

August 17, 2021

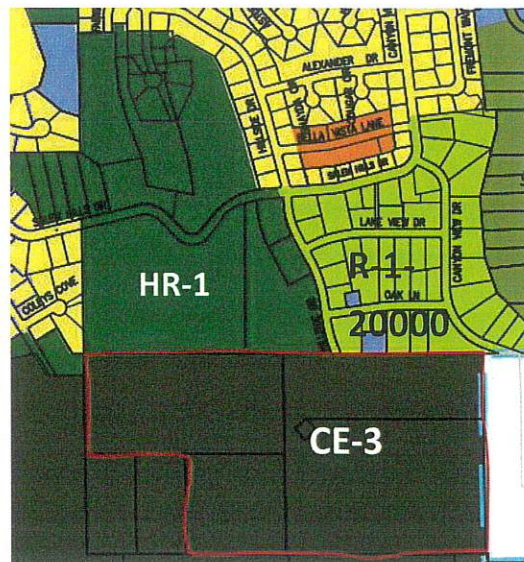
*VIA EMAIL*

Planning Commission  
City of Elk Ridge, Utah  
80 E. Park Drive  
Elk Ridge, Utah 84651  
Attn: Royce Swensen, City Recorder  
Email: [royce@elkridgecity.org](mailto:royce@elkridgecity.org)

Re: Comments to proposed Ordinance 22-07 for the Critical Environment 3  
Zone

Ladies and Gentlemen:

Our firm represents Bennett Elk Ridge LLC (“BER”), through its agent, Liz Moeller. BER owns 69.54 acres in the Critical Environment 3 (CE-3) zone, in an area immediately adjacent to the HR-1 and R-1-20000 zones, as shown below outlined in red (the “Property”):



We recently received the latest iteration of the proposed ordinance to regulate the CE-3 zone, which will be considered at the upcoming Planning Commission meeting on August 18, 2022. We request that these comments be included in the Planning Commission packet for that meeting.

In preparation for the upcoming meeting, we wanted to provide the following comments to the proposed ordinance to provide the Planning Commission with both context regarding the impact of the proposal, as well as a number of suggested revisions. We appreciate City's thoughtful consideration of the best way to protect and enhance this beautiful area of Elk Ridge. As a directly affected property owner, BER is concerned that the City's proposal is will significantly impair both the development of this area, and by extension, any plans that the City may have to bring about any of the desired public recreation amenities related thereto. We hope these comments will be helpful as the City goes through the additional steps of revising and enacting the proposed ordinance.

**I. The City should revise the proposed ordinance to balance the interests of the public with the interests of the property owners affected by it.**

The City is clearly invested in maintaining this area of the City and has put together some good ideas of how to protect this zone from erosion, provide for adequate drainage, and mitigate fire risk. However, these concerns are not unique to the CE-3 zone. A large amount of the City is on fairly steep slopes that face erosion, drainage, and fire risks. Nevertheless, the City in its proposed ordinance is uniquely burdening the CE-3 zone with extensive limitations on building area. §§ 10-9B-9-2, 10-9B-9-3, 10-9B-9-7, 10-9B-13-2. There is no reasonable basis to constrain development so severely in one part of the City when similar terrain is also located in other parts of the City, including an area immediately adjacent to the BER Property that allows for less than half acre zoning.

The City has made some effort to balance this concern by allowing building in slopes up to 29% if supported by a civil engineer as set forth in Section 10-9B-13-5, but simultaneously declares that any slope greater than 20% is unbuildable. §§ 10-9B-9-2, 10-9B-9-3, 10-9B-9-7, 10-9B-13-11. This 20% threshold is an overt attempt by the City to artificially constrain development, and the City is out of step in doing so as demonstrated by similarly situated cities in Utah that permit building at slopes of 30%. *See e.g.* City of Bountiful City Code § 4-5-106; North Salt Lake City Code § 10-12-24, City of Provo City Code § 15.05.160, City of Woodland Hills City Code § 11-5-10, and City of Mapleton City Code § 18.30.040. The City expands upon this impermissible constraint by requiring that all such slopes be "open space" and signals that such open space will be required by the City to be dedicated to public use. §§10-9B-13-2, 10-9B-11-4. As slopes less than 30% cannot reasonably be considered a hazard, the City's prohibitions on building on these areas is an illegal exercise of its police powers and contrary to Utah law. *See* Utah Code § 10-9a-505.

While it is understandable why the City would want to convert the entire CE-3 area into the City's open space and trails, the City has not offered to purchase the property and the City's police powers cannot be interpreted to provide this sweeping authority. Zoning ordinances and restrictions on development are in derogation of property owners' rights, and so "should be strictly construed" in favor of the property owner. *See Patterson v. Utah County*, 893 P.2d 602,

606 (Utah Ct. App. 1995). A city's zoning power "is of necessity confined by the limitations fixed in the grant by the state, and to accomplishment of the purposes for which the state authorized the city to zone." *Marshall v. Salt Lake City*, 141 P.2d 704, 708 (Utah 1943) ("The authority to regulate land use through zoning ordinances is conferred on municipalities by the state through enabling statutes.").

Utah Code Section 10-9a-505 only allows the City to constrain "development in a flood plain or potential geologic hazard area to: (i) protect life; and (ii) prevent: (A) the substantial loss of real property: or (B) substantial damage to real property." The proposed ordinance makes clear that the City desires to prohibit development not only near such hazards, but also in areas it desires to claim are hazardous – but are in fact not hazardous as demonstrated by the numerous municipalities that do not treat such areas as hazardous – not for the purpose of protecting life and property, but to provide public access open space and trails for the general public. Since many of the areas deemed open space in the proposed ordinance are not hazards (e.g. wildlife corridors and spaces between slopes), the City's intent in rendering them unbuildable, even for private fence installation, cannot reasonably be considered protective of life and property. §10-9B-9-5, 10-9B-9-7. Instead such characterization is for the purpose of rendering these areas as open space and subject to exaction demands by the City in the form of public trail easements or outright dedication. §§10-9B-11-2, 10-9B-11-4. The City cannot lawfully achieve this goal by attempting to recharacterize most of the CE-3 zone as hazardous or "sensitive" areas when its goal is not protection, but is instead to quash otherwise safe development. Because the proposed ordinance significantly impairs BER's development of its Property in a way that is not justified by the City's police powers, the City should significantly curtail the amount of area designated as open space by the proposed ordinance, as set forth in the comments to the proposed ordinance enclosed with this letter.

## **II. The City must treat similarly situated property owners similarly.**

Utah law prohibits the City from being arbitrary and capricious in its exercise of its zoning authority. *See Harmon City, Inc. v. Draper City*, 997 P.2d 321, 323-24 (Utah App. 2000). The CE-3 zone is largely private property, and the proposed ordinance makes a concerted effort to make this area – unlike any other part of the City though its terrain is not significantly different – devoid of development. The City's discriminatory treatment of the CE-3 zone is clear when comparing the Property to its immediately adjacent neighbors in the HR-1 and R-1-20000 zones. In the HR-1 zone, base zoning is .91 acres and in the R-1-20000 zone base zoning is .45 acres. City Code §§ 10-9A-12-1 and 10-7B-4. Without any basis other than to preserve the CE-3 zone as open space and effectively prohibit development, the proposed ordinance requires base zoning of 4 acres. When compared with the zones immediately adjacent to the CE-3 zone this limitation allows for less than 1/4th of the density allowed in the HR-1 zone and approximately 1/8th of the density allowed in the R-1-20000 zone. As compared with non-adjacent areas, the proposed ordinance only allows for 1/12th of the density allowed in other portions of the City. City Code § 10-7C-4 (the R-1-12,000 zone allows for 1/3 acre zoning and a portion of the City in

this zone is less than a quarter mile from the BER Property). Such dissimilar treatment is not justified by the terrain of the City, any logical range of zoning densities, or for the purpose of retaining agricultural space that relies on sparsely populated areas. The City has failed to justify this base zoning in any way.

