk/Auditor

(3) An analysis that compares the stated community benefit(s) with the proposed impact(s).

3. The conceptual site plan shall include the information required under Sections [9.17.3A](#) through N. [Ord. 607, 2020.]

**D. Recordation.** The developer or subdivider shall record the development agreement and master plan in the real property records of Grand County, Utah, prior to recordation of a final plat approved hereunder or issuance of a building permit for any unit within a site plan approved hereunder. Once approved, the development agreement and master plan may not be amended or modified without reapplication to the County.

**E. Effect.** Review and consideration of an -OAO District application is a discretionary legislative decision. Further, approval of an -OAO District application does not constitute site plan, preliminary plat, or final plat approval. Rather, such approval shall be deemed approval of permission to develop under the standards of this section and the master plan.

**F. Lapse of Approval.** The -OAO District approval shall automatically expire and be void unless the County approves and developer records a site plan or final plat for the overnight accommodations development in accordance with Section [9.5](#) or [9.17](#) within 24 months of the date of -OAO District approval.

**G. Conflict.** In the event of conflict between the provisions of Section [9.2](#) and this Section [4.6.7](#), this section shall control.

[Ord. 622, 2021; Ord. 595, 2019.]

## 4.7 High Density Housing Overlay Districts [Revised 3/21](#)

### 4.7.1 Purpose

The High Density Housing Overlay Districts ("HDHO Districts") are designed to provide for modification of the otherwise applicable development standards of the underlying base district as specified in Articles 2 and 5, in order to accomplish one or more of the following purposes:

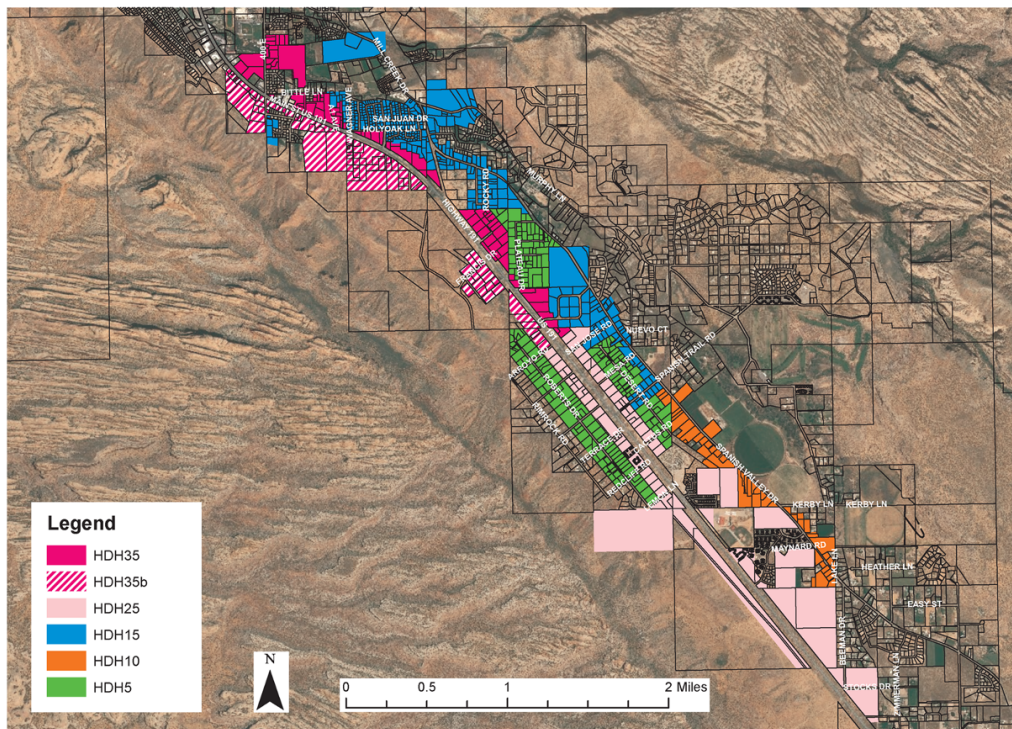
- A. Facilitating the provision of new housing units used for primary residential occupancy by actively employed households;
- B. Achieving the goals of the housing element of the County's General Plan;
- C. Implementing the policies and goals of the housing element of the County's General Plan;
- D. Encouraging the development of new high quality housing units by assisting both the public and private sector in making the provision of these units economically viable; and
- E. Encouraging the provision of primary residential housing through the combination of multiple-family and single-family residential zoning districts within the County where the residential housing projects are determined to be feasible and are consistent with the County's General Plan.

[Ord. 591, 2019.]

### 4.7.2 Applicability

The regulations set forth in this section may be applied to real property located within the HDHO boundaries, as shown in Exhibit A attached to the ordinance codified in this section, upon application to and approval by the County Commission pursuant to the provisions herein. Upon approval, the HDHO District zoning, development agreement, and master plan shall control development of the property.

High Density Housing Overlay Boundaries



[Ord. 591, 2019.]

