



**Nibley City**  
**Planning Commission**  
Wednesday, October 26, 2016  
455 W. 3200 S.  
Nibley, UT

5:30 p.m.      Call to Order  
                    Approval of Agenda  
                    Approval of Minutes

**Application for Conditional Use Permit/Business License**

1. Consideration of a conditional use permit and business license application for **Rockies Doghouse**, a home office, located at 337 W 3575 S (Applicant: Greg and Lorrie Seljestad)

**Final Plat**

2. ~~This matter has been rescheduled to the November 9<sup>th</sup> meeting. Discussion and consideration of a final plat for Phases 1 and 2 of Summerfield Place, a 28 lot subdivision located at approximately 2700 South 1000 West. (Applicant: Kelly Loosle)~~

**Ordinance Revision**

3. Discussion and consideration of an update to the Nibley City conservation residential subdivision ordinance
4. Discussion and consideration of an update to Nibley City fence ordinance
5. Discussion and consideration of an update to Nibley City canal ordinance
6. Staff Report

*Planning Commission agenda items may be tabled if: 1) Additional information is needed in order to take action on the item; OR 2) The Planning Commission feels there are unresolved issues that may need further attention before the Commission is ready to make a motion. **No agenda item will begin after 10:00 p.m. without a unanimous vote of the Commission.** The Commission may carry over agenda items, scheduled late in the evening and not heard, to the next regularly scheduled meeting.*

*IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, REASONABLE ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES WILL BE PROVIDED UPON REQUEST. FOR ASSISTANCE, PLEASE CALL 752-0431 A MINIMUM OF 24 HOURS BEFORE THE MEETING.*



**Agenda Item Report  
for the 10/25/16  
Planning and Zoning Commission Meeting**

This report was prepared by Stephen Nelson, who is currently serving as the Interim Nibley City Planner until Nibley hires a new City Planner.

There have been a couple of changes to the agenda since the first draft was posted on Friday. Please feel free to contact Stephen at (435)752-0431 with any questions.

**Application for Conditional Use Permit/Business License**

**1. Consideration of a conditional use permit and business license application for Rockies Doghouse, a home office located at 337 W 3575 S (Applicant: Greg and Lorrie Seljestad)**

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- Mr. Seljestad's application is for a business license for a food truck that will operate throughout Cache County. Mr. Seljestad's has indicated that sales will not take place on his property or in Nibley. His application states that the company will be selling gourmet hot dogs from a 14' to 20' trailer, which will not be stored at the home. According to the application, there will be no employees other than himself at the home and there will be no clients visiting the home. Mr. Seljestad is seeking to use his home as his office location and business mailing and license address.
- The Nibley City Home Office definition is:
  - HOME OFFICE: The use of a portion of a dwelling as an office for a business where: 1) no client visits are conducted and 2) no persons not living in the home are employed by the business. Home-based businesses that do not meet these requirements may still be conducted but shall be classified as a home occupation rather than a home office.
- If the business meets the definition above, then it may be licensed as a home office.
- The property is zoned Residential R-2. The Nibley City Land Use Chart allows for home office as a permitted use.
- Mr. Seljestad's application meets the requirements to be classified and approved as a home office. Because of that, staff recommends that it be approved as such.

## **Final Plat**

- 2. This matter has been rescheduled to the November 9<sup>th</sup> meeting. Discussion and consideration of a final plat for Phases 1 and 2 of Summerfield Place, a 28-lot subdivision located at approximately 2700 South 1000 West (Applicant: Kelly Loosle)**
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- This matter has been taken off the agenda because the application was not ready to be approved. With the change of staff, it was determined that there was some missing paper work and some items that were not turned in on time. Staff is also currently working on a Development Agreement. This item will be put on the agenda for the next meeting.

- 3. Discussion and consideration of an update to the Nibley City conservation residential subdivision ordinance**
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- At the last Planning and Zoning Commission meeting, there was vote to continue discussion on this item to the October 26 meeting. There have been no changes to the draft ordinance since that time.

- 4. Discussion and consideration of an update to the Nibley City fence ordinance**
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- Mayor Dustin has asked that the Commission address some concerns regarding pedestrian walkways, trails, and fences. The Mayor's proposal to the Commission is below. It is not intended that the Commission will adopt any of changes at this meeting because a draft ordinance changes has not yet been drafted and a public hearing must first be held for ordinance changes as well. The purpose of this agenda item will be a first look at the Mayor's suggestions and an opportunity for Planning Commission members to begin their discussion. A public hearing and a full vote on recommended changes to the Fence Ordinance (10-12-9) is anticipated to be held on November 9 with the goal of having the City Council hold its first reading and public hearing on November 17.
- The idea for the changes listed is to help ensure that walkways and trails that run between personal property is safe and to avoid creating alleyways with tall fences on both sides of a trail. There is also a need to clarify setbacks for some of the unusual corner lots when it comes to fences.
- The following are the Mayor's suggestions:

- As we have begun to implement the provisions of our subdivision ordinance that require pedestrian walkways and trails, we've realized that it creates a public safety issue. The fence ordinance needs to be revised to reflect this. There are some great examples of fences that allow for the compromise between private property and public responsibility, but essentially, the discussion in Council has been that 6 ft privacy fences along the 20 ft ROW for trails are a bad idea from a public safety/liability standpoint. We have examples of this at a couple of places in town and we need to get a handle on it before we inadvertently create spaces for bad things to happen while we are trying to do good things.

We've also had a problem with the interpretation of code for fence permits on corner lots that effectively allows corner lot owners to use a loophole to build privacy fences to lot lines on one or both sides of the house if the house is set at an angle on the lot. This makes for issues with neighbors where the neighbor is governed by a different setback than the corner lot and results in dumb looking fences. That's the technical term.

I've proposed a couple of solutions below. I'd like P&Z to weigh in on these. I don't feel that they are substantive changes that require a whole lot of agonizing; we should try them and if we don't get it exactly right, we will change them again till we do get them right but these need to be implemented soon, preferably this month so when spring construction/permits start, we can be ready. Please have something to the Council ASAP. Ideally, Council will consider this and do our public hearing at our meeting Nov 19 and pass it in our December meeting.

#### Fence Ordinance key points

- Public Safety along Trails and other Public Rights of Way:
  - PROPOSAL: For fences along trails and similar public rights of way that are open to public non-motorized access, the following fence types are permitted (insert photographs). All heights given are as measured from the centerline of the public trail surface:
    - Post and Rail fences
    - Field Fences
    - Barbed Wire
    - High Tension Wire
    - Other types that are maximum 20% opaque
    - Opaque fences or hedges not exceeding 42" height
    - Chain Link to 42" height
  - The following types are specifically not permitted
    - Opaque fences exceeding 42" height
    - Chain link exceeding 42" height
    - Opaque fences to 42" high with lattice or other construction above the 42" level that is more than 20% opaque
- Clarification for fencing on corner lots
  - For all corner lots or other irregular lots with frontage on more than one side to a public or private road: For the purposes of fencing, all frontage

facing a public or private road shall be regarded as Front Yard for the purpose of determining setbacks and compliance with the fence ordinance. (Insert pictures to show examples)”

#### **5. Discussion and consideration of an update to Nibley City canal ordinance.**

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- Staff and the City Attorney have been working to create a canal ordinance. It is not expected that the Commission will take any action on this item this week because the Commission will need to hold a public hearing first. The recommendation is to review the document and note any changes or identify any problems with the proposed code changes. The plan is to hold a public hearing on November 9 and to pass it on to the City Council so they can have their first reading and public hearing on the proposed ordinance on November 17.
- The goal of this ordinance is to reduce conflicts that have occurred between the canal companies and adjacent land uses. There have been some issues in the past that the canal companies in Nibley were not able to access their canals for maintenance and repairs. Parts of this ordinance have been taken from an agreement that that the City entered into with the Nibley Blacksmith Fork Canal Company. These ordinance would formalize those aspects of the agreement. The canal companies are being sent a copy of the ordinance so they might comment at the future public hearing or otherwise provide input.