The City already has included language in the proposed ordinance that will adequately protect the natural features of the CE-3 zone by protecting ravines, ridges, and natural vegetation, and requiring that property owners perform extensive and expensive engineering and sensitive area analyses. Preliminary plat approval requires no less than nine such reports. § 10-9B-15-22. Layering on constraints on development by imposing such an excessive limitation on density exceeds the City's legitimate goals in protecting these areas. If the City has instead imposed this density limitation out of a concern for inadequate infrastructure, the City should as an alternative look to developing a robust capital facilities and infrastructure plan and accompanying development impact fee structure linked to the CE-3 zone to address impacts of inevitable development. Prohibiting development in areas where it could be accommodated simply because the City does not want additional development for reasons unrelated to real infrastructure constraints is not a valid exercise of the City's police powers.

### **III. The restrictions in the proposed ordinance are not supported by the perceived inadequacy of associated infrastructure.**

Despite attending several meetings, BER is aware of no consensus or clarity on whether sewer, water, roadway, and other infrastructure are in fact inadequate. While according to members of the City Council additional sewer service may need to be obtained from the City of Payson, it is BER's understanding that Payson has offered this assistance, the additional capacity is needed due to other development activities in Elk Ridge, and the City has the tools with which to ensure that such new development pays for its proportionate share of the additional infrastructure. City Code Section 9-2-4 provides: "Any person who seeks to develop land within the city by applying for a building permit or a manufactured home permit is hereby required to pay an impact fee in the manner set forth in this chapter. No new building permit for any activity requiring payment of an impact fee shall be issued unless and until the impact fee hereby required has been paid. ...The city may impose an impact fee for capital improvements costs previously incurred by the city to the extent that new growth and development will be served by the previously constructed improvement." The City's impact fees of more than \$14,000 per building permit provide funds for additional water, roads, parks, and wastewater. As a result, and through the use of this tool, the City can have no serious concern that development within the CE-3 zone would not pay for any additional capital facilities needed to support the development of the zone. Furthermore, the claimed traffic impacts raised at prior City meetings are speculative as no traffic engineer or expert has been retained to assess generally how development could occur in a way that mitigates increased traffic flow. Consequently, constraints on development so as to avoid improving the City's infrastructure is without a basis in the City's own ordinances.

#### **IV. The proposed ordinance is an illegal exaction.**

Land use regulations such as the proposed ordinance can be a basis of an illegal exaction. *B.A.M. Development v. Salt Lake County*, 128 P.3d 1161 (Utah 2006). Exactions implicate the Takings Clause of the U.S. Constitution and Article I Section 22 of the Utah Constitution, which constitutional safeguards are designed to protect private property from governmental taking without just compensation. "We have defined development exactions as 'contributions to a governmental entity imposed as a condition precedent to approving the developer's project.'" *B.A.M.*, 128 P.3d 1161. (quoting *Salt Lake County v. Bd. of Educ.*, 808 P.2d 1056, 1058 (Utah 1991)). Development exactions are legal and appropriate only if they are "roughly proportionate" to the impact the development creates. A municipality may not "forc[e] some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

The proposed ordinance features an egregious example of an illegal exaction: property owners that dedicate property for trails or public parking for trail access are entitled to receive in exchange a 400% density bonus (from 4 acre lots to 1 acre lots). § 10-9B-13-3. The City's use of density as a lever to compel public dedication of trails and parking lots is illegal because the dedication required by the City is in no way proportionate to the impact of any given development that is likely to occur within the CE-3 zone. The City has the burden of proof to demonstrate that it has made "some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development." *Dolan v. City of Tigard*, 512 U.S. 374. The City's proposed ordinance evinces local government's worst tendencies in this arena as no such individualized determination is even available because the dedication is mandatory for any property owner that seeks to benefit from any density less than 4 acres per lot, regardless of the impact of the proposed development. The cost of such uncompensated dedication of property to the City cannot be justified by potential development or the City's exercise of police powers as trails and open space for public recreation to not protect the allegedly sensitive areas in the CE-3 zone.

The proposed ordinance's multiple attempts at imposing illegal exactions under the guise of protecting sensitive areas is just another attempt by the City to effectively prohibit development to such an extent that the CE-3 zone effectively becomes a conservation easement for which the City paid no compensation. This result is contrary to both the U.S. and Utah constitutions and violates the rights of property owners within the CE-3 zone.

#### **Conclusion**

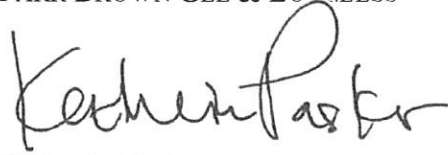
As more fully elaborated herein, the City's proposed CE-3 ordinance is contrary to state and federal law in numerous ways, including by exceeding the City's police powers and constituting an illegal exaction. In order to rectify the most glaring issues with the proposal we respectfully request that the City incorporate the revisions enclosed. We appreciate the opportunity

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to present the Commission with these additional details, and again request that this letter be included in the information available for the meeting to be held on Thursday, August 18, 202. We plan to be in attendance to voice these and additional concerns with the City's approach to regulating the CE-3 zone. In the meantime, if any reader of this letter has any questions or concerns related to these comments, please contact me.

Sincerely,

PARR BROWN GEE & LOVELESS

A handwritten signature in black ink, appearing to read 'Katherine Pasker', written in a cursive style.

Katherine Pasker

cc: Liz Moeller

ORDINANCE 22-07

**AN ORDINANCE PROPOSING THE CITY OF ELK RIDGE CRITICAL ENVIRONMENT 3 (CE 3) TITLE 10 CHAPTER 9 ARTICLE B CODE CODIFICATION, INCLUSION IN THE CODE, CORRECTION OF SCRIVENER'S ERRORS, SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, the City of Elk Ridge has adopted Code Title 10, Chapter 9 Article B Critical Environment 3 Code; and

**WHEREAS**, the Elk Ridge Planning Commission held a public meeting on August 5, 2022 at 7:00pm, for the purpose of the proposed Title 10, Chapter 9 Article B Critical Environment 3 Code; and

**WHEREAS**, the public hearing was preceded by the posting of a notice of public hearing in at least three (3) public places within the City limits of Elk Ridge, along with being published in the Provo Daily Herald Newspaper, a newspaper of general circulation within the city, at least 10 days prior to the Public Hearing; and

**WHEREAS**, the notice of the meeting, which was posted and published, by the Planning Commission contains specific advance notice that the proposed ordinance amendment, as set forth herein, would be considered and that copies thereof were available for inspection in the city offices; and

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF ELK RIDGE CITY, UTAH, AS FOLLOWS:**

**10-9B-1: LEGISLATIVE INTENT:**

The general purpose of the Critical Environment 3 (CE-3) zone is to promote safe, environmentally sensitive, development that balances the rights and long-term interests of property owners and those of the general public. These standards are intended to:

- A. Preserve and maintain the visual and aesthetic qualities of the foothills, canyons, and prominent ridgelines as defined herein.
- B. Protect public health and safety by adopting standards to reduce risk associated with natural and man-made hazards, with an emphasis on wildfire prevention.
- C. Provide efficient, environmentally sensitive, and safe transportation routes of roads and trails for vehicles and pedestrians.
- D. Incorporate parking areas at major trailheads that can also serve as emergency staging areas.
- E. Encourage development that conforms to the natural contours of the land and minimizes scarring and erosion.
- F. Minimize disturbance of existing trees and vegetation, conserve wildlife habitat and contiguous corridors, protect aquifer recharge areas, promote revegetation with indigenous trees and plants, and otherwise preserve environmentally sensitive natural areas.
- G. Reduce flooding by protecting drainage channels, absorption areas and flood plains.