**4.7.3 Definitions**

- A.** "Active employment household" or "actively employed household" means a household with at least one adult who meets one of the following criteria; provided, however, where there are unrelated individuals living together in one household, at least 50 percent of all the adults comprising the household shall meet one of the following criteria:
1. A full-time (aggregate of 30 hours of employment per week) employee of an entity or entities located within Grand County; or
  2. An owner or owner's representative of a business or entity with a primary place of business within Grand County; or
  3. A full-time (aggregate of 30 hours of employment per week for nine months out of each calendar year) worker who is self-employed or works out of their home must provide their entire list of clients/workload so that it can be verified that a minimum of 75 percent of their work/clients are based within Grand County;
  4. A person who is unable to work or does not have a work history required under subsections A.1 through 3 of this section due to a disability; or
  5. A retiree with a work history required under subsections A.1 through 3 of this section for the five years prior to retirement.
- B.** "Developer" means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities, which seeks approval of an application for an HDHO development.
- C.** "Development agreement" means a development agreement and deed restriction, which is a contract between Grand County and a developer or subdivider, which is recorded as an encumbrance upon the property to ensure compliance hereunder. A development agreement shall run with the land and be binding upon the parties and their successors in title, as provided by its terms.
- D.** "High Density Housing Overlay District" or "HDHO District" means a zoning district applied to the property that benefits from a higher density than that allowed under the existing underlying zoning designation, which attendant increased density encourages the provision of new housing units used for primary residential occupancy as further described in this section.
- E.** "High Density Housing Overlay development" or "HDHO development" means a subdivision or site plan approved within an HDHO District in which at least 80 percent of the lots or units developed on the property are restricted for primary residential housing occupied by actively employed households.
- F.** "High Density Housing Overlay lot" or "HDHO lot" is a lot restricted for primary residential housing occupied by actively employed households that otherwise meet the requirements of this section.
- G.** "HDHO lots or units" or "HDHO lots and units" shall refer to HDHO lots and/or HDHO units.
- H.** "High Density Housing Overlay unit" or "HDHO unit" is a dwelling unit restricted for primary residential housing occupied by actively employed households that otherwise meet the requirements of this section.
- I.** "Household" means one adult living alone, two or more adults related to each other by blood, marriage, or another legally recognized relationship, or a maximum of five unrelated adults residing in the same residence.
- J.** "Master plan" means a planning document which guides development of the property based on the County's planning goals, existing development, and physical characteristics of the particular HDHO development. A master plan shall be recorded, run with the land, and be binding upon the parties and their successors in title, as provided by its terms.
- K.** "Primary resident" means an adult that meets the "primary residential occupancy" requirement.
- L.** "Primary residential housing" or "primary residential development" shall have the same meaning as "high density housing development," which terms may be used interchangeably throughout this section.
- M.** "Primary residential occupancy" means the owner of record occupying the dwelling unit for a minimum of nine months out of any 12-month period or a renter occupying the dwelling unit through a lease term no shorter than six months out of any 12-month period.
- N.** "Property" means a specific parcel of real property upon which an HDHO District is applied.
- O.** "Subdivider" means any person creating a subdivision and offering lots for sale to the public.

[Ord. 591, 2019.]

**4.7.4 Permitted Uses**

The following uses are permitted within an HDHO development upon the County Commission's approval of application of an HDHO District to a specific parcel:

- A.** Residential developments at a density greater than normally permitted by the underlying zoning district as described in the table below, when a subdivider or developer ensures a minimum of 80 percent of lots or units developed on the property are deed restricted for primary residential occupancy for actively employed households. HDHO lots and units may be owner-occupied or renter-occupied as long as the residents meet the occupancy and active employment requirements of this subsection A. The maximum density (units/acre) limit shall be based on a calculation that includes all existing and all new units on the land area that is being included in the calculation. Residential development qualifying for greater density pursuant to the provisions of this section shall be permitted to obtain such density by constructing residential housing types not otherwise allowed in the underlying zoning district. For example, multifamily units may be constructed in a single-family residential zone.

High Density Housing (HDH) District	Maximum Density
HDH 35a	35 lots or units per acre
HDH 35b	35 lots or units per acre
HDH 25	25 lots or units per acre

High Density Housing (HDH) District	Maximum Density
HDH 15	15 lots or units per acre
HDH 10	10 lots or units per acre
HDH 5	5 lots or units per acre

**B.** Accessory uses or structures incidental to the principally permitted use pursuant to Section [3.3](#). Any accessory dwelling unit permitted under Section [3.3](#) in an HDHO development shall meet the occupancy and active employment requirements of subsection A of this section.

[Ord. 591, 2019.]

#### 4.7.5 Development Standards

**A. Eligibility.** In order to reduce costs associated with the development and construction of primary residential housing, the property development standards set forth in subsection B of this section are established for and shall apply to all HDHO developments within the HDHO Districts upon approval of a site plan or preliminary plat approval.

**B. Property Development Standards.** The following development standards shall apply to HDHO developments within the HDHO Districts:

**1. General Design Standards.** The development shall be designed and developed in a manner compatible with and complementary to existing and potential development in the immediate vicinity of the development site. Site planning on the perimeter shall provide for protection of the property from adverse surrounding influences and shall protect surrounding areas from potentially adverse influences from the property. To the greatest extent possible, the design of the development shall promote privacy for residents and neighbors, security, and use of passive solar heating and cooling through proper placement of walls, windows, and landscaping.