I wanted to thank all of you for your understanding as I am pulling double duty here at the city. If you have any questions about any of the items listed in the agenda please feel free to contact me. Thank you for all the wonderful work you do for the residents of Nibley, and I look forward to seeing you on Wednesday.

Stephen Nelson  
[stephen@nibleycity.com](mailto:stephen@nibleycity.com)  
Work: 435-752-0431  
Cell: 435-720-3543



Oct 26, 2016  
APPLICATION FOR CONDITIONAL USE  
PERMIT/BUSINESS LICENSE

Office Use Only

Date Received 10/16/2016

Fee Paid 25.00

Rec'd By Stephen Nelson

Name GREG AND LORRIE SELJESTAD  
Address 337 W 3575 S NIBLEY  
Phone 435-760-1666 Cell 435-760-1666 Fax \_\_\_\_\_  
Email ALASKA1040@GMAIL.COM

**Please Note: The owner/operator of the business on this application must live at the address stated above. Nibley City cannot issue conditional use permit/business licenses to persons who do not live at the address where the business will be located.**

**Please describe the reason you are requesting a conditional use permit/business license:**

☐ Home Office ☐ Sales ☐ Manufacturing ☐ Day Care  
☒ Other (please describe): LICENSE FOR A FOOD TRAILER TO BE USED IN CACHE VALLEY

Proposed business name: ROCKIES DOGHOUSE

Description of business: SELLING GOURMET HOT DOGS FROM 14' to 20' TRAILER

Describe how the proposed business activity will or will not affect the residential neighborhood surrounding the business location: THIS WILL HAVE LITTLE AFFECT ON THE NEIGHBORHOOD. SUPPLIES WILL BE BOUGHT FROM SAMS. TRAILER WILL STAY ON SITE OFF THE HOME PROPERTY

Do you plan to employ persons not living at this address as part of the business? Y ☒ N

Will those employees be working in your home or at another location? Please describe: \_\_\_\_\_

Do you plan to conduct any of the business in an accessory building at this address? Y ☒ N

How many clients will visit this location weekly? 0

Describe how you will provide parking for client visits (if applicable): NA

Will you have business vehicles which will require parking accommodations? Y ☒ N

If so, please describe the vehicles and parking plans: \_\_\_\_\_

How many business shipments do you anticipate sending and receiving from this location each month and how will these deliveries be shipped? 0

Will you be able to provide adequate indoor storage for these deliveries? Y ☒ N

If applicable, describe any signs at this address which will advertise the business: NONE



**File the completed application at:**

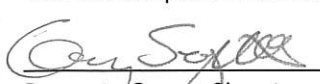
Nibley City  
455 West 3200 South  
Nibley, UT 84321  
(435) 752-0431


Once the application has been completed and submitted, along with any and all applicable fees (see attached "Nibley City Fee Schedule"), the item will be placed on an upcoming agenda for the Nibley Planning Commission meeting. Planning Commission meetings have a two-week prior application deadline, so be aware that it may be up to 4 weeks before this application is on the agenda.

Meeting Date	Application Deadline	Meeting Date	Application Deadline
January 13, 2016	December 30, 2015	July 13, 2016	June 29, 2016
January 27, 2016	January 13, 2016	July 27, 2016	July 13, 2016
February 10, 2016	January 27, 2016	August 10, 2016	July 27, 2016
February 24, 2016	February 10, 2016	August 24, 2016	August 10, 2016
March 9, 2016	February 24, 2016	September 14, 2016	August 31, 2016
March 23, 2016	March 9, 2016	September 28, 2016	September 14, 2016
April 13, 2016	March 30, 2016	October 12, 2016	September 28, 2016
April 27, 2016	April 13, 2016	October 26, 2016	October 12, 2016
May 11, 2016	April 27, 2016	November 9, 2016	October 26, 2016
May 25, 2016	May 11, 2016	November 9, 2016	October 26, 2016
June 8, 2016	May 25, 2016	December 14, 2016	November 30, 2016
June 22, 2016	June 8, 2016		

**Applicant Certification**

I certify under penalty of perjury that this application and all information submitted as a part of this application are true, complete and accurate to the best of my knowledge. I also certify that I am the owner of the subject property and that the authorized agent noted in this application has my consent to represent me with respect to this application. Should any of the information or representations submitted in connection with this application be incorrect or untrue, I understand that Nibley may rescind any approval, or take any other legal or appropriate action. I also acknowledge that I have reviewed the applicable sections of the Nibley City Code and that items and checklists contained in this application are basic and minimum requirements only and that other requirements may be imposed that are unique to individual projects or uses.

  
Property Owner Signature



6 Oct 2016  
Date

**FOR OFFICE USE ONLY**

Approved \_\_\_\_\_ Denied \_\_\_\_\_ Approved w/Conditions \_\_\_\_\_

Comments \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

## CONSERVATION RESIDENTIAL SUBDIVISION ORDINANCE

10-18-1	Purpose
10-18-2	Applicability
10-18-3	Definitions
10-18-4	Development Options
10-18-5	Approval Process
10-18-6	Development Activities Prohibited
10-18-7	Waiver
10-18-8	Sensitive Area Designation Plan
10-18-9	Master Development Plan
10-18-10	Dimensional Standards
10-18-11	Design Standards
10-18-12	Attached Housing
10-18-13	Conservancy Lots
10-18-14	Use Regulations
10-18-15	Conservation Land Design Standards
10-18-16	Permanent Protection of Conservation Lands
10-18-17	Ownership of Conservation Lands
10-18-18	Maintenance of Conservation Lands

**10-18-1 Purpose:** The purpose of this Chapter is to provide for subdivision development within Nibley City in a manner that:

- A. Protects areas of the City with productive agricultural soils for continued agricultural use by conserving blocks of land large enough to allow for farm operations;
- B. Provides standards accommodating to some extent the varying circumstances and interests of individual landowners and the individual characteristics of their properties; and
- C. Protects constrained and sensitive lands, including those areas containing sensitive and undevelopable features such as steep slopes, floodplains and wetlands, by setting them aside from development;
- D. Conserves conservation and open space land, including those areas containing unique or natural features such as meadows, grasslands, tree stands, streams, stream corridors, berms, watercourses, farmland, wildlife corridors and/or habitat, historical buildings and/or sites, archeological sites, and green space, by setting them aside from development;
- E. Provides greater design flexibility and efficiency in the siting of services and infrastructure, including the opportunity to reduce length of roads, utility runs, and the amount of paving required for residential development;