**10-9B-2: MINIMIZE IMPACTS:**

- A. Development must minimize impacts to the present terrain and natural conditions.
- B. It must be demonstrated to the planning commission and city council that any proposed development will preserve the natural features and conditions of the area, following the restrictions outlined on the Sensitive Areas map.
- C. Roadways and building envelopes shall conform to the lay of the land as much as possible.

**10-9B-3: MITIGATION:**

This code establishes the need for mitigation of potentially adverse or unsafe conditions arising from development activities for the protection of the interests of subsequent purchasers and occupants and adjacent landowners.

**10-9B-4: PROPERTY RIGHTS:**

This code recognizes the rights of current owners to the reasonable use of the developable property providing development falls within the guidelines of the zone.

**10-9B-5: LOCATION AND DESIGN:**

This code facilitates the location, design, use, and construction of development projects and building sites within the zone. Design and location will provide safety consistent with the natural limitations and the need for protection of the environment.

**10-9B-6: PERMITTED AND CONDITIONAL USES:**

Various activities are allowed within the CE-3 Zone. Some uses can be allowed with conditions.

**10-9B-6-1: PERMITTED USES:**

Uses permitted within the CE-3 Zone are the standard uses allowed within the zone. Though their use is permitted, they must be constrained to the intent and regulations of the CE-3 Zone. Permitted uses include:

- A. Foster care homes.
- B. Home occupations.
- C. Livestock grazing--must be managed to avoid stripping the land of vegetation, creating erosion issues.
- D. Minor utility transmission projects.
- E. Non-livestock and livestock animals specifically listed in section 10-18-5, table 10-18-B of this title, in 40,000 sq. ft. lots or larger.
- F. Orchards and field crops.
- G. Residential facilities for persons with a disability.
- H. Residential facilities for the elderly.

**10-9B-6-2: CONDITIONAL USES:**

Conditional uses are those that can be allowed if approved by the Planning Commission and City Council-and they meet the requirements of section 10-12-33 and 10-12-29 in the city-code. It should be demonstrated that the proposed use is in concert with the General Plan, and zoning ordinances. The following can be allowed as conditional uses:

- A. Accessory apartments (section 10-12-29 of the city code)
- B. Agricultural building directly associated with agricultural development (Ord. 17-9, 9-26-2017)

**10-9B-7: NATURAL HAZARDS:**

Development must avoid or mitigate the potential impact of natural hazards from earthquakes, landslides, floods, fires and similar calamities, and reduce the extent of public involvement or expenditure in subsequent mitigation of the adverse or unsafe conditions.

**10-9B-8: PROTECTION AND CONSERVATION:**

Development must protect and conserve the following:

- A. Culinary water supply
- B. Watersheds/water drainage
- C. Vegetation
- D. Soil
- E. Wildlife habitat and contiguous corridors

**SUBDIVISION DEVELOPMENT**

**10-9B-9: SUBDIVISION DESIGN AND ENVIRONMENTAL CONSTRAINTS:**

Designing a development that conforms to the natural constraints of the terrain and the unique geologic features of the area is a main concern for preserving the aesthetic appearance of the open space hillside terrain, allowing wildlife to continue to reside in the area and maintaining the safety of current and future residents.

- A. The development design in the CE-3 Zone shall indicate what areas shall be left in a natural condition.
- B. The development design will minimize impacts to the open space and hillside terrain.
- C. The design will incorporate an interconnected trail system for public use, which includes trail access to natural spaces beyond the development area.

**10-9B-9-1: SENSITIVE AREA DETERMINATION:**

In designing a development an applicant must first identify the property's sensitive environmental and aesthetic areas: steep slopes, ridgeline areas, ravines and drainages, fault lines, unstable soils, wildlife habitat areas and major wildlife corridors. The General Plan Sensitive Areas map outlines areas that should be preserved and protected.

- A. Impacts of development to these areas should be minimized or be dedicated to open space.

- B. A sensitive areas plan shall be required prior to the preliminary plat, mapping all environmental constraints and illustrating that the proposed layout of the subdivision limits or avoids sensitive environmental and aesthetic areas.

#### **10-9B-9-2: RAVINES AND DRAINAGES:**

A ravine is considered a continual low point in topography that slopes down a hillside. A drainage is similar to a ravine but is shown on the General Plan Sensitive Areas Map as a low point that could carry water. No building envelope shall be within these areas.

- A. The area thirty feet (30') from each side of the center of these features shall be designated as open space.
- ~~B. All slopes twenty percent (20%) or greater and any incidental lesser slopes interspersed within these steeper slopes, rising from ravines and drainages, shall be designated as open space.~~
- C.B. City staff or the Planning Commission can require a larger setback if the drainage is wide in nature or if greater distances are required as established by a professional geologist, geotechnical engineer, or civil engineer registered in the State of Utah.

#### **10-9B-9-3: RIDGELINES:**

A ridge is defined as an elongated crest or series of crests of a hill and a "ridgeline" is defined as the highest elevation of a ridge running parallel with the long axis of the ridge. Major ridgelines are identified on the city General Plan Sensitive Areas map. No building envelope shall be within these areas.

- A. Any ridge or ridgeline ~~or portion of a ridge or ridgeline with slopes twenty percent (20%) or greater~~ shall be designated as open space.
- ~~B. The open space area associated with the ridgeline will include all slopes twenty percent (20%) or greater and any lesser slopes interspersed within these steeper slopes.~~
- C.B. Required opens space shall also extend ~~uphill~~ fifty feet (50') from the crest of ~~the twenty percent (20%) slopes~~ any ridgeline.

#### **10-9B-9-4: FAULT LINES:**

A fault line is defined as a fracture in the earth's crust accompanied by displacement of one side relative to the other. No building envelope shall be located within a minimum of one hundred feet (100') of a fault line as shown on the sensitive lands map on file, unless greater distances are required as established by a professional geologist or geotechnical engineer registered in the state of Utah.

#### **10-9B-9-5: WILDLIFE CORRIDORS:**

The area in CE-3 contains important wildlife habitat for a variety of animals. Wildlife corridors, as identified on the Sensitive Areas map, ~~are designated as natural open space and~~ should be preserved and protected.

#### **10-9B-9-6: UNSTABLE SOILS:**

No building envelope shall be located within one hundred feet (100') of an area identified to have unstable soils that cannot be stabilized through engineering as

disclosed within a geotechnical report, unless greater distances are required as established by a professional geologist or geotechnical engineer registered in the state of Utah. (Ord. 08-4, 2-26-2008)

**10-9B-9-7: SLOPES TWENTY PERCENT OR GREATER:**

- A. All land having a slope of ~~twenty-thirty~~ percent (~~2030~~%) or greater ~~that is not a part of an approved limit of disturbance~~ shall remain in its natural state and shall not be graded, fenced, or otherwise disturbed.
- B. The planting of additional vegetation and/or the addition of sprinkler irrigation systems is allowed.
- C. Roads, trails, firebreaks, utilities, retention walls, and driveways can traverse these areas if it is demonstrated that they adhere to cuts and fills requirements in section 10-9A-17-4 of this article and other requirements in this code or that by their construction other adverse conditions are mitigated.

**10-9B-9-8: SLOPES THIRTY PERCENT OR GREATER:**

All land having a slope of thirty percent (30%) or greater shall not be disturbed, except for those outlined in **10-9B-13-5**.