**2. Minimum Design Standards.** Minimum design standards are included to ensure a high degree of quality in the development of HDHO lots and units. The following design standards shall apply to a development that utilizes the density increases allowed by this section:

a. Sidewalks shall be installed along all street frontages where otherwise required by this LUC.

**b. Screening Requirements.**

**(1) Outdoor Storage Screening.** All outdoor storage areas for materials, trash, mechanical equipment, vehicles, or other similar items shall follow the standards outlined in Section [6.4.3](#).

**(2) Parking Lot Screening.** Parking lot screening must be provided between an off-street parking area containing six or more parking spaces and either 1) a different zoning district or 2) a public street, and shall:

i. Be provided within 10 feet of the perimeter of the parking lot to be screened, except for parking lots adjacent to rain gardens/bioretenion systems, other landscape features, or where screening may negatively impact the traffic sight distance (as defined by the American Association of State Highway and Transportation Officials (AASHTO) and verified by the County Engineer);

ii. Be not less than 80 percent opaque and be a minimum of three feet in height as measured from the highest finished adjacent grade of the parking area. When shrubs are used to provide the screen, such shrubs must be at least two feet tall at planting and anticipated to grow to at least three feet tall at maturity;

iii. Not interfere with driver or pedestrian visibility for vehicles entering or exiting the premises;

iv. Utilize plants found in Section [6.4.3F](#), where required;

v. Consist of at least two of the following:

**(A)** A compact hedge of evergreen or densely twigged deciduous shrubs spaced to ensure closure into a solid hedge at maturity.

**(B)** A berm with plantings as described above.

**(C)** Transit shelters, benches, bicycle racks, and similar features may be integrated as a part of the screen.

**(D)** Fencing may be integrated as part of the screen. All wood fencing shall be stained and sealed with a weatherproof product;

vi. Be equipped with an irrigation system adequate for establishing and maintaining the plant materials within it.

**c. Parking Island Design.** Off-street parking areas with at least 25 parking stalls shall contain interior landscaped islands. Such islands shall be bounded by a raised concrete curb, pervious curbing, or an approved equivalent and shall contain mulch to retain soil moisture. This provision shall not apply to parking structures. Landscaped parking lot islands shall:

**(1)** Be located at the beginning and end of each parking row and shall contain a minimum of 180 square feet and a minimum width of nine feet;

**(2)** Include at least one tree per island;

**(3)** Incorporate shrubs, perennials, and ornamental grasses, where required;

**(4)** Be prepared with topsoil to a depth of two feet and improved to ensure adequate drainage, nutrient, and moisture retention levels for the establishment of plantings; and

**(5)** Be equipped with an irrigation system adequate for establishing and maintaining the plant materials within it.

**d. Building Exterior Facade Standards.**

(1) Exterior finishes may be of wood, masonry, stone, stucco, HDO board or other high quality material permitted by the building code, but shall not utilize vinyl siding; cedar or wood shakes; highly reflective, shiny, or mirror-like materials; or exposed plywood or particle board.

(2) Buildings shall utilize at least two of the following design features to provide visual relief along the front of the residence:

- i. Projections, recessions, or reveals such as, but not limited to, columns, pilasters, cornices, and bay windows.
- ii. Dormers.
- iii. Gables.
- iv. Recessed entries, a minimum of three feet deep.
- v. Covered front porches.
- vi. Cupolas.
- vii. Architectural pillars or posts.
- viii. Quoins.
- ix. Corbeling on wall.
- x. Decorative lintel.
- xi. Incorporation of brick or stone on at least 25 percent of front surface area.

e. Where HDHO units may be placed on the same lot as current or future temporary or short-term accommodations, dedicated HDHO units shall be clustered together so as to minimize the exposure of residents to temporary guests. In all other developments, where temporary or short-term accommodations units do not exist and cannot exist due to zoning restrictions, dedicated HDHO units shall be dispersed throughout the residential development.

f. Where there is a combination of commercial and residential uses, the commercial uses shall front along the highest road designation. Residential development shall be located behind commercial development or on upper floors above commercial development.

g. The County Commission may waive, or modify, any, or all, of these requirements when the Commission finds it is infeasible to comply due to physical or other constraints on the lot.

**3. Minimum Building Site Area and Lot Width.** There shall be no minimum building site area, minimum lot width, or maximum lot coverage requirements for individual lots or individual dwelling sites in a HDHO development. However, the building site area lot widths and lot coverage percentages shall be designated on a preliminary plat or site plan pursuant to Section [4.7.9](#).

**4. Density.** Overall density of site development within an HDHO District shall not exceed the limits established in Section [4.7.4](#).

**5. Building Height.**

a. Maximum building heights shall not exceed the limits defined in the underlying zone district except that buildings constructed in the HDHO 35b District shall not exceed four stories or 42 feet in height.

b. To the maximum extent possible, building heights and locations shall minimize shading and interruption of solar access to adjacent properties with existing residential structures or commercial agricultural operations.