- F. Reduces erosion and sedimentation by the retention of existing vegetation and the minimization of development on steep slopes and other constrained and sensitive lands;
- G. Provides for a diversity of lot sizes to accommodate a variety of age and income groups and residential preferences, so that the community's population diversity may be enhanced;
- H. Provides incentives for the creation of greenway systems and open space within the City for the benefit of present and future residents;
- I. Implements adopted City policies to conserve a variety of irreplaceable and environmentally sensitive resource and agricultural lands as set forth in the Comprehensive General Plan;
- J. Implements adopted land use, environment, natural hazards, transportation, and community policies, as identified in the Comprehensive General Plan;
- K. Creates neighborhoods with direct visual and/or recreational access to constrained, sensitive and conservation land;
- L. Provides for the conservation and maintenance of constrained, sensitive and conservation land within the City to achieve the goals of the Nibley City General Plan;
- M. Provides incentives and design alternatives for landowners to minimize impacts on environmental resources such as, sensitive lands, wetlands, floodplain, and steep slopes, and to minimize disturbance of natural or cultural features such as, mature woodlands, tree lines, wildlife habitats and corridors, and historic buildings;
- N. Conserves scenic views and elements of the City's rural and scenic character and minimizes perceived density by minimizing views of new development from existing roads.

#### **10-18-2      Applicability**

- A. The intent of this Chapter and the Conservation Residential Subdivision options is to encourage the creation and development of flexibly-designed open space subdivisions. Conservation Residential Subdivisions may be developed within applicable residential zones of the City. Conservation Residential Subdivisions shall be developed in accordance with and subject to the development standards, conditions, procedures and regulations of this Chapter and with all other applicable subdivision ordinances and zoning regulations of the City which are not otherwise in conflict with the provisions of this Chapter.
- B. Residential subdivisions in the R-2 and R-2A zones in Nibley City shall develop as conservation subdivisions, if the gross acreage of the property, prior to subdividing, is at least five (5) acres.

- C. In the R-1 and R-1A zones in Nibley City, developers may elect to develop the conservation residential subdivision if the gross acreage of the property, prior to subdividing, is at least five (5) acres.
- D. Conservation residential subdivisions shall not be permitted in the R-E zone.
- E. In cases of conflict with other Nibley City ordinances, this shall be the prevailing ordinance.

**10-18-3 Definitions.** For purposes of this Chapter, the following words shall have the meanings set forth herein:

- A. Conservation Land. Conservation land means land containing unique, historic, cultural, archeological, natural or other significant features, including, but not limited to, meadows, grasslands, tree stands, streams, stream corridors, flood walls, berms, watercourses, farmland, wildlife corridors and/or habitat, historic buildings and/or sites, archeological sites, and open space.
- B. Constrained and Sensitive Land. Constrained and sensitive land means land which is generally unbuildable and which contains constrained and sensitive features including, but not limited to, wetlands, floodplains, steep slopes, faults and other geologically or environmentally sensitive features.

**10-18-4 Development Options**

- A. The intent of the conservation residential subdivision is to encourage the preservation of usable open space, thus helping to maintain the rural character of Nibley City. The City will provide density bonuses to developers as outlined in this ordinance, and as an incentive for preservation of an increased amount of open space. Density bonuses shall be calculated in accordance with the provisions outlined in this chapter.
- B. Developers desiring to develop property as a Conservation Residential Subdivision are subject to the development standards, conditions, procedures and regulations of this Chapter.

**10-18-5 Approval Process**

- A. **Concept Plan.** All applications for a Conservation Residential Subdivision shall submit a concept plan to the Nibley City Planning Commission for their review and comment. The concept plan shall include an overall layout of the property, including road alignments and lot sizes. Additionally, the developer shall submit a brief written plan for development, ownership and management of the open space, including conceptual landscape plans, and options for amenities.

- B. Once the Planning Commission has had an opportunity to review and comment on the concept plan, applications for a Conservation Residential Subdivision shall be submitted and processed in accordance with the requirements and procedures set forth in the City Subdivision Ordinance, including submission and approval of schematic, preliminary and final plans or plats, and any additional procedural requirements set forth in this Chapter, including, but not limited to, submission of a Sensitive Area Designation Plan and/or Master Development Plan.

#### **10-18-6 Development Activities Prohibited**

- A. In order to ensure the preservation and enhancement of existing conditions of certain property within the City, including, but not limited to, constrained and sensitive lands, natural and cultural resources, wildlife habitat and other unique and sensitive lands, no new development activity shall be permitted on property proposed for development as a Conservation Residential Subdivision prior to final plat approval as provided herein. Upon final plat approval, all development activity shall be conducted in accordance with and subject to applicable permit and development approval processes required by City Ordinances, rules and regulations. For purposes of this Section, "development activity" shall include any disturbance or alteration of the property in any way, but shall not include continuation of any currently existing permitted use of the property.

#### **~~10-18-7 Waiver~~**

- ~~A. Subject to the provisions set forth herein, any provision of this Chapter may be waived by the City Council upon a vote of not less than three (3) members of the City Council. Such waiver(s) shall be granted only in limited circumstances as deemed appropriate and necessary by the City Council. No waiver shall be granted absent a finding of good cause based upon specific special circumstances attached to the property, nor shall any waiver be granted for reasons of financial hardship. No waiver shall be granted that would be contrary to the public interest or contrary to the underlying intent of this Chapter. Any waiver of the required minimum conservation land dedication shall require comparable compensation, off-site improvements, amenities or other consideration of comparable size, quality and/or value.~~

#### **10-18-8 Sensitive Area Designation Plan Map**

- A. All applications for a Conservation Residential Subdivision shall include a Sensitive Area Designation Plan Map prepared in accordance with the provisions set forth herein. The Sensitive Area Designation Plan Map shall identify all constrained and sensitive lands within the property boundaries and within four hundred (400) feet outside of the property boundaries, including, but not limited to, floodplains, wetlands, and steep slopes. The Sensitive Area Designation Plan Map shall also clearly identify all natural or cultural resources present on the property and within four hundred (400) feet outside of the property, including, but not limited to, geographic features, including, but not limited to,

meadows, grasslands, tree stands, streams, stream corridors, flood walls, berms, watercourses, farmland, wildlife corridors and/or habitat; historic buildings and/or sites; archeological sites; cultural features and green space. Applicants are solely responsible for checking and ensuring the accuracy and designation of constrained and sensitive lands and natural and cultural resources on the Sensitive Area Designation Plan Map for their particular project and applicable adjacent property. If site analysis, surveying and/or identification of constrained and sensitive lands and natural and cultural resources require entry onto adjacent properties, applicants are solely responsible for obtaining all required permits and/or approvals for such entry and analysis, surveying and/or identification.

#### 10-18-9 Master Development Plan

- A. Application and approval for a Conservation Residential Subdivision shall include a Master Development Plan and/or Development Agreement. Such Master Development Plan and/or Development Agreement shall be reviewed and approved as part of the subdivision approval process.

#### 10-18-10 Dimensional Standards

- A. Density. The permitted density for development within a Conservation Residential Subdivision shall be determined in accordance with the following chart, hereinafter referred to as the “Development Incentive Chart”.