**10-9B-9: REVEGETATION/RETENTION PLAN:**

- A. A revegetation/retention plan shall be submitted as part of the preliminary plat.
- B. The revegetation/retention plan shall show all areas that will be disturbed, retained and revegetated. These areas include: roads, utility corridors, firebreaks, trails, and other proposed work that requires cuts and/or fills, any grading or retention.
- C. The slope, height, and depth of cuts and fills and/or retention walls shall be included.
- D. The plan shall show designated storage areas for debris, dirt, and topsoil.
- E. On slopes of twenty percent or greater, manmade or natural, plant materials with deep rooting characteristics shall be selected for revegetation, to minimize erosion and reduce surface runoff.
- F. The Revegetation/Retention plan may not include landscaping or other elements that conflict with the approved fire protection plan.
- G. Disturbed areas must be revegetated with indigenous plants before any bonds are returned by the city.
- H. A licensed civil engineer shall endorse the plan.
- I. The city engineer, planning commission, and city council must approve the plan.

**10-9B-10: CUTS AND FILLS:**

- A. Development is required to conform to natural terrain conditions to the extent feasible. At the subdivision phase, cuts and fills should only be associated with the construction of roads, trails, utilities, or other approved activities.
- B. Cuts, fills, and any grading to a lot should be completed at the time individual lot development occurs in the building process.
- C. Benching or terracing to provide additional or larger building sites is prohibited.

**10-9B-11: OPEN SPACE:**

Open space and preserving the natural conditions are a fundamental aspect of the CE-3 zone. Open space is defined as land preserved in its natural state, and is designated as unbuildable. In the CE-3 code, there are three general categories of open space: land with public access, private land left in its natural state, land deemed unbuildable due to natural constraints.

**10-9B-11-1: REQUIREMENTS OF OPEN SPACE:**

- A. ~~All slopes twenty percent (20%) or greater that are not a part of a building envelope are required to be preserved as open space.~~ Ravines, drainages, ridgelines, unstable soils and wildlife corridors shall be preserved as open space.
- B. Open space areas shall be shown on the plat map marked as unbuildable.
- C. ~~Open space areas must remain in their natural state unless revegetation or retention is needed to mitigate adverse conditions due to past uses or if the city council approves an allowed use.~~
- D.C. The city council must approve the locations of proposed open space and any uses within them.
- E. ~~The city council can also require additional areas of open space to further implement the intent of the zone. Open space can be public or part of a private lot.~~

**10-9B-11-2: OPEN SPACE DEDICATION TO CITY:**

- A. ~~Any open space to be deeded to the city must be recommended by the planning commission and approved by the city council.~~
- B. ~~If approved, the title must be conveyed to the city and be designated for open space purposes.~~
- C. ~~Open space deeded to the city should be contiguous to other open space areas, roads, trails, or adjacent properties that have the potential to become open space.~~
- D. ~~These areas will be labeled on the preliminary and final plats as unbuildable (except for areas approved for building allowed uses) and must be cordoned off during any grading and construction activities with nylon fencing or equivalent.~~
- E. ~~The applicant and the city shall enter into a preservation agreement (conservation easement) requiring the open space area to remain as such in perpetuity.~~
- F. ~~Open space deeded to the city cannot be part of a building lot or homeowners' association.~~

**10-9B-11-3: ALLOWED USES WITHIN OPEN SPACE:**

- A. Roads, trails, utility corridors, and driveways can traverse open space areas if it is demonstrated that they pose a minimal impact to the area or that by their construction other adverse conditions are mitigated.
- B. Cuts and fills for these activities shall be revegetated and shown on the revegetation plan.
- C. Developed parks with lawn and Xeriscape, play equipment, picnic areas, pavilions, or other park facilities can be interspersed within open space areas.
- D. Open space can be linear along road corridors to allow for trails, sidewalks, or entrance features.

#### 10-9B-11-4: TRAILS:

- A. All proposed development in CE-3 shall be consistent with the city's General Plan regarding trails, parks, and trail access locations. A dedication of private land may be required for public trails if the required dedication complies with the exaction requirements set forth in Utah Code Section ~~17-10-27a9a-507~~508(1).
- B. All land offered for dedication for trails or public access to trails must be verified by Planning Commission and City Council before approval of the site plan. The city has the option of rejecting the applicant's offered land dedication if the proposed dedication does not comply with the exaction requirements set forth in Utah Code Section 17-27a-507(1), or the requirements set forth in subsection (C) below. The city may suggest more suitable land for the applicant's consideration that does comply with each of these requirements.
- C. Land offered for dedication for trails must be located so that:
  - a. Proposed trail construction and maintenance is feasible.
  - b. Side slopes do not exceed seventy percent (70%)
  - c. Rock cliffs and other insurmountable physical obstructions are avoided.
- D. Subject to Utah Code Section 10-9a-508(1), ~~if~~ trails required along roadways shown on the city trail plan shall have a 10 foot (10') easement, surfaced as described within the trail plan, in addition to the standard street right-of-way. Trails can be road shared.
- E. Subject to Utah Code Section 10-9a-508(1), ~~if~~ in addition to trails along roadways and as part of the city trail plan, natural trails traversing and interconnecting open space areas throughout the development, as identified on the trails map, are required.
- F. Subject to Utah Code Section 10-9a-508(1), ~~if~~ trails connecting roads through open space to adjoining developments, public facilities, or adjacent cul-de-sacs shall have a ten foot (10') easement and be surfaced as described in the city trail plan.
- G. Public parking areas at major trailheads, that can also serve as emergency staging areas, ~~must be~~should included in the proposed development if such a requirement is consistent with the exaction requirements set forth in Utah Code Section 10-9a-508(1).

#### 10-9B-12: STREET DESIGN REQUIREMENTS:

The varying slopes within the CE-3 zone make road designs complicated at best. As with other requirements of the zone, minimal impact to the current slopes, ravines, drainages, wildlife corridors, and vegetation is required. These roadway regulations are required within all developments of the CE-3 zone.

##### 10-9B-12-1: IMPROVEMENT REQUIRED:

All roads shall conform to city code 10-15C-2: Streets and Roads.

All existing public streets and all streets proposed to be dedicated to the public shall be improved in accordance with city standards for public streets.

##### 10-9B-12-2: ROAD GRADE

No major collector/arterial street shall have a grade of more than 10% and no local street shall have a grade of more than ten percent (10%), except that the planning

commission may recommend, and the city council approve, up to an additional 2 percent (2%) grade for short straight stretches of roadway under three hundred feet (300') in length.

A. City staff must conclude that the ten percent (10%) standard would result in undesirable extra earthwork or circuitous routes and that the proposed steep grade section will not result in the establishment of a hazardous condition. It is the responsibility of the developer to present evidence that the additional allowance in grade is desirable.

B. The city engineer shall provide recommendation regarding hazardous conditions and any other concerns on the proposed steep grade section.

C. It must also be demonstrated that for dead end or temporary stubbed streets constructed on grades over ten percent (10%), that the road shall not be constructed in a manner that would make adjacent future development be out of compliance with the three hundred foot (300') requirement.

**10-9B-12-3: STABILIZATION AND REVEGETATION:**

A. All disturbed cut and fill slope areas shall be stabilized and revegetated.

B. Submitted plans for the preliminary plat shall include a general revegetation/retention plan showing the intended revegetation and retention treatment for all cut and fill slope areas of roads.

**10-9B-12-4: CUL-DE-SACS:** All cul-de-sacs shall conform to section 10-15C-5, "Cul-De-Sacs", of the city's general code.

A. Cul-de-sac Turnaround Diameter: Each cul-de-sac shall be terminated with a turnaround or loop road of not less than one hundred ~~fifty-twenty~~ (150'-120') in diameter at the property line.

**Commented [AA1]:** This is consistent with City Code 10-15C-5. There is no reason to treat the C3 zone differently from the rest of the City.

**10-9B-12-5. Snow Removal and Storage.**

A. The road system shall be designed to accommodate snow removal and storage. Consideration shall also be given for snow storage.

