2012 Land Use Training

Toole
April 25, 2012

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Why Are You Here?

- The Utah State legislature
- Compliance is the primary legislative issue
- Knowledge leads to better planning
- Use a Common Language
- Self enforcement - not mandated

EDUCATION

Regional Land Use Trainings with ULUI

- ✓ 2 hour basic powers & duties
- ✓ 2 hour appeal authority
- ✓ By request land use topics

Web site with resources
Books/Publications
Technical ordinance review

Agenda for tonight

PART 1

1. Review of statutory duties assigned Land Use Authorities -LUDMA
2. Administrative, Legislative & Quasi Judicial Actions
3. Meetings, Public Notice & Public Hearings
4. Conditional Uses

PART 2

1. Open & Public Meetings Act
2. Ethics
3. Legislative Update

Average American attention span is about 6 minutes

Why?

Get to the Point!

Think about the message

You are the government

How are you helping the issue at hand?

- TED (online) - 6 minutes w/ 6 slides OR 20 minutes w/20 slides

1. Long Term Vision

Utah's system of land use administration by cities and towns has hardly been updated for many decades. State law does not now require the formalities of the past. Rethink your codes

2. Know your limitations and your possibilities

- What are you really allowed to do and not to do?

3. Don’t get to comfortable

- Nothing is constant but change – adapt to it

4. Enjoy it

- This is your community – have fun thinking about it and working with your neighbors

SUPREMACY OF LAWS

Federal Constitution

Federal Supreme and Appellate Court Decisions

Federal Statutes

Federal Administrative Rules

State Constitution

State Supreme and Appellate Court Decisions

State Statutes (LUDMA)

State Administrative Rules

Local Land Use Code

UTAH LEAGUE OF CITIES AND TOWNS

Enabling legislation for land use in Utah

Title 10, Chapter 9a
Land Use Development and Management Act

"LUDMA"

Cities & Towns
are creatures of the State

Respects local control

Authorizes land use regulation to City Council

Mandates the creation of a Planning Commission (Advisory body)
& Land Use Authorities
& Appeal Authorities