Development Incentive Chart- R-2			
Conservation Land	Incentive Multiplier	Lot Size Minimum	Minimum Frontage
25%	25%	12,000	100'
30%	31.25	10,500	95'
35%	37.5	9,000	90'
40%	45%	7,500	85'

Development Incentive Chart- R-2A			
Conservation Land	Incentive Multiplier	Lot Size Minimum	Minimum Frontage
25%	18.75%	9,000	95'
30%	25%	8,000	<del>90'85'</del>
35%	31.25%	7,000	<del>8085'</del>
40%	37.5%	6,000	<del>70'80'</del>

**Comment [SP1]:** I've been looking at the buildable area of small lots and how that is impacted by our setback requirements. Building lots typically need more depth than width in order to accommodate quality housing. I would suggest reducing the required frontage so that people can have the depth needed on their yard to maintain our current setbacks but still have enough space to build a high-quality, good sized home.

Developers who opt to develop a conservation residential subdivision in the R-1 and R-1A zones shall do so in accordance with the development incentive charts listed below, and in accordance with all other applicable provisions of this Chapter.

Development Incentive Chart- R-1			
Conservation Land	Incentive Multiplier	Lot Size Minimum	Minimum Frontage
25%	18.75%	25,000	100'
30%	25%	22,500	95'
35%	31.25%	20,000	85'
40%	37.5%	18,000	80'

Development Incentive Chart- R-1A			
Conservation Land	Incentive Multiplier	Lot Size Minimum	Minimum Frontage
25%	25%	17,000	100'
30%	33.33	15,000	100'
35%	41.67%	13,000	95'
40%	50%	11,000	90'

- B. Procedure For Calculating Density Bonuses. The density bonus for a conservation subdivision shall be arrived at by multiplying the incentive multiplier for the percentage of conservation land by the original number of lots. The original number of lots shall be calculated as follows:
1. R-1 zone: Gross acreage x .8 = original yield
  2. R-1A zone: Gross acreage x 1.2= original lot yield
  3. R-2 zone: Gross acreage x 1.6= original lot yield
  4. R-2a zone: Gross acreage x 2.3 = original lot yield
- C. Minimum Required Conservation Land. All Conservation Residential Subdivisions shall provide a minimum of 25% conservation land within the Conservation Residential Subdivision as set forth in the Development Incentive Chart in Subsection A. The percentage of required conservation land for any given Conservation Residential Subdivision shall be calculated based upon the gross acreage of property within the proposed subdivision, less the acreage needed for publicly dedicated rights-of-way. Except as otherwise provided herein, conservation land shall not be included within any residential lot.
- D. Density Bonuses Not Otherwise Listed. Developers may choose to set aside open space in excess of what is provided for in the incentive charts included herein. The City Council may choose to approve an increase in density beyond what is provided for in the charts in exchange for an increased percentage of open space. However, in no case shall the density bonus exceed fifty percent (50%).
- E. Lot Area. The lot area and minimum lot size for lots within a Conservation Residential Subdivision shall be determined in accordance with the Development Incentive Chart set

forth in Subsection A. The typical lot area is likely to be much closer in size to the established threshold for each zone because that lot size can be delivered by developers while still meeting the minimum conservation land requirements set forth herein.

- F. Lot Width at Front Setback. The minimum lot width at the front setback (Required Frontage) for main buildings within a Conservation Residential Subdivision shall be in accordance with the Development Incentive Chart.
- G. Yard Regulations. All yard regulations, including building setbacks, heights and regulations on accessory structures shall be in compliance with the Nibley City zoning and subdivision codes.

#### **10-18-11 Design Standards**

- A. As part of the application for a Conservation Residential Subdivision, developers shall be required to submit drawings showing the design options for the primary dwelling on lots within the subdivision. Such designs shall be in accordance with the provisions contained in this section.
- B. **Individual Lots.** Individual lots in Conservation Residential Subdivisions shall be laid out pursuant to the dimensional standards set forth herein. With the exception of conservancy lots, individual residential lots shall not encroach upon or contain any of the required minimum designated conservation land for the Subdivision or any constrained or sensitive lands, as defined herein.
- C. **Orientation.** All principal dwelling structures shall front a publicly dedicated street or private drive.
- D. **Building Height.** All building heights shall comply with Nibley City Code 10-11-1 "Space Requirements Chart".
- E. **Materials.**
  - 1. Allowable primary materials for shall be wood clapboard, cementitious fiber board, wood board and batten, wood siding, brick, stone, stucco, or similar material.
  - 2. Allowable secondary materials can include cementitious fiber board, brick, wood, exposed smooth-finish concrete block, stone, glass, architectural metal panels, EIFS, corrugated metal, or similar material.
  - 3. Pitched roofs of structures shall be clad in asphalt shingles, wood shingles, standing seam metal, a similar material, or a combination of similar materials.
- F. **Porches, Landings, Stoops, or Porticos.** All buildings shall have a covered porch, a covered landing, a stoop, or a portico. This element shall be:
  - 1. The primary architectural element of the façade where located;



2. Located on the front facade of the structure; and
3. Porches must be at least six feet deep;
4. Stoops and landings must be at least four feet deep.
5. Porticos must provide a depth of covering of at least four feet.

G. **Roofs and Overhangs.** Roofs and overhangs on buildings using shall comply with the following standards:

1. Pitched roofs covering the main body of the structure shall be hip style, shed style, mansard, or shall have symmetrical gables.
2. Shed roofs shall maintain a minimum pitch of 2:12 and all other roofs covering the main body shall maintain a minimum roof pitch of 6:12 or steeper.
3. Overhanging eaves may expose rafters, but flush eaves shall be finished with profiled molding or gutters.
4. Flat roofs may not be used.

H. **Facades.** Any structure with a front façade of thirty feet (30') or more shall incorporate wall offsets in the form of projections or recesses in the front façade plane. Offsets shall have a minimum depth of two feet (2').

I. **Garages.** All structures intended for residential occupancy shall include a garage. The following garage standards shall apply:

1. Street facing garage façades shall not visually or architecturally dominate the front façade elevation of the primary building. Compliance is determined by:
  - a. The living space is the dominant element of the front façade;
  - b. The roof accent gabling is visually dominant over the living space instead of the garage;
  - c. Front facing garages must contain at least two of the following:
    - i. Single carriage house garage doors with windows;
    - ii. Garage doors that include windows and are painted to match the main or accent color of the dwelling;
    - iii. Ornamental light fixtures flanking the doors;
    - iv. Arbor or trellis;
    - v. Columns flanking doors and/or an eyebrow overhand;
    - vi. Portico;
    - vii. Dormers;
    - viii. Twelve-inch overhangs over garage doors;

- ix. Eaves with exposed rafters with a minimum six inch (6") projection from the front plane;
  - x. A vertical element such as a tower, placed over the primary pedestrian entrance; or
  - xi. Roof line changes.
- d. In addition to the two required elements described in the section above, front-facing garages protruding up to four (4) feet from the front plane shall have garage doors with windows.
- e. Front facing garages protruding more than four feet (4') from the front façade shall include a porch or covered landing that extends a minimum of six feet (6') from the plane of the living space. In no case shall a street facing garage protrude more than eight feet (8') from the plane of the living space.
- f. In no case shall front facing garage doors comprise more than fifty percent (50%) of the primary façade.
- i. Front facing garage doors that comprise from forty percent (40%) to fifty percent (50%) of the primary façade shall be recessed from the primary façade by at least four feet (4') Front facing garage doors that are flush with the primary façade or that protrude up to four feet (4') from the front façade shall comprise no more than forty percent (40%) of the primary façade
  - ii. Front facing garage doors protruding more than four feet (4') from the front façade shall comprise no more than thirty percent (30%) of the primary façade.
2. All garages with more than two bays or with doors exceeding sixteen feet (16') in width shall be located behind the rear façade of a structure or shall be side-loaded. Buildings using this form that incorporate side-loaded garages shall emphasize the pedestrian entrance to the building. Side loaded garages along front facades shall incorporate a portico, arbor, trellis, or some other element to articulate the façade incorporating the garage

#### **J. Architectural Variability.**

1. All residential subdivision of three lots or more that are intended solely for single-family detached structures shall include multiple distinctly different front façade designs within any single phase of the development. Developments of three to ten units shall have a minimum of three façade variations. One additional façade variation will be required to be included for each additional ten units.
2. No structure shall be of the same primary façade design as any other structure within three building lots along the same block face, and no single front façade design may

constitute more than 25 percent of the front façade design within any single phase of a subdivision.