B. Cul-de-sacs with diameters of ~~150'-120'~~ (one hundred ~~fifty-twenty~~ feet) ~~or greater~~ are required to allow for essential use of emergency equipment and service vehicles.

**Commented [AA2]:** This is consistent with City Code 10-15C-5. There is no reason to treat the C3 zone differently from the rest of the City.

C. Plans for snow storage are required for all roads and cul-de-sacs.

**10-9B-12-6: SECONDARY ACCESS:**

A. All development in the CE-3 zone shall have more than one access route which provides simultaneous access for emergency equipment and civilian evacuation.

B. The design of access routes shall take into consideration traffic circulation and provide for looping of roads as required to ensure at least two (2) access points. Looped roads with a single access are not allowed.

C. Specifications: All roads shall conform with the city development code, subsection 10-15C-2 A of this title, streets and roads. (Ord. 11-7, 8-9-2011, eff. 8- 10-2011)

**10-9B-12-7: GRADING PERMIT:**

A. No grading, filling or excavation of any kind shall commence on land within the CE-3 zone without the developer first having obtained a grading permit.

B. A revegetation/retention plan, endorsed by a licensed civil engineer, must be approved by the city engineer prior to preliminary plat approval.

- C. A grading permit for subdivisions shall not be issued and shall not become active until the proposed development has final plat approval, all fees have been paid, and the bonding has been posted, guaranteeing the construction of all uncompleted required improvements.
- D. Areas outside of approved grading areas shall be cordoned off with nylon fencing or equivalent during the grading and construction process and shall not be disturbed.

## INDIVIDUAL LOT REQUIREMENTS

### 10-9B-13: LOT DESIGN REQUIREMENTS:

The design of lots shall conform to the environmental constraints of the property. The size, buildable areas and frontage to city streets are explained in this section.

#### 10-9B-13-1: LOT SIZE:

A. ~~4-1/2 acre (160,000~~21,780 Square foot) and larger lots are the allowed base density of the zone for traditional methods of development and the open space requirement met.

~~B. Lot sizes of no less than 1 acre are allowed within a subdivision if open space requirements for 1 acre lots is adhered to.~~

#### 10-9B-13-2: OPEN SPACE REQUIREMENT:

Open space areas are required in the CE-3 zone to preserve natural features that sustain hillside stability. Open space areas shall conform to the requirements listed under sections 10-9B-11 through 10-9B-11-4 of this article. Open space can be part of individual lots. Ravines, drainages, steep slopes, ridgelines, fault lines, ~~unstable soils,~~ and ~~wildlife habitat corridors~~ all must be included within open space areas.

#### 10-9B-13-3: OPEN SPACE WITH 1 ACRE LOTS

~~The desired outcome of allowing homes to be built on 1-acre lots is to preserve open space. Therefore, a development may subdivide to smaller lots of 1-acre or greater, on slopes of less than twenty percent (20%), if 40% of the development site is dedicated to open space. Open space areas shall conform to the requirements listed under sections 10-9B-11 through 10-9B-11-4 of this article. 1-acre lot subdivisions shall include:~~

- ~~1. A 1-acre lot subdivision that the Planning Commission and the City Council determine meets the intent of this ordinance.~~
- ~~2. Open space area for public access to trails which includes area for trailheads.~~
- ~~3.1. Public parking at trailhead locations.~~

#### 10-9B-13-4: BUILDING ENVELOPE:

The building envelope location shall conform to the natural terrain and remain within the areas of least slope. This area could be considerably smaller than the lot to accomplish this requirement. The minimum building envelope size is four thousand (4,000) square feet. The front, side and rear setback requirements must be met. No design envelope can be located within areas of thirty percent (30%) or greater slopes, nor can these slopes be graded to provide for a buildable area.

#### 10-9B-13-5: STEEPER BUILDABLE SLOPES:

**Commented [AA3]:** This base zoning is consistent with the adjacent zones of the City. There are no distinguishing characteristics of the C3 zone that make it necessary to require 88% less density than is allowed in immediately adjacent zones (and 92% less dense than other areas of the City). The City's concerns in protecting natural features of ravines and steep slopes are already achieved by the building limits in those areas. Requiring such an excessively high base zoning represents an illegal exaction.

**Commented [AA4]:** As noted by the City's own engineer, nearly all land in the City could be subject to this label. Dictating that all unstable soil is unbuildable is an overreach of the City's police powers.

**Commented [AA5]:** The City has not established these and no other zones in the City are required to maintain these areas, much less declare them unbuildable areas. This restriction represents an illegal exaction.

**Commented [AA6]:** This criteria represents an illegal exaction.

Lots that contain natural terrain with slopes between twenty percent (20%) and twenty nine percent (29%) must be engineered and approved by a licensed engineer. The city engineer must approve lots incorporating these slopes. A building envelope can only contain a maximum of fifty percent (50%) of its area of these steeper slopes.

**10-9B-13-6: LOT FRONTAGE:**

- A. Frontage along a city street shall be a minimum of one hundred twenty feet (120')
- B. Each lot shall abut upon and have direct access to a city street.
- C. The distance of said abutting side shall be not less than the minimum width requirement of the zone, except that the length of the abutting side may be reduced to not less than sixty feet (60') when the lot fronts upon a cul-de-sac or curve in a designated city street and the lot lines radiate in such a manner that the width of the lot will meet or exceed the minimum lot width requirements as determined in accordance with city code.

**10-9B-13-7: FRONT SETBACK:**

All dwellings and other main buildings shall be set back not less than thirty (30') feet from the front lot line which abuts on any existing or proposed public street right of way.

**10-9B-13-8: FRONT SETBACK EXCEPTION:**

The planning commission can recommend and city council approve an adjustment to the front setback of not less than thirty feet (30') from the front lot line abutting a street if it is demonstrated that by doing so sensitive areas such as steep slopes, ridgelines, drainage areas, or wildlife corridors would be preserved. A forty-five foot (45') clear view at the corner of a road intersection is still required. Exception must be defined on the final plat.

**10-9B-13-9: SIDE SETBACK:**

All dwellings and other main buildings, including any attached garage or similar structure, shall have side setbacks of twenty feet (20') or greater from any side property line.

**10-9B-13-10: REAR SETBACK:**

All dwellings or other main buildings shall be set back thirty feet (30') or greater from the rear lot line. On corner lots for a garage that is attached to the rear of the dwelling, the required rear setback for the garage may be reduced to twenty feet (20') or greater from the rear lot line. No living area can be included within the garage footprint in the reduced area.

**10-9B-13-11: LOT REQUIREMENT TABLE:**

|               |                                         |
|---------------|-----------------------------------------|
| Lot size      | <del>4 Acres or greater</del> <u>1½</u> |
| Minimum       | <del>Acre with Open Space</del>         |
| Lot frontage  | 120 feet                                |
| Front setback | 30 feet                                 |

|                   |                                                 |
|-------------------|-------------------------------------------------|
| Front exception   | 30 feet                                         |
| Side setback      | 20 feet                                         |
| Rear setback      | 30 feet                                         |
| Building envelope | 4,000 square feet minimum                       |
| Envelope slope    | 50 percent under <del>20-30</del> percent slope |

Commented [AA7]: This is consistent with Section 10-9B-13-5.

**10-9B-13-12: ACCESS:**

Each lot shall front upon and have direct access to a designated city street.

**10-9B-13-13: BUILDING WITH THE NATURAL TERRAIN:**

The intent of the CE-3 zone is to construct with the natural terrain. All structures should be built using the current natural terrain configuration. Some grading can be approved if it is demonstrated that it is needed for safety, erosion control, or that the alternative is less desirable. Dwellings on the down slope side of a road should utilize the natural slope while designing the grade around the structure to drain away from it. Using fill to raise the finished grade around a structure to rise above a road is prohibited.