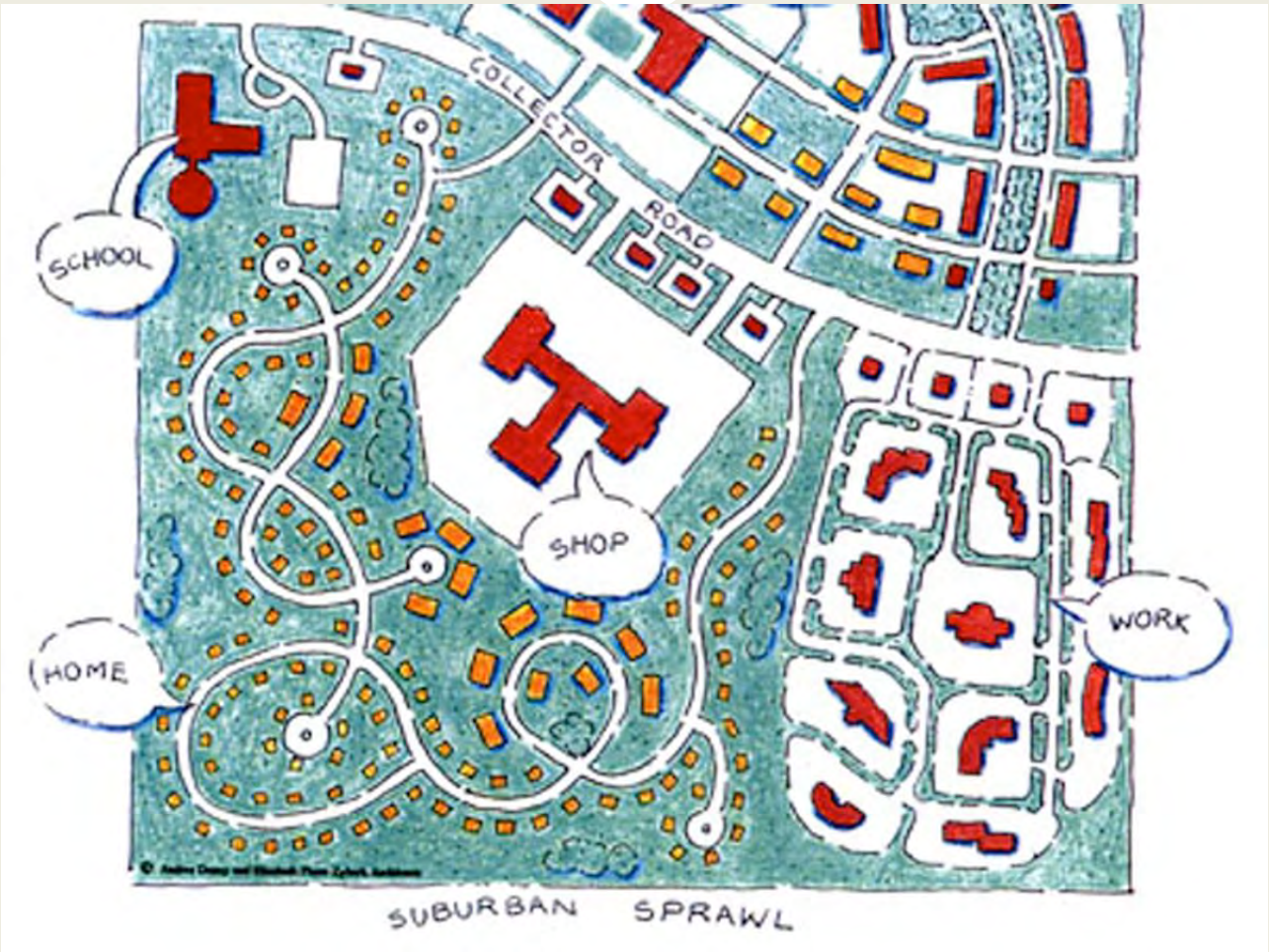
10-9a-102. Purposes -- General land use authority.

(1) The purposes of this chapter are to provide for the health, safety, and welfare, and promote the prosperity, improve the morals, peace and good order, comfort, convenience, and aesthetics of each municipality and its present and future inhabitants and businesses, to protect the tax base, to secure economy in governmental expenditures, to foster the state's agricultural and other industries, to protect both urban and nonurban development, to protect and ensure access to sunlight for solar energy devices, to provide fundamental fairness in land use regulation, and to protect property values.

(2) **To accomplish the purposes of this chapter, municipalities may enact all ordinances, resolutions, and rules and may enter into other forms of land use controls and development agreements that they consider necessary or appropriate for the use and development of land** within the municipality, including ordinances, resolutions, rules, restrictive covenants, easements, and development agreements governing uses, density, open spaces, structures, buildings, energy efficiency, light and air, air quality, transportation and public or alternative transportation, infrastructure, street and building orientation and width requirements, public facilities, fundamental fairness in land use regulation, considerations of surrounding land uses and the balance of the foregoing purposes with a landowner's private property interests, height and location of vegetation, trees, and landscaping, **unless expressly prohibited by law.**

What does this mean?

Communities shape there own destiny through local planning laws



Priorities

&

Political Will

UTAH LEAGUE OF CITIES AND TOWNS

Basic LUDMA Themes

Private Property Rights: Individuals are free to use private property as they wish, unless valid, written land use laws direct otherwise.

Must clearly write it down: Community has broad discretion to regulate private property. However, it must do so deliberately and openly.

Must abide by it:
Land use authority is bound by the terms and standards of applicable land use ordinances and shall comply with the provisions of those ordinances. 10-9a-509

Must act with reasonable diligence:
Land use authority must process complete applications promptly. "Timely manner" /"reasonable period"

LUDMA Stricter requirements. 10-9a-104

(1) Except as provided in Subsection (2), ***a municipality may enact an ordinance imposing stricter requirements or higher standards*** than are required by this chapter.