- K. Conservation Land Coordination. Conservation land shall be coordinated and located so as to maximize the continued use of the space. In order to create larger areas of conservation land and to combine open space from a variety of developments, conservation land shall be coordinated either with existing adjacent conservation land or with planned future conservation land. If no adjacent parcels of land are planned for development, conservation land shall be planned to provide the greatest likelihood of adjoining future developments' conservation land.
- L. Conservation Lands. Standards pertaining to the quantity, quality, configuration, use, permanent protection, ownership, and maintenance of the conservation land within a Conservation Residential Subdivision shall be complied with as provided herein.
- M. Constrained and Sensitive Lands. Restrictions and regulations regarding the preservation, protection, ownership and maintenance of constrained and sensitive lands within a Conservation Residential Subdivision shall be complied with as provided herein.

#### **10-18-12 Attached Housing Development**

- A. Conservation residential subdivisions in the R-1a, R-2 and R-2a zones in excess of twenty-five (25) acres may develop as a Planned Unit Development and include up to fifty percent (50%) of the property as single-family attached (townhome) housing, subject to the standards outlined in the Nibley City ordinance regulating Planned Unit Developments.

#### **10-18-12 Conservancy Lots**

- A. Conservancy Lots. Conservation land and constrained and sensitive land may be included within individual residential lots in limited circumstances when such areas can be properly protected and preserved in accordance with the intent and purpose of this Chapter. Such lots shall be known and referred to as "Conservancy Lots" and must be approved by the City Council in conjunction with the subdivision approval.
- B. Regulations. Conservation land and constrained and sensitive land within a Conservancy Lot shall remain subject to all regulations and requirements for such land as set forth herein, including, but not limited to, use, design, maintenance, ownership and permanent protection.
- C. Ownership. Ownership may be held in perpetuity by an individual or corporation with a restriction on the recorded plat preventing further development by providing a conservation easement to Nibley City.

#### **10-18-13 Use Regulations**

A. Subdivision. Subject to use and development restrictions of constrained and sensitive lands as set forth herein, land within Conservation Residential Subdivisions may be used for the following purposes:

1. Permitted Uses. Any uses permitted in the relevant zone.
2. Conservation Land. Conservation land, subject to the use and development restrictions of conservation land as set forth herein.
3. Accessory Uses. Any permitted accessory uses as provided in the relevant zoning regulations.

B. Conservation Land. Conservation land may be used for the following purposes:

1. Permitted Uses. The following uses are permitted in conservation land areas:
  - a. Conservation of open land in its natural state; e.g., meadow, grassland, tree stands, farmland, etc.
  - b. Agricultural and horticultural uses, including raising crops.
  - c. Underground utility easements for drainage, access, sewer or water lines, or other public purposes.
  - d. Above-ground utility and street rights-of-way may traverse conservation land if permitted under City Ordinances; provided, areas encumbered by such facilities and/or rights-of-way shall not be counted towards the minimum required conservation land for the Subdivision.
  - e. Conservation land of less than one half (.5) acre may be used as landscaped buffers for road ways, landscaped entrances to subdivisions, neighborhood "pocket parks" or similar amenities as approved by the Planning Commission.
2. Conditional Uses. The following uses shall be considered as conditional in conservation land areas:
  - a. Agricultural uses, not otherwise permitted, including livestock and associated buildings that support an active, agricultural or horticultural operation, but excluding livestock operations involving swine, poultry, and mink.
  - b. Pastureland for sheep, cows and horses.
  - c. Equestrian facilities.

- d. Wholesale nurseries and associated buildings that are specifically needed to support active, viable horticultural operations.
  - e. Silviculture, in keeping with established standards for selective harvesting and sustained-yield forestry.
  - f. Neighborhood open space uses such as village greens, commons, picnic areas, community gardens, trails, passive recreation parks and similar low-impact passive recreational uses specifically excluding motorized off-road vehicles, rifle ranges, and other uses similar in character and potential impact.
  - g. Active non-commercial recreation areas, such as trails, playing fields, playgrounds, courts, and bikeways.
  - h. Golf courses, not including miniature golf.
  - i. Water supply and sewage disposal systems, and stormwater detention areas designed, landscaped, and available for use as an integral part of the conservation land.
  - j. Fencing, when deemed necessary and appropriate for the particular use, condition, purpose and/or location of the conservation land.
3. Prohibited Uses. The following uses shall be considered prohibited in conservation land areas:
- a. Any residential, commercial or industrial activity;
  - b. Any development, construction or location of any manmade modification or improvements such as buildings, structures, roads, parking lots, or other improvements, except as may be necessary to support a permitted or conditional use;
  - c. Any filling, dredging, excavating, mining, drilling, or exploration for and extraction of oil, gas, minerals or other resources from the property;
  - d. Any dumping or storing of ashes, trash, garbage or junk vehicles or equipment;
  - e. Burning of any materials, except as necessary for agricultural, drainage and fire protection purposes;

- f. The use of motor vehicles, including snowmobiles, all-terrain vehicles, motorcycles and other recreational vehicles, except as may be necessary to maintain and operate the property and/or utility facilities within the property;
- g. Hunting or trapping for any purpose other than predatory or problem animal control;
- h. Advertising of any kind or nature and any billboards or signs; provided, directory and information signs may be displayed describing the easement and prohibited or authorized use of the same;
- i. Any cutting of trees or vegetation, except as necessary for fire protection, thinning, elimination of diseased growth, control of non-native plant species, maintenance of landscaped areas, and similar protective measures or those activities relating to permitted agricultural uses;
- j. The change, disturbance, alteration, or impairment of significant natural ecological features and values of the property or destruction of other significant conservation interests on the property;
- k. The division, subdivision or de facto subdivision of the property;
- l. Changing the topography of the property by placing on it any soil, dredging spoils, land fill, or other materials, except as necessary to conduct specific permitted purposes; and
- m. All other uses and practices inconsistent with and detrimental to the stated objectives and purpose of the easement.

C. Constrained and Sensitive Lands. Except for passive recreational activities, no development or residential uses shall be permitted within constrained and sensitive lands.