**10-9B-13-14: GRADING OF INDIVIDUAL BUILDING LOT:**

All grading, removal of natural vegetation and retention on building lots requires a revegetation/retention plan and a grading permit.

**10-9B-13-15: REVEGETATION/RETENTION PLAN:**

A revegetation/retention plan is required for each lot prior to any removal of vegetation or the issuance of a grading permit. The plan must follow, at a minimum, the IBC (International Building Code) standards. Areas requiring retention over four feet (4') will require the plan to be approved by a licensed civil engineer. The city engineer and planning commission shall approve the revegetation/retention plan.

**10-9B-13-16: REMOVAL OF NATURAL VEGETATION:**

Natural vegetation including indigenous hardwood trees can be removed from the portions of the lot to be committed to the dwelling, driveway, retention walls, firebreaks and areas required to be cleared as described within the urban interface area requirements (section 9-3-9 of the city code). Areas with slopes ~~twenty-thirty~~ percent (20~~30~~%) or greater ~~that are not a part of an approved building envelope, ravines, drainages, and wildlife corridors~~ shall remain in a natural state. ~~(Ord. 08-4, 2-26-2008~~

**10-9B-13-17: CUTS AND FILLS:**

Cut or fill slopes shall be no steeper than two feet (2') horizontal to one foot (1') vertical and shall be designed with acceptable erosion control systems. An erosion control

system is generally composed of a combination of long term nondegradable erosion mat, structural geogrid and/or geotextile.

**10-9B-13-18: GRADING PERMIT:**

- A. No grading, filling or excavation of any kind shall commence on a lot within the CE-3 zone without first having obtained a grading permit.
- B. A revegetation/retention plan, endorsed by a licensed civil engineer, must be approved by the city engineer and planning commission.
- C. A grading permit is required for each individual lot prior to a building permit being issued.
- D. Areas outside of approved grading areas shall be cordoned off during the grading and construction process and shall not be disturbed.

**10-9B-13-19: DWELLING REQUIREMENTS:**

Each dwelling within any development in the CE-3 zone shall conform to the following requirements.

**10-9B-13-20: BUILDING ENVELOPE:**

All buildings shall be constructed within the building envelope. The building envelope is identified on the approved subdivision plat and is located on the lot detailing the front, side and rear setback requirements. The building envelope must exclude all areas as defined in the Sensitive Areas Plan, the Slope Analysis Plan, and the set backs as outlined above.

**10-9B-13-21: RAMBLER DWELLINGS:**

For dwelling size requirements, see supplemental regulations, section 10-12-41 of this title.

**10-9B-13-22: MULTI-STORY DWELLINGS:**

For dwelling size requirements, see supplemental regulations, section 10-12-41 of this title.

**10-9B-13-23: MULTI-STORY DWELLINGS:**

For dwelling size requirements, see supplemental regulations, section 10-12-41 of this title.

**10-9B-13-24: Minimum Dimension:**

The minimum width and length of any dwelling as measured from the outside wall shall be a minimum of twenty-four feet (24'). Non living spaces such as garages, porches, and shed shall not be included in determining compliance with this requirement. (Ord. 08-4,2-26-2008)

**10-9B-13-25: HEIGHT OF BUILDING:**

The maximum height of any dwelling shall be thirty-six feet (36') as measured from the highest point of finished grade of the ground surface adjacent to the foundation of the structure to the top of the roofline. The minimum height of a building used as a dwelling shall be not less than eight feet (8'). Chimneys, flagpoles, television antennas and similar ancillary structures not used for human occupancy shall be excluded in

determining height; provided, that no such ancillary structure shall extend to a height in excess of fifteen feet (15') above the building.

**10-9B-13-26: CONFORMANCE WITH SPECIAL DWELLING REQUIREMENTS:**

In addition to the requirements herein set forth, all dwellings shall conform to the special provisions relating to dwellings set forth under section 10-12-27 of this title.

**10-9B-13-27: DWELLING OCCUPANCY LIMIT:**

The number of unrelated individuals residing in a dwelling unit shall not exceed four (4).

**10-9B-13-28: OFF STREET PARKING AND DRIVEWAYS:**

All dwellings within the CE-3 zone shall adhere to the following parking and driveway requirements.

**10-9B-13-28-1: OFF STREET PARKING:**

A minimum of two (2) off street parking spaces shall be required for each dwelling unit. Each off street parking space shall be not less than ten feet by twenty feet (10' x 20') per space and shall not be located within any portion of a side setback area adjacent to a street.

**10-9B-13-28-2: GARAGE:**

A minimum of two (2) off street parking spaces shall be enclosed within a garage. A minimum of one off-street parking space shall be enclosed within a garage for an accessory dwelling. (10-12-29)

**10-9B-13-28-3: REVERSE SLOPE DRIVEWAYS:**

A. No driveway providing access to a garage or off-street parking area within a lot shall have a down slope grade from the adjacent street to the garage or covered off street parking area.

A. Applicability. These provisions apply to all developments in CE-3, with the following exceptions:

- a. The planning commission may approve a down slope driveway if:
  - i. The drainage of surface water will be adequately diverted from entry into the dwelling, garage or other covered parking area
  - ii. The proposed diversion of surface water will not impact adjacent property.

**10-9B-13-29-4: DRIVEWAY GRADE:**

- A. Any driveway providing access to a building envelope shall have a slope of not more than twelve percent (12%) at any point.
- B. A driveway grade up to fifteen percent (15%) is allowed if heated.
- C. Construction of a driveway shall not result in any cut or fill slopes greater than seven feet (7').
- D. Any cut or fill between five feet (5') and seven feet (7') shall be subject to planning commission approval and shall be retained.

**10-9B-14: FENCING:**

- A. No fence may be constructed or installed unless shown on an approved site plan.
- B. Fences are subject to the intersecting streets and clear visibility restrictions of this code.

- C. Fencing requirements will conform to the standards listed in section 10-12-13 of this title. ~~Additionally, to preserve drainage and wildlife corridors, no fence shall be constructed on ravines, drainages, open space areas, and slopes of twenty percent (20%) or greater.~~
- D. Fences in identified wildlife corridors are strongly discouraged, but in no case may exceed forty-two inches in height.

**Commented [AA8]:** As fencing does not impair drainage and the City does not have any documented wildlife corridors this restriction is not a reasonable exercise of the City's police powers.

## **10-9B-15 Subdivision Development Requirements**

### **10-9B-15-1: CONCEPT PLAN:**

Conceptual work done before the extensive work needed to gain preliminary plat approval can guide the applicant in a direction that can help make development layout better, obtain approvals in a timely manner, and be overall less expensive. A concept plan is not required but is highly recommended.

### **10-9B-15-2: APPLICATION AND FEE:**

The concept stage requires an application and fee. Listed on the application are the requirements that must be met to have a complete application along with the fee schedule. There are recommended guidelines that can be followed to help give the planning commission enough detail to adequately review a concept proposal.

### **10-9B-15-3: VESTING:**

Since a concept plan is not required, projects are not vested at concept. Any advice or direction given by staff or the City Council shall not be construed as an approval.

### **10-9B-15-4: SENSITIVE AREAS PLAN:**

A full sensitive areas plan is not required in the concept stage, but it is recommended that a cursory plan be done to aid in designing the concept plan layout. See section 10-9B-9-1 of this article for the requirements of a sensitive areas plan.

### **10-9B-15-5: STAFF REVIEW:**

City staff will review the concept plan and make comments that can guide the applicant to design a development that meets the CE-3 zone intent and regulations. Multiple reviews can occur. Staff review shall occur prior to a public meeting and planning commission review.

