



Conditional Uses – the “new” approach via State Law

Let's Catch up!

*State Law changed 15
years ago!!!*

2021 APA Conference

What you need to know about...



CONDITIONAL USES



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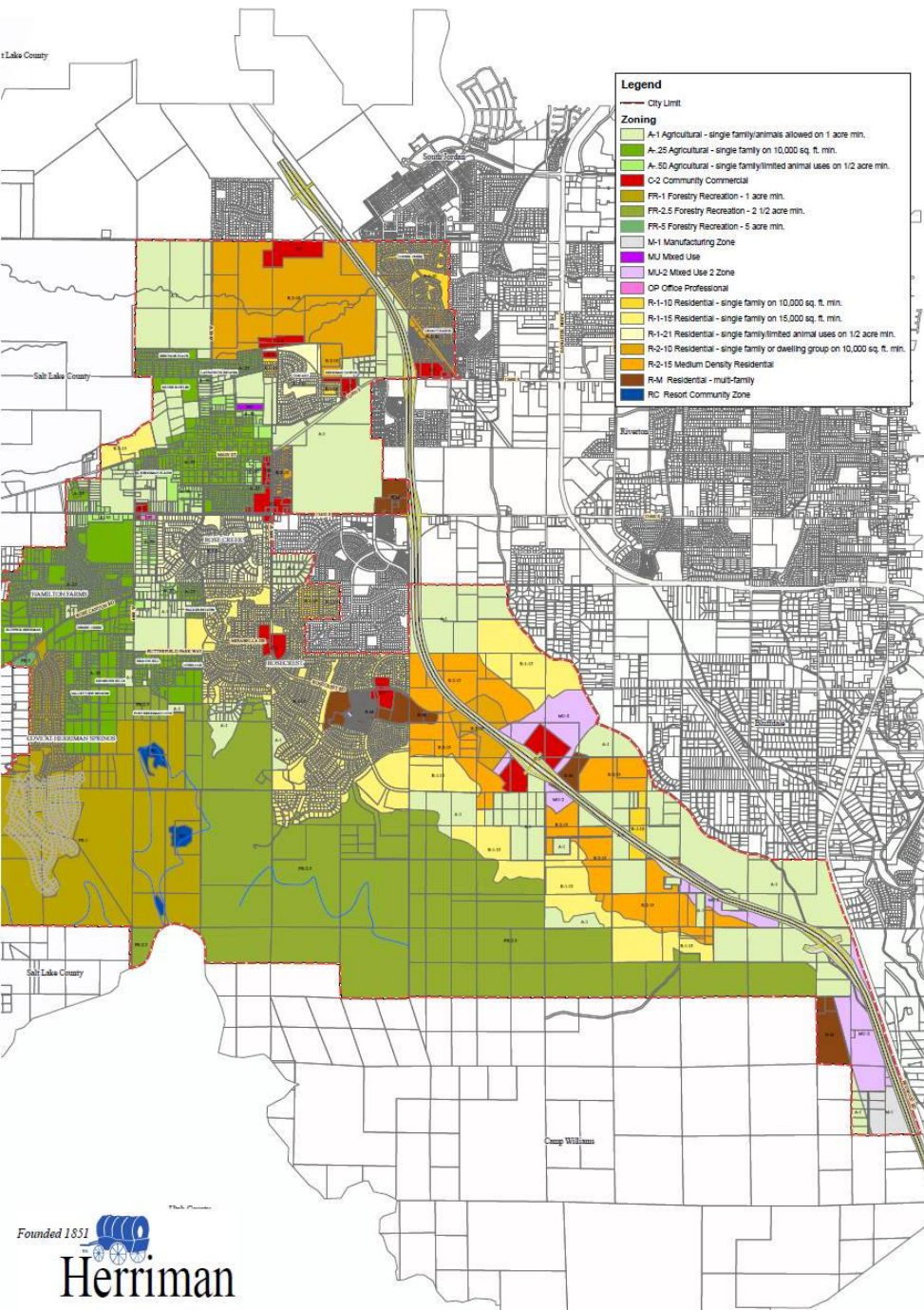
With help from Meg Ryan
ULCT



Session Goals:

1. What is a CUP?
2. How do we use them?
3. Why we need to make sure our code is up to date if we use them.
4. Examples of their use
5. Test!

ZONING



ZONING

[Title 10](#) Utah Code

[Chapter 9a](#) Municipal Land Use,
Development, and
Management Act

[Part 5](#) Land Use Regulations

[Section 507](#) Conditional uses.

A legislative body shall classify any use that a land use regulation allows in a zoning district as either a *permitted or conditional use* under this chapter.

Permitted





Prohibited – may not have to be specified (you can use a blanket statement)

Conditional Uses



Permitted with conditions.....


Utah State Code

10-9a-507. Conditional uses.

(1) A land use ordinance may include conditional uses and provisions for conditional uses that require compliance with **standards** set forth in an applicable ordinance.

Utah State Code

10-9a-507. Conditional uses.



(2) (a) A conditional use shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards.

10-9a-507. Conditional uses.

Utah State Code

(2) (b) If the reasonably anticipated detrimental effects of a proposed conditional use *cannot be substantially mitigated* by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the conditional use *may* be denied.

Why is this a rare occurrence?



“Mit·i·gate”

To moderate in force or intensity; alleviate.
To become milder.



DOES NOT MEAN ELIMINATE!

Standards have to be written in your Code!

- Not a discretionary approval
- Not subject to “I don’t like it” (from you or from the public)
- Not a question of “works here but not there”
- The phrase “compatible with the neighborhood” is no longer valid!
- A conditional use is allowed in the zone

Potential Condition Categories – Derive Standards from these (and others written in your Code)

- You already have some standards
 - Setbacks
 - Height
 - Lot coverage
 - Landscaping
 - Maybe design standards
- Health and sanitation—Trash disposal, odor, manure management, stormwater
- Environmental concerns—dust, chemicals, noise, geologic hazards
- Traffic, Parking
- Lighting
- Hours of operation
- Utility systems/capacities
- Building features/materials/appearance
- Graffiti

Written Standards first, then Conditions

- A standard of review could be “Off-site effects of Lighting”
- An ensuing condition related to that standard could be “No flood lights are allowed” or a photometric limitation and/or dark sky compliance, etc.

Why make these conditional if you already have a bunch of standards?

- Most likely you already have detailed additional ordinances
 - Home occupations
 - Accessory Dwelling Units (new State Law)
 - Daycare (State Law provisions too)
 - Gravel pits (reclamation, noise, dust)
 - Vehicle Recycling (aka junk yards – fencing, fluid disposal)
 - Others? (there are lots!)
- While updating your CUP chapter:
- Add more standards in other chapters
- Review your “use lists”
 - Always placing the same conditions on a use – codify them!
 - Don’t want that use in the zone – drop! – don’t want it in certain spots in the zone – drop!
 - Simplify

CU Summary Principles

- Administrative – not discretionary
- Shall be approved
- Can mitigate potential detrimental effects
- Written findings of your decisions
- Motions need to be tied to a potential detrimental effect
- If you have a written standard that applies to all your uses does it need to be part of your motion?



Process Options
Mail outs not
required.
Hearings not
required.

Your turn – let's all evaluate one of your CU ordinances

Thank you!