**10-18-14 Conservation Land Design Standards.** Designated conservation land within a Conservation Residential Subdivision shall meet the following standards:

- A. Construction of Conservation Land and other Amenities. Regardless of the overall phasing of the project, all conservation land and other amenities that will be constructed as part of the Conservation Residential Subdivision shall be constructed and installed in the first phase of the development.
- B. Significant Areas and Features. Conservation land should include the most unique and sensitive resources and locally significant features of the property within the Subdivision such as meadows, grasslands, tree stands, streams, stream corridors, berms, watercourses, farmlands, wildlife corridors and/or habitat, historic buildings and/or sites, archeological



sites, cultural features, green space, scenic views, etc. Developers, as part of the subdivision application, shall submit a report detailing why the conservation land was selected and what features and resources it is preserving.

- C. Contiguous Land. Conservation lands within a development shall be contiguous to provide for large and integrated open space areas within the Subdivision. Non-contiguous parcels of conservation lands may be approved by the City Council during plat approval process upon a finding that such exception is necessary and/or desirable based upon consideration of the size of the project, the size of the conservation parcels, the types of features and resources included within the conservation lands, and other relevant considerations. Long thin strips of conservation land (less than one hundred (100) feet wide) are prohibited, unless approved by the City Council during plat approval process upon a finding that such configuration of the conservation land is necessary and/or desirable to connect other significant areas, to protect linear resources such as streams or trails, or to provide a buffer.
- D. Open Space Network Connection. Conservation land within a Conservation Residential Subdivision shall be designed and laid out as part of a larger continuous and integrated open space system to ensure that an interconnected network of open space will be provided throughout the City.
- E. Trail Connection. Wherever practical, conservation land within a Conservation Residential Subdivision shall incorporate trail connections into the design of the conservation land.
- F. Canal. Wherever canals traverse the property on which the Conservation Residential Subdivision, the Developer shall leave a minimum of ten feet (10') of open space on each side of the canal's top banks. This open space may count towards the required open space and also towards the required trail connections, provided the open space along the canal is developed in a manner that it can be reasonably and safely used as a pedestrian corridor.
- G. Visibility. Conservation land shall be located and designed within the Conservation Residential Subdivision to add to the visual amenities of neighborhoods and to the surrounding area by maximizing the visibility of internal open space. Such enhanced visibility of conservation land may be accomplished through design and location of such open space as terminals at the ends of streets or along "single-loaded" street segments, particularly along the outside edges of street curves, and by maximizing the visibility of external open space as perimeter "greenbelt" conservation land.
- H. Buffering. Conservation land shall be designed to provide buffers and to protect scenic views as seen from existing roadways and from public parks. Where the proposed development abuts a national forest or other public park, open space, wildlife sanctuary or preserve, a natural greenway buffer at least twenty-five (25') feet wide shall be provided within the development along its common boundary with said land, within which no new structures shall be constructed, nor shall any clearing of trees or understory growth be permitted (except as may be necessary for street or trail construction or fire safety). Where

this buffer is unwooded, the City may require vegetative screening to be planted at developer's sole cost and expense and/or that the buffer be managed to encourage natural forest succession through policies and the periodic removal of invasive alien plant and tree species.

- I. Pedestrian Access. Developer shall provide adequate pedestrian access to conservation land which is open to public or resident use.
- J. Maintenance Access. Developer shall provide sufficient maintenance access to all conservation land and constrained and sensitive lands within the Conservation Residential Subdivision.
- K. Landscaping. All conservation land that is not wooded, farmed, or maintained as conservation meadows, grassland, or other approved open space, shall be landscaped at developer's sole cost and expense in accordance with landscaping requirements for subdivisions.

**10-18-15      Permanent Protection of Conservation Lands.**

- A. Conservation Easement. All conservation land shall be permanently restricted from future development by a conservation easement or other method of protection and preservation acceptable to the City. Under no circumstances shall any development be permitted in the conservation land at any time, except for those permitted or conditional uses listed herein and approved in conjunction with the Conservation Residential Subdivision. All conservation easements, or other acceptable method of protection and preservation of the conservation land within a Conservation Residential Subdivision, shall be approved by the City Council and recorded prior to or concurrent with the recording of the final plat for the Conservation Residential Subdivision.
- B. Terms and Conditions. All conservation easements, or other acceptable method of protection and preservation of the conservation land within a Conservation Residential Subdivision, shall be in substantially the same form as the standard conservation easement form provided by the City and shall include, at a minimum, the following terms and/or conditions:
  - 1. legal description of the easement;
  - 2. description of the current use and condition of the property;
  - 3. permanent duration of easement;
  - 4. permitted and conditional uses;
  - 5. prohibited development and/or uses;
  - 6. maintenance responsibilities and duties; and
  - 7. enforcement rights and procedures.

- C. Grantee. Unless otherwise approved by the City Council, the grantee of a conservation easement shall consist of one of the following acceptable entities which entity shall be qualified to maintain and enforce such conservation easement: land trust, conservation organization or governmental entity. The City may, but shall not be required to, accept, as grantee, a Conservation Easement encumbering conservation lands within a Conservation Residential Subdivision, provided there is no cost of acquisition to the City for the easement and sufficient access to and maintenance responsibilities regarding the conservation land are provided.

**10-18-16      Ownership of Conservation Lands.**

- A. Undivided Ownership. Unless otherwise approved by the City and subject to the provisions set forth in this Chapter, the underlying fee ownership of the conservation land shall remain in single ownership and may be owned and maintained by one of the following entities: homeowners' association, land trust, conservation organization, governmental entity, or private individual.
- B. Property subject to a conservation easement, or other acceptable method of protection and preservation, shall not be subdivided.
- C. Owners' Association. Conservation land may be held in common ownership by a condominium homeowners' or other acceptable owners' association, subject to all of the provisions for owners' associations set forth in State regulations and the City's Subdivision regulations. In addition, the following regulations shall be met:
1. A description of the organization of the proposed association, including its by-laws, and all documents governing ownership, maintenance, and use restrictions for conservation land, including restrictive covenants for the Subdivision, shall be submitted by the developer with the Final Plat application.
  2. The proposed association shall be established and operating (with financial subsidization, if necessary) prior to or concurrent with the recording of the Final Plat for the Subdivision.
  3. Membership in the association shall be mandatory for all purchasers of property within the Subdivision and their successors in title.
  4. The association shall be responsible for maintenance and insurance of conservation land.
  5. The by-laws of the association and restrictive covenants for the Subdivision shall confer legal authority on the association to place a lien on the real property of any member who falls delinquent in dues. Such dues shall be paid with the accrued interest before the lien may be lifted.

6. Written notice of any proposed transfer of conservation land by the association or the assumption of maintenance for the conservation land must be given to all members of the association and to the City no less than thirty (30) days prior to such event.
7. The association shall have adequate staff to administer, maintain, and operate such conservation land.