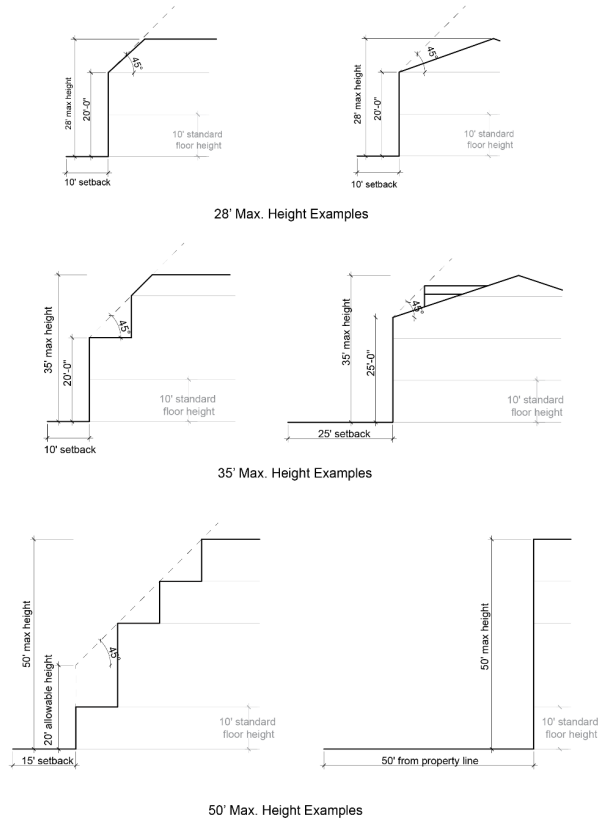
c. All structures shall conform to the ridgeline standards of Section [6.9.8](#).

d. Structures built within an HDHO development must comply with the setback and buffer requirements of the underlying zone. The maximum height of the building at the exterior wall shall be the greater of:

- (1) Twenty feet.
- (2) The building's setback at that point.

e. From the exterior wall, the building's height may increase to its maximum height at a rate not greater than a 45 degree angle from the maximum allowable height of the exterior wall.

Examples of HDH Height-Compliant Structures



6. **Setbacks.** The minimum setbacks from the lot line of the development shall be determined by the buffer requirements of Section 5.4.1B and the compatibility standards of Section 6.10.

7. **Parking.**

a. **Number of Spaces Required.**

- (1) For every single-family or two-family dwelling, there shall be provided at least two off-street parking spaces for each unit. Parking spaces provided in a garage or carport may count towards the minimum requirement.
- (2) For every attached multifamily dwelling, off-street parking spaces shall be provided in accordance with Section 6.1.4:

Multifamily dwellings	Efficiency and one-bedroom	1.5 per dwelling unit
	Two-bedroom	1.75 per dwelling unit
	Three-bedroom and larger	2.0 per dwelling unit

b. **Parking Design Requirements.**

- (1) Parking areas for single-family or two-family dwellings need not be paved.
- (2) Parking areas for attached multifamily dwellings shall be subject to the off-street requirements outlined in Section 6.1.7.
- (3) Uncovered surface parking may be permitted in the rear and side setbacks but is not permitted in the front or street-side setback.
- (4) Garages, carports, and individual locking storage units are subject to the setback standards outlined in Section 5.4.1.
- (5) Required spaces for multifamily developments equal to or greater than five units shall be covered in a carport or a garage except that for multifamily dwellings with four or fewer units, parking spaces can be uncovered.

8. **Minimum Standards of Physical Condition.** Each HDHO unit is required to have and maintain those minimum standards of physical conditions set forth in Exhibit B – Minimum Standards, attached to the ordinance codified in this section.

9. **Streets.** All public streets within or abutting the proposed planned development shall be dedicated and improved to County specifications for the particular classification of street.

10. **Signs.** Signs shall be permitted only to the extent allowed under Section 6.5. Signs, and must be approved by the Planning and Zoning Administrator.

11. **Construction Timing.** The HDHO units shall be ready for occupancy no later than the date of the initial or temporary occupancy of any unrestricted units within the development or applicable phase thereof. If the unrestricted units are developed in phases, then the HDHO units may be developed in proportion to the phasing of the unrestricted units. For example, for each unrestricted unit constructed at least four HDHO units shall be constructed.

[Ord. 591, 2019.]

#### 4.7.6 Assurance of Primary Residential Housing and Occupancy

**A. General.** HDHO lots and units shall be used for primary residential housing for actively employed households in perpetuity.

**B. Deed Restriction.** The following deed restriction shall be integrated into the development agreement, the master plan, each final plat or site plan, and each deed of conveyance:

The Property shall be used for Primary Residential Housing for Actively Employed Households as required by Grand County Land Use Code, Section [4.7](#), High Density Overlay Districts Overlay, in perpetuity. The Property is further subject to a Development Agreement and Master Plan recorded against the Property in the real property records of Grand County, Utah.

Grand County reserves the right to revoke, deny or suspend any permit, including a land development permit, conditional use permit, building permit, certificate of occupancy, or discretionary approval upon a violation or breach of this Deed Restriction by a record owner of any HDHO Lot or Unit in Grand County. [Ord. 615, 2020.]