"unless expressly prohibited by law."

(2) A municipality may not impose stricter requirements or higher standards than are required by:

(a) Section 10-9a-305;
(b) Section 10-9a-514;
(c) Section 10-9a-516; and
(d) Section 10-9a-520.

School Districts
Manufactured homes
Homes for the elderly
Homes for people with disabilities

UTAH LEAGUE OF CITIES AND TOWNS

Land Use Tools

General Plan

"A practical vision for the future"

Zoning /Land Use Code

"Where the rubber meets the road"

Creation:

1. Planning Commission creates, holds a public hearing and recommends to the Council
2. Council Approves, modifies/denies

State and Federal Law Mandates

General Plan before zoning:

1. Land Use element in General Plan
2. Transportation; and
3. Affordable Housing

Land Use Ordinances that:

1. Creates a planning commission and establishes an appeal authority
2. Address Residential Facilities for Elderly/Persons w/Disabilities
3. Allow for Manufactured homes which comply with zone
4. Address Cell Towers – can't prohibit- can regulate
5. Reestablish after calamity nonconforming structure
6. Allows for Charter schools -in all zones
7. Allow for uses protected by freedom of speech (Adult oriented businesses)

PAGE 16 OF LAND USE BOOK

UTAH LEAGUE OF CITIES AND TOWNS

“Land use authority"

A person, board, commission, agency, or other body **designated** by the local legislative body to **act** upon a land use application.

From permit counter employee to City Council

Staff

Planning Commission

City Council

Creation:

1. Planning Commission recommends to Council
2. Council takes final action and appoints

Rules and Procedures

All PC's and CC's must have written rules of procedure adopted and posted

(2011 Leg session)

Ordinances should be clearly written and <u>objective</u>, not subjective

"The Planning Commission shall at its discretion pick any house color they want"

"Not so good"

"All applicant shall pick from the 9 approved house colors which are…"

Better

"This use is allowed and all other like and similar uses"

"Arbitrary and capricious"

“Appeal authority"

A person, board, commission, agency, or other body designated by ordinance to decide an **appeal** of a decision of a land use application or a **variance** from the land use code.

Can be one person,
or a board,
or share with another jurisdiction

Creation:

1. Planning Commission recommends to Council
2. Council takes final action and appoints

APPEALS & VARIANCES

Municipality sets standard of review- “De Novo” or “On the Record”

Applicant has the burden of proving that the Land Use Authority has erred.

Impartial decision makers

DUE PROCESS

No public hearing required.

Section III in Land Use Book

State provides mechanism to vary the rules of your land use ordinances

The state sets the five criteria. All five must be met

Very rare that all five are met

After decision is rendered in both cases any further action is heard in Court

UTAH LEAGUE OF CITIES AND TOWNS

Findings of Fact

Findings of fact are the reasons why a motion is being made or a decision is being made in such a way. They are unique to each permit.

Findings should be part of a motion and recorded carefully in the minutes of the meeting. They cannot legally be added at a later date.

When action is taken to the court, the judge will read the minutes of your meeting, looking specifically at your process and your findings. If both are in order and relevant, the case usually goes no further. Seldom does the judge consider the merits.

A written record also helps with compliance and future owners.

What Hat Do You Wear?

Policy

- Properly noticed and adopted?
- Reasonably debatable
- Constitutional?
- Consistent with LUDMA?

Legislative

Enforcing & Interpreting the law

Applying the Law

- Consistent with ordinance?
- Supported by substantial evidence?
- Uninfluenced by public clamor?