**10-18-17      Development and Maintenance of Conservation Lands.**

- A. Costs. Unless otherwise agreed to by the City, the cost and responsibility of maintaining conservation land shall be borne by the owner of the underlying fee of the conservation land.
- B. Plan. Each stage of required approval of a Conservation Residential Subdivision, developers shall submit an Open Space Development Plan, with increasing levels of detail.
  1. At the concept plan stage, the developer shall submit a brief written plan for development, ownership and management of the open space, including conceptual landscape plans, and options for amenities.
  2. As part of the preliminary plat approval, developers shall submit a detailed Open Space Development Plan, outlining landscaping, maintenance and operations of the conservation land and providing for and addressing the means for permanent maintenance of the conservation land within the proposed Conservation Residential Subdivision with the Preliminary Plat application for the Subdivision. Schematics for the landscaping shall be included with the preliminary Open Space Development Plan.
  3. As part of final plat approval, developers shall submit an Open Space Development Plan which, in addition to the items required of the preliminary Open Space Development Plan, shall include the following items:
    - a. The Plan shall define ownership.
    - b. The Plan shall establish necessary regular and periodic operation and maintenance responsibilities for the various kinds of open space (e.g., lawns, playing fields, meadow, pasture, wetlands, stream corridors, hillsides, cropland, woodlands, etc.).
    - c. The Plan shall estimate staffing needs, insurance requirements, and associated costs, and define the means for funding the maintenance of the conservation land and operation of any common facilities on an on-going basis. Such funding plan shall include the means for funding long-term capital improvements as well as regular yearly operating and maintenance costs.
    - d. At the City's discretion, the applicant may be required to escrow sufficient funds for the maintenance and operation costs of common facilities for up to one year following acceptance by the City.

- C. Approval. The Maintenance Plan must be approved by the City Council prior to or concurrent with Final Plat approval for the Subdivision. The Maintenance Plan shall be recorded against the property and shall include provisions for the City's corrective action rights as set forth herein. Any changes or amendments to the Maintenance Plan shall be approved by the City Council.
- D. Failure to Maintain. In the event that the organization established to maintain the conservation land and the common facilities, or any successor organization thereto, fails to maintain all or any portion thereof in reasonable order and condition, the City may assume responsibility, as a right but not an obligation, for maintenance, in which case any escrow funds may be forfeited and any permits may be revoked or suspended.
- E. Corrective Action. The City may enter the premises and take corrective action, including extended maintenance. The costs of such corrective action may be charged to the property owner and may include administrative costs and penalties. Such costs shall become a lien on said properties. Notice of such lien shall be filed by the City in the County Recorder's office. The Maintenance Plan and all other documents creating or establishing any association or conservation organization for the property shall reference the City's corrective action authority set forth herein and shall be recorded against the property.
- F. The developer shall fund implementation and maintenance of the conservation easement until such time as the control of the easement is transferred to the long-term manager. The developer shall address implementation, development, maintenance and transfer procedures in the Sensitive Area Designation Plan Map or Master Development Plan, as applicable

**ORDINANCE 16-\_\_\_\_\_**  
**AN ORDINANCE PRESERVING THE**  
**SAFETY AND ALLOWING FOR MAINTENANCE OF CANALS AND WATERWAYS**

WHEREAS, Nibley City has an ownership interest in all canal and/or irrigation companies within the City; and

WHEREAS, Nibley residents rely on free-flowing and clean canals and waterways for the conveyance of irrigation water to agricultural and rural landscapes, and also for the conveyance of City stormwater; and

WHEREAS, unobstructed canals and waterways are critical to controlling flooding of private and public property within the City, and, in some cases, are integral parts of the City's stormwater infrastructure; and

WHEREAS, open canals and waterways provide critical wildlife habitat and corridors, opportunities for connectivity and recreation, and are an integral part of the rural landscape; and

WHEREAS, increased development pressure is impeding canal and waterway owners' ability to maintain the infrastructure such that it can function for its intended purposes of flood control and irrigation delivery; and

WHEREAS, Nibley City has certain contractual obligations with respect to the Nibley Blacksmith Fork Irrigation Company (NBFI); and

WHEREAS, Nibley City has the authority to establish policies to control the impact of development on commonly held assets and resources within the City.

NOW THEREFORE, BE IT ORDAINED BY THE NIBLEY CITY COUNCIL OF NIBLEY, UTAH THAT:

1. The attached ordinance, titled "An Ordinance Preserving the Safety and Allowing for Maintenance of Canals and Waterways" is hereby adopted.
2. All ordinances, resolutions, and policies of the City, or parts thereof, inconsistent herewith, are hereby repealed, but only to the extent of such inconsistency. This repealer shall not be construed as reviving any law, order, resolution, or ordinance, or part thereof.
3. Should any provision, clause, or paragraph of this ordinance or the application thereof to any person or circumstance be declared by a court of competent jurisdiction to be invalid, in whole or in part, such invalidity shall not affect the other provisions or applications of this ordinance or the Nibley City Municipal Code to which these amendments apply. The valid part of any provision, clause, or paragraph of this ordinance shall be given independence from



the invalid provisions or applications, and to this end the parts, sections, and subsections of this ordinance, together with the regulations contained therein, are hereby declared to be severable.

4. This ordinance shall become effective upon posting as required by law.

PASSED BY THE NIBLEY CITY COUNCIL THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2016.

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Shaun Dustin, Mayor

ATTEST:

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David Zook ,City Recorder

**ORDINANCE 16-\_\_\_\_**  
**AN ORDINANCE PRESERVING THE**  
**SAFETY AND ALLOWING FOR MAINTENANCE OF CANALS AND WATERWAYS**

1. Waterways as used in this Ordinance includes surface water runoff and drainage, drainage ditches and irrigation ditches, whether surface or subsurface.

2. Irrigation and canal companies shall have the right of access to canals and waterways as allowed by state law, and as permitted by the easements and rights of way of such companies.

3. Nibley City will not issue building, fence, grading or other permits that would limit, hinder, infringe or encroach upon any established rights of way, whether established by deed, use, or otherwise, for access to or maintenance of the canals and waterways within the City. Absent clear and convincing evidence otherwise, the City presumes that all canals and waterways have an access easement and setback fifteen feet (15') in width from the top of each inside bank or the toe of the Canal, whichever is greater, to the edge of the easement. To protect this easement, there is a fifteen foot (15') setback requirement prohibiting any fences, structures or permanent improvements within fifteen feet (15') of the bank of any canal or waterway. The City will not require permits for existing fences, structures or permanent improvements within the fifteen foot (15') setback if such were legal under Nibley City Ordinances when installed. Improvements or modifications to existing fences, structures or other permanent improvements shall be subject to this ordinance.

4. For changes in land use, including but not limited to building permits, new subdivisions, rezones, annexations, and development:

a. Nibley City may condition approval upon the formal recording of any reasonable canal and/or waterway easements, for access, maintenance, public right-of-way, and public safety.

b. Canal and waterway easements will not count against zoning density requirements for open canals and waterways.

c. Easements for canals and waterways and for access to the same within any new subdivision shall be required for approval of any proposed subdivision.

d. Easements for canals and waterways and for access to the same may be required by Nibley City across property that adjoins the subdivision when necessary to properly serve the subdivision or protect the City and may be a condition for approval of any proposed subdivision.

e. Developers who choose to establish deeded public rights-of-way along open canals and waterways shall be entitled to an increased (10%) density bonus, as outlined in the Nibley City Subdivision Ordinance.

f. The City may require Preliminary Plats to be submitted to canal or irrigation companies, who may be impacted by the subdivision, for review, comment and/or approval.

5. The City adopts the following conditions and requirements with respect to any land use change, development, or improvement that may impact the NBF Canal ("Canal") and which, at the discretion of the City Manager, in consultation with the Mayor, may be applied to and required for other canals and water ways within the City prior to any land use change, development or improvement:

a. Authorization for New Storm Water Inlet Structures and Outlet Structures. No new or additional Storm Water Inlet Structures and Outlet Structures and no increases in the flow of such inlets or outlets beyond the Current Discharge as defined by an Agreement between the City and NBF, shall be created or maintained except in conformance with the following procedure.