**C. Enforcement.** In addition to other remedies preserved herein, Grand County reserves the right to revoke, deny or suspend any permit, including a land development permit, conditional use permit, building permit, certificate of occupancy, or discretionary approval upon a violation or breach of this section by a record owner of any HDHO lot or unit in Grand County.

[Ord. 591, 2019.]

#### 4.7.7 Development Incentives

**A. General.** As a further inducement to the development of primary residential housing beyond the relaxation and flexibility of development standards, the County, where appropriate, may also extend one or more development incentives to an HDHO development, as set forth in subsection B of this section, the selection of which shall depend on the quality, size, nature, and scope of the development being proposed. Incentives shall be targeted to improve the development design or to yield the greatest number of HDHO units, so as to permit the County to meet its estimate of additional housing needs and the goals of the housing element of the County's General Plan.

**B. Additional Development Incentives.** The County may also offer impact fee deferrals or waivers, property tax abatements, or direct financial contributions should the County Commission determine that such incentives are warranted and in the best interest of the County.

[Ord. 591, 2019.]

#### 4.7.8 HDHO District Application [Revised 3/21](#)

**A. Preapplication Conference.** Prior to submission of an HDHO District application, as defined in this section, the developer or subdivider shall meet with the Community Development Director or their designee(s), including other County staff deemed desirable or necessary by the Community Development Director, to discuss the procedures, standards, and regulations hereunder.

**B. Procedure.** An HDHO District application shall be reviewed and approved in accordance with the procedures of Section [9.2](#), Text and Zoning Map Amendments (Rezoning), and shall be considered to be a zoning map amendment.

**C. Application.** A developer or subdivider shall submit an HDHO District application with the information contained in Section [9.2.3](#) together with a development agreement, master plan, and conceptual site plan as follows:

1. The development agreement shall include the following information:
  - a. Legal description of the property;
  - b. Narrative summarizing the proposed development of the property by gross acre, number of lots or units, common area and open space acreage, overall character and architectural style, and other related development features as proposed by the developer or requested by the County;
  - c. Percentage of HDHO lots or units to be developed on the property; and
  - d. Deed restriction required by Section [4.7.6B](#).
2. The master plan shall include the following information:
  - a. Legal description of the property;
  - b. Number and location of lots or units to be developed on the property;
  - c. Percentage of HDHO lots or units to be developed on the property, including designation of the specific HDHO lots or units in accordance with Section [4.7.4](#); and
  - d. Identification of site planning features designed to ensure compatibility between proposed HDHO development and surrounding neighborhoods and land use.
3. The conceptual site plan shall include the information required under Sections [9.17.3A](#) through N.

**D. Recordation.** The developer or subdivider shall record the development agreement and master plan in the real property records of Grand County, Utah, prior to recordation of a final plat approved hereunder or issuance of a building permit for any unit within a site plan approved hereunder. Once approved, the development agreement and master plan may not be amended or modified without reapplication to the County.

**E. Effect.** Review and consideration of an HDHO District application is a discretionary legislative decision. Further, approval of an HDHO District application does not constitute site plan, preliminary plat, or final plat approval. Rather, such approval shall be deemed approval of permission to develop under the standards of this section and the master plan.

**F. Lapse of Approval.** The HDHO District approval shall automatically expire and be void unless the County approves and developer records a site plan or final plat for the HDHO development in accordance with Sections [4.7.9](#) and 9.5 within 24 months of the date of HDHO District approval.

**G. Conflict.** In the event of conflict between the provisions of Section [9.2](#) and this Section [4.7.8](#), this section shall control.

[Ord. 622, 2021; Ord. 591, 2019.]

#### 4.7.9 HDHO Development Plat and Site Plan Approval

**A. Application Procedure.** Review of an HDHO development plat or site plan is an administrative decision, which shall be consistent with the County's prior legislative approval of an HDHO District, the development agreement, and the master plan.

**B. HDHO Development Preliminary Plat and Final Plat.** Each subdivider shall submit and the County shall review a preliminary plat application and final plat application in accordance with Sections [9.4](#) and [9.5](#), Preliminary Plat and Final Plat, and this Section [4.7](#).

1. In addition to the requirements of Sections [9.4.2](#) and [9.5.1](#), Submittal Requirements, each plat shall include:

- a. Designation of HDHO lots in accordance with Section [4.7.4](#);
- b. Deed restriction as required by Section [4.7.6B](#).

**C. HDHO Development Site Plan.** Each developer of a mixed use or multifamily residential HDHO development shall submit and the County shall review a site plan application in accordance with Section [9.17](#), Site Plan Review, and this Section [4.7](#).

1. In addition to the requirements of Section [9.17.3](#), Submittal Requirements, each site plan shall include:

- a. Designation of HDHO units in accordance with Section [4.7.4](#);
- b. Deed restriction as required by Section [4.7.6B](#).

**D.** In the event of conflict between the provisions of Section [9.4](#), [9.5](#), or [9.17](#) and this Section [4.7.9](#), this section shall control.

[Ord. 591, 2019.]