Administrative

- Consistent with ordinance?
- Respect Due Process?
  - Notice
  - Opportunity to be heard
  - Cross examine

Quasi-Judicial

UTAH LEAGUE OF CITIES AND TOWNS

	LEGISLATIVE	ADMINISTRATIVE	QUASI- JUDICIAL
Characteristics	**Very Broad Authority** Broad Public Input	**Much More Restrictive** Limited or no input	**Very Restricted** Input restricted to parties in case
	• Creates new law • Allows for citizen input as basis of decision • Based on vision and goal setting • Use of judgment	• Enforces the current law and makes reference to it in a decision • Bound by the law rather than public opinion • Does not create or "bend" the law ▪ The application of the law to a specific situation	• Based on established state law Looks for errors made in the process • Not a judgmental decision • Public input for information only
Responsible Body	Land Use Authority (ies) ▪ Planning Commission* • City Council/Town Board *Acts as an advisory board to the legislative body	Land Use Authority (ies) • Planning Commission • City Council • Mayor • Board of Adjustment • Enforcement Officer	Appeal Authorities ▪ As designated Courts
Land Use Actions	▪ General Plan • Zoning Ordinance • Subdivision Ordinance • All Municipal Ordinances • Creation and Amendments • Annexation Policy Plan	• Building Permit Approval • Subdivision Approval • Conditional Uses • Variances	• Appeals

HOW MUCH FLEXIBILITY DO LAND USE AUTHORITIES HAVE?

MOST >>>>

Meetings
Public Hearings & Public Notice

Which is the crowd you get?

PUBLIC NOTICES

WHAT'S REQUIRED AND A WAY TO RETHINK HOW WE USE THEM

10-9a-205. Notice of public hearings and public meetings on adoption or modification of land use ordinance.

(1) Each municipality shall give:
(a) notice of the date, time, and place of the first public hearing to consider the adoption or any modification of a land use ordinance; and
(b) notice of each public meeting on the subject.

Make it Clear and Simple

"Miss Jones we found this man attempting to read a public notice."

PUBLIC HEARING

The Daggett County Commission will hold a Public Hearing at the Daggett County Courthouse – 95 North 1st West; Manila, Utah on October 19, 2010 at 9:30 am. The Hearing is to obtain comments regarding a proposed change to the Daggett County Planning and Zoning Ordinance/Map for parcel A300-2 requested by John R and Marion Butler as co-trustees. The request is to change the zoning from A-20 to R-R-1/2. Additional information can be found on the County website at: www.daggettcounty.org/hearing101910 .

All interested parties are invited to attend or send written comments to the Daggett County Commission; PO Box 400; Manila, UT 84046 before 5 pm on October 14.

For more info call (435) 784-3154. In compliance with the Americans With Disabilities Act, persons needing auxiliary services for this meeting should call the Daggett County Clerk's Office at (435) 784-3154 at least 24 hours prior to the meeting.

THE CITY OF WEST JORDAN, UTAH PLANNING AND ZONING COMMISSION NOTICE OF PUBLIC HEARING The City of West Jordan Planning and Zoning Commission has scheduled a public hearing to be held on Tuesday, April 3, 2012, at which time input will be received concerning the proposed item: GENERAL PLAN LAND USE MAP AMENDMENT - The Village at Gardner Mill; NE corner 1300 West 7800 South; General Plan Land Use Map Amendment for approximately 14.43 acres from Very High Density Residential, Low Density Residential, and Neighborhood Commercial to Town Center/Neighborhood Center TSOD; Colosimo Development (applicant) The meeting will begin at 6:00 p.m. and will be held in the Council Chambers of the West Jordan City Hall, third floor, 8000 South Redwood Road, West Jordan, Utah. The Planning Commission will consider input from all interested parties prior to making a recommendation to the West Jordan City Council on this issue.

Sandy City Public Hearing Research and Development Zone Parking Regulations Notice is hereby given of a public hearing to be held in the Sandy City Hall, City Council Chambers, 10000 South Centennial Parkway (170 West), Sandy, Utah, before the Sandy City Planning Commission on April 5, 2012 at approximately 6:35 p.m., to consider the following: Amend Title 15A, Chapter 23, Commercial, Office, Industrial, & Transit Corridor Development Standards, Revised Ordinances of Sandy City, 2008. The purpose of the Code Amendment is to consider allowing the Planning Commission, under a Special Exception, to approve parking between the building and the public street. If you have questions or comments concerning this proposal, please attend this Planning Commission Meeting, or call Brian, in the Sandy City Community Development Department, at (801) 568-7268 and your comments will be forwarded to the Sandy City Planning Commission members.