(1) The City, a landowner or a developer may at any time contact NBF to evaluate the potential for new Inlet Structures and Outlet Structures, or the potential for an increase in the capacity of any existing Inlet Structure or Outlet Structure.

(2) The City, a landowner or a developer shall provide a written request to NBF for each additional Storm Water Inlet Structure or Outlet Structure, and for increases in flow beyond the Current Discharge or any previously approved increase for existing Inlet Structures or Outlet Structures. The request shall be accompanied by the following:

(i) Drawings in both digital and printed copy showing the location, size and design specifications of each Inlet Structure or Outlet Structure proposed to be added or increased.

(ii) Drawings showing the drainage area to be served by the Inlet Structure.

(iii) Expected occurrences that will cause Storm Water inflow into the Canal, including an estimate of the time of year during which maximum inflows are expected, subject to subsection (iv) below.

(iv) An estimate of the maximum inflow to be expected from the area to be served by the Inlet Structure (with the understanding that the maximum flow may not exceed the flow allowed by Current Design Standards). This rate is determined by completing a hydrologic analysis based on soil types to determine the runoff rates prior to any land use change, development or improvement for sites greater than 1 acre, or by assuming a historical runoff rate of 0.1 cfs per acre for sites smaller than 1 acre.

(v) Written disclosure of whether the Storm Water discharge to the Canal is expected to contain any Pollutant regulated under the Utah Clean Water Act and implementing regulations thereof.

(vi) Certification that the City, landowner or developer have complied and will comply with all applicable requirements of the Utah Water Quality Act and associated regulations.

(vii) Any additional documentation or information reasonably requested by NBFI.

b. Any objections of any kind by NBFI to a new proposed Inlet Structure, Outlet Structure, or the enlargement of either, shall be given by written notice within sixty (60) days after receipt by NBFI of the written request for the same from the City, landowner or developer. NBFI shall have the right to refuse such approval only if, as demonstrated by empirical data:

(1) in the case of a new Inlet Structure or enlargement of an existing Inlet Structure, water inflow into the Canal from such inlet will exceed the Current Discharge into the Canal from the drainage area to be served by such inlet;

(2) the inflows are found by a City-County Health Department or other State, County or federal agency to be physically harmful to animals, crops of any kind, or any other beneficial use of the water; or

(3) the proposed Inlet Structure or Outlet Structure will diminish the ability to utilize all of the water to which NBFI is entitled under its water rights, hinder water deliveries, or alter, damage or obstruct, diversion structures, measuring devices, or regulating headgates on the Canal.

c. If NBFI does not provide written objections within sixty (60) days after receipt of the City's, landowner's, or developer's written request, NBFI shall be deemed to have approved the additional Inlet Structure, Outlet Structure, or increase in capacity of either.

d. If the request for additional Inlet Structures, Outlet Structures or increase in capacity of an inlet or outlet is not agreed to, NBFI shall work with the City, landowner or developer in an attempt to reach an equitable resolution in order to provide for the same.

e. If the additional Inlet Structure, Outlet Structure or increase in flow is formally approved or deemed approved as provided herein, the City shall allow commencement of construction or modification only after a written Agreement has been agreed-to, signed by the City, landowner or developer and NBFI.

f. The City shall require, as a condition to any land use change, development or improvement approval, that infrastructure (such as fencing or other improvements) be

installed by a landowner or developer as part of a land development project, when reasonably determined by the City to be necessary.

g. Landowners or developers of any land within the City must include with their plans and specifications a storm water detention plan that provides for all storm water to be retained at the site of such any land use change, development, or improvement except as may be otherwise approved by the City and NBFI.

h. If any landowner or developer of any land proposes any piping of the Canal, the construction of bridges or retaining walls, the installation of culverts, or any other action which may in any way affect the Canal, the City shall require that the plans and specifications be delivered to NBFI, and that NBFI consent to the same, in writing, prior to the approval of such land development by the City, which consent or the basis for denying such consent shall be given by NBFI within sixty (60) days after NBFI receipt of the request for approval.

i. Trash Racks. The City shall require landowners or developers to install, in connection with City-approved land use changes, development plans, or improvements, trash racks and inlet grates on all Inlet Structures so as to prevent clogging of the headgates, screens and pipelines situated within the Canal.

6. Alteration of canals or waterways, including grading, modification, contouring or removal of vegetation or soil of banks to canals and waterways, shall only be done by the canal or irrigation company, or pursuant a written permit issued by the canal or irrigation company.

7. Vested rights in the established canals and waterways for both conveyance of water and for access and maintenance of the canal or other waterway shall be protected against all encroachments and no improvements shall be erected that interfere with the same and the City shall issue no permits for improvements that interfere with the same.

8. A civil action for damages and other relief under this ordinance may be brought by the City or any person injured by another's actions in violation of this ordinance. Such civil action may be brought independent of any criminal action.

9. It is unlawful for any person to place any pole, board or other obstruction whatsoever, or any trash, yard waste or other waste material, other than irrigation water, in any ditch, waterway, or canal for any purpose, or in any manner to interfere with the free and unobstructed flow of water in such ditch, waterway, or canal. Violation of this provision constitutes a Class B misdemeanor under this Code.

10. It shall be unlawful to willfully or maliciously alter, break, or injure any dam, canal, headgate, water ditch, or other means of diverting or conveying water for irrigation or other useful purpose, or to dig away the bank or banks of any ditch, canal, or reservoir within the Nibley City boundaries. Violation of this provision constitutes a Class B misdemeanor under this Ordinance.

11. Whenever any irrigation or canal company has a right-of-way for any canal or other waterway, it shall be unlawful for any person to place or maintain in place any obstruction, or change of the water flow by fence or otherwise, along or across or in such canal or waterway, without first receiving written permission for the change from the irrigation or canal company. Violation of this provision constitutes a Class B misdemeanor under this Ordinance.

12. Any person who in any way unlawfully interferes with, injures, destroys, or removes any dam, head gate, weir, casing, valve, cap, or other appliance for the diversion, apportionment, measurement, or regulation of water, or who interferes with any person authorized to apportion water while in the discharge of his or her duties, is guilty of a class B misdemeanor under this Ordinance.

13. It shall be unlawful for any person to place or cause to be placed in the easement, channel, bed or bank of any river, stream, wash or other natural drain or within or upon any storm drain, flood control channel, reservoir, detention basin, debris basin, or other property over which the City, canal or irrigation company has an interest, matter of any kind that may operate to impede, retard or change the normal direction of the flow of flood, storm or other waters, or that may catch or collect debris carried by such waters, or that may be carried downstream by such waters to the damage and detriment of adjacent private or public property, or that may degrade the quality of the water, without first obtaining a written permit for such placement from the City and canal and/or irrigation company. Violation of this provision constitutes a Class B Misdemeanor under this Ordinance.

14. In the event any person violates any of the provisions of this Ordinance and the City takes action to correct the violation in order to protect the health, safety or welfare of its residents or to protect public or private property, the violator shall pay all reasonable costs and expenses incurred by the City (including but not limited to reasonable charges for use of City equipment and employees plus ten percent (10%) overhead) when invoiced by the City. Failure to pay within thirty (30) days of invoice shall cause the amount due to bear interest at eighteen percent (18%) per annum from the invoice date until paid, plus attorney fees and costs incurred by the City in collecting the same.