### **10-9B-15-6: PRELIMINARY PLAT AND REQUIRED PLANS:**

A preliminary plat is required and is the first official step toward gaining approvals of a development. With the plat being preliminary in nature, larger developments and those being proposed on unique terrains can require multiple renditions of the plat as prescribed by staff and the planning commission.

### **10-9B-15-7: APPLICATION AND FEE:**

The preliminary plat stage requires an application and fee. Listed on the application are the requirements that must be met to have a complete application along with the fee schedule.

### **10-9B-15-8: VESTING:**

Once an application is found complete and all fees paid, an applicant is vested with all applicable development codes and standards.

**10-9B-15-9 PRELIMINARY PLAT REQUIREMENTS:**

- A. The preliminary plat shall contain the following:
  - a. Delineate the location of designated setback areas.
  - b. The building envelope.
  - c. Areas of cuts and fills.
  - d. Retention
  - e. Limits of disturbance.
  - f. Open space areas
  - g. Conform to the requirements set forth in chapter 15, article B of this title.
- B. Plans that shall be submitted and approved in conjunction with the Preliminary Plat:
  - a. Sensitive Areas Plan
  - b. Slope Analysis Plan
  - c. A revegetation/retention plan.
  - d. Erosion control plan
  - e. Geotechnical report
  - f. Fire Protection Plan
  - g. Trails Plan

**10-9B-15-9-1: SENSITIVE AREAS PLAN:**

Purpose. To promote safe, environmentally sensitive, development that balances the rights and long-term interests of property owners and those of the general public.

The sensitive area plan shall contain the following:

- A. slope analysis and an aerial map as a base, showing the non-disturbed conditions that exist prior to any grading or construction.
  - a. The map shall outline and have the following overlays: current vegetation including clusters or groves of trees, natural features that include ravines, drainages, steep slopes, ridgelines, fault lines, unique soil features (collapsible soil or large rock features).
  - b. wildlife habitat corridors and existing trails,
  - c. proposed trails, lots, and open space, the building envelope, and roads
- B. The plan shall be submitted and recommended by the planning commission and approved by the city council with the submittal of the preliminary plat. The commission can require redesigns of lots, roads, and other development features to better implement the intent of this code.
- C. Data from the sensitive areas plan shall be used to develop the preliminary plat by locating areas that should be preserved to meet the intent and regulations of the CE-3 zone.

**10-9B-15-9-2: SLOPE ANALYSIS PLAN:**

- A. A slope analysis plan shall be submitted in conjunction with the sensitive areas plan and with the submittal of the preliminary plat.
- B. Application.
  - a. The slope analysis shall show contour lines at two-foot (2') intervals.
  - b. It will also identify by color the following slopes:

- i. under fifteen percent (15%).
  - ii. Fifteen percent (15%) to nineteen percent (19%).
  - iii. Twenty percent (20%) to twenty nine percent (29%).
  - iv. Thirty percent (30%) to thirty nine percent (39%).
  - v. Forty percent (40%) and above.
- c. It shall also contain the following:
  - i. Proposed lots.
  - ii. Building envelopes.
  - iii. Roads.
  - iv. Trails.
  - v. Open space.
  - vi. Area of disturbance.
- d. The slope analysis shall aid the applicant, staff, and the planning commission in determining that the intent and regulations of the CE-3 zone are met.

**10-9B-15-9-3: REVEGETATION/RETENTION PLAN:**

- A. A revegetation/retention plan is required for each lot prior to any removal of vegetation or the issuance of a grading permit.
- B. The plan shall illustrate all areas proposed for removal of vegetative materials and retention.
- C. The plan may not include landscaping or other elements that conflict with the approved fire protection plan.
- D. Revegetation with natural plants is required for areas of cuts and fills, around retention walls, and areas where previous activities have disturbed natural conditions.
- E. Areas requiring retention over four feet (4') will require the plan to be approved by a licensed civil engineer.
- F. The city engineer and planning commission shall approve the revegetation/retention plan.

**10-9B-15-9-4: SURFACEWATER AND EROSION CONTROL PLAN:**

Must be submitted with the Preliminary Plat

- A. The plan shall detail the following:
  - a. Water runoff control to avoid flooding problems on neighboring properties.
    - i. In accordance with section 10-15D-3
  - b. Erosion control.
  - c. Debris and silt prevented from infiltrating storm water system during construction.
  - d. Detail how erosion will be managed in cut and/or fill areas.
- B. City Engineer must approve Plan.
- C. Planning Commission must recommend plan.
- D. City Council must approve plan

**10-9B-15-9-5: PRELIMINARY GEOTECHNICAL REPORT:**

- E. A preliminary geotechnical report shall be completed and submitted as a part of the preliminary plat.

- F. The report shall consider and address all recommendations in any reports prepared by the Utah geological survey (UGS) in relation to the subject property.
- G. If no prior reports have been prepared, the applicant shall consult with the appropriate UGS official, obtain comments addressing the geologic conditions affecting the area, and provide those comments.
- H. If unsafe geologic conditions that may affect the property and the probability that those conditions will detrimentally impact the proposed development or surrounding properties within fifty (50) years from the date of the statement, the environmental impact of the proposed action, including a projected "worst case scenario" of the detrimental effects the proposed action or development may have on the safety and environmental stability of the property and adjacent properties shall be required.
- I. Any adverse environmental effects that cannot be avoided, should the proposal be implemented, as well as alternatives to the development to avoid any unsafe geologic conditions, shall be documented.
- J. The geotechnical report shall be stamped and signed by a licensed professional geotechnical engineer registered in the state of Utah with experience in preparing and rendering geotechnical reports.
- K. The city can require that the report undergo a peer review by a separate engineering firm selected by the city at the applicant's expense.

#### **10-9B-15-9-6: Fire Protection Plan.**

A fire protection plan shall be submitted as part of the preliminary plat. Approval by the city Fire Chief is required. All Standards of the International Fire Code must be met with regards to fire flow and structure size. Additional water source and supply may also be required to meet the fire flow requirements for the use of the structure. Additional requirements to recommendations for defensible space may also be required. Wildland Urban Interface (WUI) will also need to be referenced for all structures within the CE-3 zone.

#### **10-9B-15-10: STAFF REVIEW:**

City staff will review the preliminary plat and its associated plans and reports and make comments that can guide the applicant to a development that meets the CE-3 zone intent and regulations. Multiple reviews can occur. Staff review shall occur prior to the public hearing and planning commission review. Staff shall make recommendations to the planning commission stating the general plan, city code, and the development standards to support their recommendations.

#### **10-9B-15-11: PUBLIC HEARING:**

A public hearing shall be held with the neighboring property owners in accordance with subsection 10-11F-4D of this title. This is a formal meeting. Concerns and comments from the public shall be taken. Staff and/or the commission shall address any comments that cite code violations or health, safety, and welfare concerns. Comments from this hearing can aid the applicant, staff, and the commission to address design elements of the development.

#### **10-9B-15-12: PLANNING COMMISSION REVIEW:**

After staff reviews and comments from the public hearing have been addressed, the planning commission shall review the preliminary plat and associated plans and reports. The commission can require adjustments to the building envelope, roadways, open space areas, and other elements of the development that better accommodate the natural conditions present and ensure that location or construction of such elements will not result in the creation of an adverse or unsafe condition. The commission shall conclude that the development will accomplish and preserve the intent and regulations of the zone.

**10-9B-15-13: PLANNING COMMISSION ACTION:**

The commission can approve, approve with conditions, or deny the plat giving findings drawn from the general plan, city codes, and development standards. The motion shall be sent to the city council with the recommendation and findings from the commission. If the commission finds that the plat is not ready to be forwarded to the council, the commission can table the plat requiring the applicant to supply additional information or make changes.