#### 4.7.10 Expiration of High Density Housing Ordinance [Revised 3/21](#)

The ordinance codified in this section shall automatically expire after 300 HDHO lots or units have been approved or after two years, whichever occurs first. A record of the number and location of HDHO lots and units approved shall be kept on file within the Community Development Department at all times. [Ord. 622, 2021; Ord. 591, 2019.]

#### 4.7.11 Enforcement

**A. Penalties for Violation.** As more particularly set forth in Section [1.9](#), Penalties for Violation, any person, firm, entity, or corporation violating any provision or failing to comply with any provision of this section shall be guilty of a Class C misdemeanor. Without limiting the generality of the foregoing, it shall also be a Class C misdemeanor for any person, firm, entity, or corporation to sell or rent an HDHO lot or unit to a household not qualified under this section. It shall further be a Class C misdemeanor for any person, firm, entity, or corporation to provide false or materially incomplete information to the County or its designee or to a seller or lessor of an HDHO lot or unit to obtain occupancy of housing for which the person is not eligible.

**B. Legal Action.** In addition to the remedies set forth in Section [1.9](#), the County may institute any appropriate legal actions or proceedings necessary to ensure compliance with this section, including:

- 1. Actions to revoke, deny or suspend any permit, including a land development permit, conditional use permit, building permit, certificate of occupancy, or discretionary approval;
- 2. Actions to recover from any violator of this section civil fines, restitution to prevent unjust enrichment, and/or enforcement costs, including attorney fees;
- 3. Actions to seek judicial enforcement of such fines, restitution and costs, including judgment liens and foreclosure; and
- 4. Any other appropriate action for unlawful detainer, injunctive relief or damages.

[Ord. 591, 2019.]

#### 4.7.12 Repeal/Savings Clause

Ordinance No. 584, enacted January 15, 2019, is hereby repealed; provided, however, that Ordinance No. 584 shall remain in force to authorize the arrest, prosecution, conviction, and punishment of a person who violates Ordinance No. 584 prior to the effective date of the ordinance codified in this section. [Ord. 591, 2019.]

### 4.8 Scenic Resource Protection District [Revised 3/21](#)

#### 4.8.1 Purpose [Revised 3/21](#)

The Scenic Resource Protection District (SRPD) is an overlay district intended to accomplish one or more of the following purposes:

- A.** Prioritize the preservation of the natural beauty and ecological quality of the gateway to Moab and facilitate the use and enjoyment of the area while providing opportunities for development that enhances the character of the area while not impeding its scenic value;
- B.** Recognize this area as a gateway to the valuable scenic amenities of the greater Moab area, and as an introduction to the character and outdoor ethics of the community;
- C.** Protect and preserve the recreational and conservation uses of the area;

PART II. NON-RESIDENTIAL DISTRICTS. This Part sets forth the standards for development in non-residential districts. Section [5.5.1](#) to [5.5.3](#)

## 5.4 Part I: Residential Districts

### 5.4.1 Residential Development Standards

Development projects may include a mix of housing types as set forth in Section [3.1](#), Use Table.

#### A. Residential Density and Dimensional Standards

Residential development shall be subject to the maximum density and dimensional standards of the underlying base zoning district in accordance with the following table.

Residential Zoning Districts					
Development Standard	MFR	SLR	LLR	RR	RG
Max. Density (units/acre)	8	5	2	1	0.20
Min. Lot Size (acres)	0.125	0.20	0.50	1	5
Min. Project Boundary Buffer Parcel Size	5,445	8,712	21,780	21,780	21,780
Min. Front Yard and Street Side Yard	10'	20'	25'	25'	25'
Min. Interior Side Yard*	10'	10'	10'	15'	15'
Min. Rear Yard	10'	10'	20'	20'	20'
Min Lot Width*	80'	50'	100'	130'	130'
Bldg. Coverage Max.	55%	45%	25%	25%	25%
Max. Height Principal Structure	28'	28'	35'	35'	35'
Max. Height Accessory Structure	28'	28'	35'	35'	35'
*Side setback and min. lot width does not apply to townhome and multi-family shared walls.					

[Ord. 615, 2020.]

#### B. Project Boundary Buffer

1. Project boundary buffers are intended to provide a suitable transition between the proposed subdivision and adjacent development. Buffers are required along all sides of the proposed subdivision that share a boundary with a protected zone district, excluding arterial or collector streets. For projects providing 20 percent or more affordable housing units as defined by Section [6.14](#), the project boundary buffer on each edge shall be 20 feet. For all other projects, the project boundary buffer on each edge shall be 20 feet or the proposed building height, whichever is greater.
2. Buffer width shall be measured perpendicular to the property lines that define the project area.
3. Development projects may include a mix of housing types as set forth in Section [3.1](#), Use Table, so long as the development complies with the maximum density requirement of the underlying base district (see subsection A of this section). [Ord. 549, 2016.]

#### C. Mix of Housing Types

Two-family, townhouse, multi-family residential units may comprise no more than 50 percent of the total dwelling units of any proposed conventional residential subdivision. In no case shall the district density be exceeded for the overall site.