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on Feb. 8,9, 10 and
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1245 S. 1950 W. Springville, UT

Wanted: Therapist

Masters Level Therapist needed to provide individual, group, and family therapy in a therapeutic boarding school. The ability to manage a caseload and work independently with good interpersonal skills is required.

Salary based on education and experience.

Silverado Boys Ranch ~ Panguitch, UT

Please send cover letter and resume to Lee Ann Fielding at lfielding@silveradoboysranch.com or call 435-676-8482.

PUBLIC NOTICES

"Because the People Must Know"

UPAXLP

NOTICE OF PUBLIC MEETING

Taylor's Tub-n-Grub is holding a public meeting to discuss a conditional use permit to allow Doug Taylor to expand his woodworking business and build a suitable shop/garage on the residential property directly south of his home at 432 South 200 West in Emery Town. The meeting will take place immediately following the Emery Town Council meeting on Feb. 13 at 6 p.m. This will also set the groundwork to establish a 501 C-3, non-profit foundation, for a renewable energy resources corporation. Any comments or complaints will be accepted, in writing prior to the meeting at PO Box 648 in Emery, Utah. No calls, please.

Published in the Emery County Progress January 23, 30 and February 6, 2007.

ANNOUNCEMENT OF APPOINTMENT AND NOTICE TO CREDITORS

Estate of John I. Parker, Deceased
Probate No. 06370015

All persons having claims agains the above estate are hereby notified that John Ira Parker, Jr., has been appointed Personal Representative of the above-entitled estate. Creditors of the estate are hereby notifed that they must present their claims to the personal representative's attorney of record or to the Clerk of the Court within three months of the date of the first publication of this notice or

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Why Use Social Media?

"The Internet generation is not fighting that battle about who gets to speak; they all get to speak."

Jennifer Pahlka: "Coding a better government" – TED talks 2012

- The millenium generation
- Improved transparency of information
- Improved responsiveness to citizen needs
- Improved citizen engagement
- Social media creates the possibility of real two-way communications between the audience and the organization.

For example:

Use Twitter for emergency information, reminders and short announcements

Use Facebook for community building, discussions, and event information

Use YouTube to highlight programs, promote your organization

Ideas to Consider

- Planners are in the business of the future- clients are our pre teens…
- Planning is implementation, not just creating plans

Groupthink- become closed to outside ideas "the search for consensus encourages tepid, lowest common denominator solutions which offend no one rather than excite everyone"
Wisdom of Crowds- James Surowiecki

Simplify- return to roots. Work with existing patterns- Identify that place that gives you roots in your community work to preserve it – shape a positive future
Smart Codes
***smartcode**central.org*

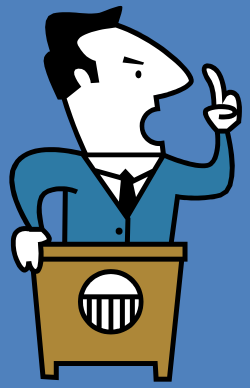
Public Meeting

- Posted and Noticed
- Open to the public
- Agenda with items listed
- Public input not required

Public Hearing

- Posted and Noticed
- Happens within a public meeting on a specific agenda item
- Input required – anyone can comment
- Can limit time of input – must be uniform (due process)
- Can accept written comments
- Can continue to another night

UTAH LEAGUE OF CITIES AND TOWNS



The State has reduced the required number of public hearings.

How many land use actions actually require a public hearing under State law?

7

1. General Plan

   1 by the PC

2. Land Use Ordinances

   1 by the PC

3. Subdivision Ordinance

   1 by the PC

4. Vacating/Altering or Amending a Subdivision plat

   1 by the LUA

5. Vacating a street/ right of way or easement

   1 by the CC

6&7. Annexation policy plan/Annexation Adoption

   1 by the PC/1 by CC

EDUCATE

Improving the process

Ask- Why are we regulating this?