**10-9B-15-14: CITY COUNCIL REVIEW:**

After staff reviews and comments from the public hearing have been addressed, and the planning commission has approved, the city council shall review the preliminary plat and associated plans and reports. The council can require adjustments to the building envelope, roadways, open space areas, and other elements of the development that better accommodate the natural conditions present and ensure that location or construction of such elements will not result in the creation of an adverse or unsafe condition. The council shall conclude that the development will accomplish and preserve the intent and regulations of the zone.

**10-9B-15-15: CITY COUNCIL ACTION:**

The city council can approve, approve with additional conditions, or deny the plat basing their decision on the planning commission recommendations and their findings. If the council denies or significantly changes the plat, it shall be sent back to the planning commission for additional work. Significant changes shall include adding or subtracting five (5) or more building lots, adding development to sensitive lands (slopes over 20 percent, drainages, ravines, ridgelines, sensitive soils, fault lines, wildlife corridors), changes to open space, or changes that require additional engineering work. Additional public hearings could be required. Once a preliminary plat is approved, the developer has one year to gain final approval. If final approval is not obtained within the one year period, the plat approval and vesting shall be void.

**10-9B-15-16: FINAL PLAT:**

A final plat is required and is the last official step toward gaining approvals of a development. Changes to the preliminary plat should be minimal.

**10-9B-15-17: APPLICATION AND FEE:**

The final plat stage requires an application and fee. Listed on the application are the requirements that must be met to have a complete application and the fee schedule.

**10-9B-15-18: FINAL PLAT REQUIREMENTS:**

The final plat shall conform to the city development standards.

**10-9B-15-19: FINAL GEOTECHNICAL REPORT:**

All projects require a final geotechnical report. The geotechnical report shall be stamped and signed by a licensed professional engineer registered in the state of Utah with experience in preparing and rendering geotechnical reports. The report shall include as a minimum the following: field investigation; description and classification of site soils including boring and pit logs; depth to ground water if applicable; depth to bedrock if applicable; suitability of site soils for proposed project improvements including foundations; identification of expansive/collapsible soils and remedial action if required; liquefaction potential and remedial action if required; hazardous geologic conditions not accounted for or identified in the preliminary geotechnical report such as unstable soils, faults, etc.; stability of natural slopes; slope and retaining recommendations for graded slopes; soil weights, loads, and allowable bearing pressures; soil preparation recommendations; seismic recommendations, subgrade and pavement recommendations; a percolation test at the proposed stormwater basins, other recommendations applicable to the project site. This report shall be completed and approved by staff prior to planning commission review of the final plat. The city can require that the report undergo a peer review by a separate engineering firm selected by the city at the applicant's expense.

**10-9B-15-20: OPTIONAL PUBLIC MEETING:**

A public hearing is not required for the final plat though staff or the planning commission can decide to hold one if substantial changes from the preliminary plat would require additional comment. If a second hearing is not desired, the planning commission meeting where the final plat shall be reviewed is a public meeting. Staff can require an applicant to notify residents and landowners in the area of the meeting where the final plat shall be reviewed.

**10-9B-15-21: PLANNING COMMISSION REVIEW/ACTION:**

The commission can approve, approve with conditions, or deny the plat giving findings drawn from the general plat, city codes, and development standards. The motion shall be sent to the city council with the recommendation and findings from the commission. If the commission deems that the plat is not ready to be forwarded to the council, the commission can table the plat requiring the applicant to supply additional information or make changes.

**10-9B-15-22: CITY COUNCIL REVIEW/ACTION:**

The city council can approve, approve with additional conditions, or deny the plat basing their decision on the planning commission recommendations and their findings. If the council denies or significantly changes the plat, it shall be sent back to the planning commission for additional work. Once a final plat is approved, the developer has six (6) months to record the development with the county. If the final plat is not recorded with the county within the six (6) month period, the plat approval and vesting shall be void.

| Report         | Concept | Preliminary | Final |
|----------------|---------|-------------|-------|
| Sensitive Area | Advised | Mandatory   |       |
| Slope Analysis | Advised | Mandatory   |       |

|                       |  |           |  |
|-----------------------|--|-----------|--|
| Erosion Control Plan  |  | Mandatory |  |
| Revegetation Plan     |  | Mandatory |  |
| Retention Plan        |  | Mandatory |  |
| Geotechnical Report   |  | Mandatory |  |
| Limits of Disturbance |  | Mandatory |  |
| Fire Protection Plan  |  | Mandatory |  |
| Trails                |  | Mandatory |  |

Other reports may be required by code or due to unique circumstances found at concept/preliminary review.

**SECTION II. Codification, Inclusion in the Code, and Scrivener's Errors.** It is the intent of the City Council that the provisions of this ordinance be made part of the City Code as adopted, that sections of this ordinance may be re-numbered or re-lettered, that the word ordinance may be changed to section, chapter, or other such appropriate word or phrase in order to accomplish such intent regardless of whether such inclusion in a code is accomplished. Typographical errors which do not affect the intent of this ordinance may be authorized by the City without need of public hearing by its filling a corrected or re-codified copy of the same with the City Recorder.

**SECTION III. Severability.** If any section, phrase, sentence, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**SECTION II. Posting.** A copy of this Ordinance shall be deposited in the office of the Elk Ridge City Recorder, and on \_\_\_\_\_, 2022, the Elk Ridge City Recorder shall certify that this Ordinance has been posted in three public places within the municipality on that date, as provided in Utah State Code Annotated § 10-3-711(1).

**SECTION III. EFFECTIVE DATE.** This ordinance shall become effective immediately upon passage.

Passed and duly adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Rob Haddock, MAYOR

|               |              |          |             |
|---------------|--------------|----------|-------------|
| Councilmember | Nelson       | Abbott   | Voted       |
| Councilmember | Tricia       | Thomas   | Voted       |
| Councilmember | Jared        | Peterson | Voted       |
| Councilmember | Cory         | Thompson | Voted       |
| Councilmember | Tanya Willis |          | Voted _____ |

ATTEST:

\_\_\_\_\_

Royce Swensen  
Elk Ridge City Recorder

STATE OF UTAH                    )  
                                          ) ss.  
COUNTY OF UTAH                )

I, ROYCE SWENSEN, City Deputy Recorder of the City of Elk Ridge, Utah, do hereby certify and declare that the above and foregoing is a true, full, and correct copy of Ordinance #22-07, passed by the City Council of the City of Elk Ridge, Utah, on the \_\_\_\_\_ day of \_\_\_\_\_, 2022, entitled:

"AN ORDINANCE PROPOSING THE CITY OF ELK RIDGE CRITICAL ENVIRONMENT 3 (CE 3) TITLE 10 CHAPTER 9 ARTICLE B CODE CODIFICATION, INCLUSION IN THE CODE, CORRECTION OF SCRIVENER'S ERRORS, SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE."

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of Elk Ridge City Utah this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
ROYCE SWENSEN

Elk Ridge City Recorder

AFFIDAVIT OF POSTING

STATE OF UTAH                    )  
                                          ss.  
COUNTY OF UTAH                )

I, ROYCE SWENSEN, City Recorder of the City of Elk Ridge, Utah, do hereby certify and declare that I posted in three (3) public places Ordinance # 22-07, which is attached hereto on the day of \_\_\_\_\_, 2022.

The three places are as follows:

1. Elk Ridge City website elkridgecity.org
2. Utah Public Notice Website <https://www.utah.gov/pmn/>
3. 80 E Park Dr. Elk Ridge City, UT 84651

I further certify that copies of the ordinance so posted were true and correct copies of said ordinance.

\_\_\_\_\_  
ROYCE SWENSEN  
Elk Ridge City Recorder

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by ROYCE SWENSEN.

My Commission Expires:

\_\_\_\_\_  
Notary Public

Residing at:           Utah County