#### D. Constrained Lands

1. Maximum allowable density for constrained lands (or portion of property which constitutes constrained lands) as described in this subsection (below) in all subdivision types shall be reduced by a minimum of 50 percent (see also Section [5.6](#), Measurements, Computations, and Exceptions).
2. Constrained lands include lands with natural slopes greater than 30 percent, jurisdictional wetlands, lands in the 100 year floodplain, public drinking water supply water sources (recharge areas for the aquifer in the Glen Canyon Formation), lands affected by unmitigable geo-hazards, and riparian habitats and archeological sites.
3. Constrained lands in all developments and subdivisions shall be identified on plats and remain unoccupied by buildings or impervious surfaces, unless the applicant demonstrates to the County Commission that this provision would constitute an unusual hardship and is counter to the purposes of this LUC. In cases where a hardship is granted not more than ten percent of any constrained land area shall be occupied by such surfaces.

#### E. Land Suitability

The County shall not approve the subdivision of land if, from adequate investigations conducted by all public agencies concerned, it has been determined that in the best interest of the public, the site is not suitable for platting and development purposes of the kind proposed. Land deemed to be environmentally unsuitable shall not be platted for residential occupancy, or for such other uses as may increase danger to health, life, or property, or aggravate erosion or flood hazard. Such land within the plat shall be restricted for such uses as shall not be endangered by periodic or occasional inundation or shall not produce unsatisfactory living conditions.

## 5.5 Part II: Nonresidential Districts

**GRAND COUNTY, UTAH  
ORDINANCE 600.01 (2019)**

**APPROVING APPLICATION OF THE HIGH DENSITY HOUSING OVERLAY  
DISTRICT 15 (HDHO-15) TO 1185, 1187 AND 1189 MURPHY LANE AND  
ASSOCIATED MASTER PLAN, DEVELOPMENT AGREEMENT AND DEED  
RESTRICTION, AND REDUCED PARKING REQUIREMENT  
(Murphy Flats HDHO Development)**

**WHEREAS**, Courtney Kizer and Robert Kizer, (Applicants) are the owners of record of 1.46 acres of real property located at 1187 and 1189 Murphy Ln. in West ½ of Section 8, Township 26 South, Range 22 East, SLM, Grand County, Utah, more specifically described as follows:

Beginning at a corner which bears South 69° 20' East 1582.6 feet; thence North 15° 13' West 267.0 feet from the West ¼ Corner Section 8, Township 26 South, Range 22 East, SLM, and proceeding thence North 15°13' West 334.8 feet (record=340.0 feet) to a corner; thence North 89°03' East 175.2 feet (record=East 180.43 feet) to a corner; thence South 15°13' East 412.8 feet (record=420.0 feet) to a corner; thence North 69°43' West 208.7 feet to the point of beginning. (Parcel No. 02-008-0097)

TOGETHER with an access easement for ingress, egress and utilities over and across the Easterly 24 feet of the Johnson/Jones Property as reserved in the Warranty Deed recorded October 4, 1999 in Book 539 at Page 268, Entry No. 449419.

TOGETHER with a 25 foot wide access and utility easement dated April 17, 2001 and recorded as Entry No. 453809 in Book 561 at Page 68.

TOGETHER with a 25 foot wide access and utility easement dated April 17, 2001 and recorded as Entry No. 453810 in Book 561 at Page 71.

**WHEREAS**, Applicants have a development agreement with the owners of record of 1.02 acres of real property owned by Michael Lee Dyke and Shelly Lee Dyke, as Trustees of the Dyke Family Trust, dated December 9, 2014, located at 1185 Murphy Ln. in West ½ of Section 8, Township 26 South, Range 22 East, SLM, Grand County, Utah, more specifically described as follows:

Beginning at a corner which bears South 69 degrees 20' East 1582.6 feet from the West ¼ Corner Section 8, Township 26 South, Range 22 East, SLB&M, and proceeding thence North 15 degrees 13' West 267.0 feet to a corner, thence South 69 degrees 43' East 208.7 feet to a corner, thence South 15 degrees 13' 267.0 feet to a corner thence along a 745.2 feet radius curve to the left 209.4 feet (said curve has a chord which bears North 69 degrees 43' West 208.7 feet) to the point of beginning. (Parcel No. 02-008-0094)

Reserving an access easement for ingress, egress and utilities over and across the Easterly 24 feet of said land.

Excepting therefrom ½ of oil, gas, and minerals;

**WHEREAS**, Ordinance 597.02 (2019) was approved by Grand County Council on September 17, 2019 approving application of the High Density Housing Overlay District 15 (HDHO-15) to 1187 & 1189 Murphy Lane;

**WHEREAS**, this ordinance does hereby repeal and replace Ordinance 597.02 (2019) as adopted on September 17, 2019.

**WHEREAS**, the Grand County Land Use Code was adopted by the Grand County Council on January 4, 1999 with Ordinance No. 299 (1999), codified with Resolution No. 468 on April 15, 2008, as amended, for the purpose of regulating land use, subdivision and development in Grand County in accordance with the General Plan;

**WHEREAS**, the Council adopted the High Density Housing Overlay on January 15, 2019 with Ordinance No. 584, as repealed and replaced on June 18, 2019 with Ordinance No. 591;

**WHEREAS**, the Applicants submitted an application requesting designation of the High Density Housing Overlay District 15 (HDHO-15) to the real property described above;

**WHEREAS, with the application**, the Applicants submitted the Murphy Flats HDHO Development Master Plan and Development Agreement) which designate that eighty percent (80%) of the HDHO Lots or Units within the proposed development shall be deed restricted in perpetuity for households that are primary residents who are actively employed within Grand County pursuant to LUC Section 4.7;

**WHEREAS**, the Grand County Planning Commission heard and considered the proposed HDHO-15 application in a public hearing on October 22, 2019 and forwarded a favorable recommendation to the Council;

**WHEREAS**, after providing due notice, the Council heard and considered the proposed HDHO-15 application in a public hearing on November 19, 2019;

**WHEREAS**, upon considering the same, the Council determined that the application of the HDHO-15 to the real property described above was in the best interests of the citizens of Grand County, Utah;

**NOW, THEREFORE, BE IT ORDAINED** by the Grand County Council that it does hereby approve:

1. The application of the High Density Housing Overlay District 15 (HDHO-15) to the real property known as 1185, 1187, & 1189 Murphy Lane, Moab, Utah 84532, subject to the

Master Plan and HDHO Development Agreement and Deed Restriction, attached hereto as Exhibits A and B; and

2. The reduced parking requirement from 60 parking spaces to 53 parking spaces, as shown on the Master Plan.

This Ordinance supersedes and replaces all prior approvals of a High Density Housing Overlay for the real property described herein under LUC Section 4.7, which prior approvals shall be void and of no further force or effect.

**PASSED, ADOPTED, AND APPROVED** by the Grand County Council in open session on November 19, 2019 by the following vote:

*Those voting aye:* McGann, Hawks, Clapper, Wells, Woytek, Paxman, Halliday


*Those voting nay:* \_\_\_\_\_

*Those absent:* \_\_\_\_\_

**ATTEST:**

**Grand County Council**

  
Chris Baird, Clerk/Auditor

  
Evan Clapper, Chair

**Exhibit A**  
**Murphy Flats Master Plan**

**Exhibit B**  
**Murphy Flats Development Agreement**


		CALCULATIONS			NOTES
		QUANTITY	SQUARE FOOTAGE UNIT	SQUARE FOOTAGE TYPE	
1187 1188 MURPHY	EXISTING CONTAINER HOME	1	300	300	OWNER OCCUPIED, HGH
	EXISTING UNIT 2 BED	1	800	800	EXISTING, NO CHANGES PROPOSED, HGH
	QUAD - 1 BEDROOM UNITS	12	410 (AVG)	4,920	ALL UNITS HGH
	DUPLEX - 2 BEDROOM UNITS	6	540 (AVG)	3,240	(4) MARKET, (2) HGH
1188 MURPHY	EXISTING UNIT 2 BED	1	1750	1750	EXISTING, NO CHANGES PROPOSED, HGH
	QUAD - 1 BEDROOM UNITS	8	410 (AVG)	3,280	ALL UNITS HGH
	DUPLEX - 2 BEDROOM UNITS	8	540 (AVG)	4,320	(3) MARKET, (5) HGH
	TOTAL	37		18,610 sq	(7) MARKET, (30) HGH

## UNIT BREAKDOWN

1/4" = 1'-0"

NOTES

**NOTES:**  
- NO PERMANENT CONSTRUCTION IS TO TAKE PLACE IN AREAS DESIGNATED AS 'FUTURE PARKING SPACES'  
- DEVELOPER TO DETERMINE WITHIN (1) YEAR OF FULL PROJECT BUILD OUT IF SPACES ARE REQUIRED FOR THE SUCCESS OF THE PROJECT.

- |   |   |  |
|---|---|--|
| ALL MAIN UTILITY LINES<br>INCLUDING WATER,<br>SEWER, POWER & GAS)<br>TO FOLLOW ACCESS<br>ROAD AND BRANCH TO<br>METERS (UNITS AS<br>NECESSARY) |   | EXISTING SLOPES - 30%  |
| REFERENCE CIVIL<br>PLANS FOR DRAINAGE   |  | ROOF EXTENTS, PROPOSED   |
| REFERENCE<br>LANDSCAPE PLANS  |  | ROOF EXTENTS, EXISTING   |
| REFERENCE CIVIL PLANS<br>FOR DRIVEWAY, SLOPE<br>AND DRAINAGE  |  | LANDSCAPING, SCREENING &<br>VEGETATION DETENTION POOLS,<br>DETAILS & SPECIES TBD |
| HYDRANT LOCATION  |  | ROAD AND PARKING PER CONSTRUCTION<br>STANDARDS FOR "PRIVATE LANE"                |
|   |  | HAMMERHEAD FOR FIRE VEHICLE<br>ACCESS AS PER CIVIL DRAWINGS                      |
|   |  | SP ACCESS EASEMENT SHARED WITH<br>ADJACENT PROPERTY OWNERS                       |
|   |  | FENCES & WALLS (TO SCREEN<br>GARBAGE DUMPSTERS ONLY)                             |
|   |  | NOT IN PROJECT SCOPE   |
|   |  | PEDESTRIAN PATH  |

 **SITE PLAN KEY**

 $\frac{1}{4}'' = 1'-4$