Here to say How – Not No

Know when to engage and when not to engage

Purpose of a Public hearing is to

1. to inform and
2. be informed

Not to get consent of crowd

Not in business of creating investments

UTAH LEAGUE OF CITIES AND TOWNS

Decision Fatigue

- The more choices you make each day the harder each one becomes for your brain
- Outcomes: Reckless decisions or the ultimate energy saver – "do nothing"– resist change

"Decide" – share roots with Homicide

"Resistance against making decisions is based in fear of giving up options"

Stanford University Researchers & Baumeister *"Willpower: Rediscovering the Greatest Human Strength" 2011*

"Good decision making is not a trait of the person, in the sense that it's always there. It is a state that fluctuates. The best decision makers are the the ones who know when not to trust themselves" *Baumeister*

[redacted]

Conditional Uses

Uses in a Land Use Ordinance Zoning District

- Permitted :Allowed with set standards
- Conditional: Permitted with conditions
- Prohibited: Not allowed

Title 10-Chapter 9a-Section 507.

"Conditional use" means a land use that, because of its unique characteristics or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts."

What does that mean?

A land use may fit…

and

It may not …..

Utah State Code
10-9a-507. Conditional uses.

A land use ordinance may include conditional uses and <u>provisions for conditional uses</u> that require compliance with standards set forth in an applicable ordinance.

Conditional Uses

Standards of Review first

(General or specific or both)

Must be written down!

Then apply Conditions

Will be unique to each permit

Seventh Inning Stretch

Utah Open & Public Meetings Act

Utah Code 52-4-1-101

OPMA

Do I have to follow this law?

Yes...if you are:
An administrative, advisory, executive or legislative body of the state or its subdivisions and;
were created by the Utah constitution, statute, or rule, ordinance or resolution.

Annual Training is required

Written and recorded minutes required

CC required to have 1 hearing a month

Must post schedule of annual meetings

Proper notice of quorum or majority of members

UTAH LEAGUE OF CITIES AND TOWNS

Utah Open & Public Meetings Act

Utah Code 52-4-1-101

Who is subject to this law?

A public body w/ 2 or more members or a quorum

Examples:

DABC
State records
City Council
City or Council Advisory Boards:
Planning/Appeals/
Project Committees

Utah Open & Public Meetings Act

Utah Code 52-4-1-101

Who is not?

Examples:

Political parties groups & Caucuses

State Legislative conference, rules and sifting committees

Community Councils

Utah Open & Public Meetings Act

Utah Code 52-4-1-101

What is a Meeting?

Meeting means the convening of a public body with a quorum present including a workshop or an executive session whether the meeting is held in person or by means of electronic communication for the purpose of discussing, receiving comments from the public about or acting upon a matter of which the public body has jurisdiction or advisory power.

UTAH LEAGUE OF CITIES AND TOWNS

Utah Open & Public Meetings Act

Utah Code 52-4-1-101

What does a meeting not mean?

- A chance meeting
- A social meeting
- Meeting of public body with <u>both legislative and executive</u> responsibilities where:
  1. No public funds were appropriated
  2. Meeting where no formal action is required (administrative)

Utah Open & Public Meetings Act

Utah Code 52-4-1-101

Closed meetings

An open meeting can be closed for:

1. Discussion of individuals character(personnel)
2. Strategy for collective bargaining
3. Pending litigation
4. Real estate transactions
5. Security
6. Sale of Water shares or rights

The law does not require any meeting to be closed – discretionary not mandatory

Utah Open & Public Meetings Act

Utah Code 52-4-1-101

What happens if someone violates the OPMA?

1. A court can void any action in violation of the law
2. Any member who intentionally violates or abets can be convicted of a class B misdemeanor (6 months jail- and/or $1,000 fine)

UTAH LEAGUE OF CITIES AND TOWNS

ETHICS LAW IN UTAH

(SECTION V LAND USE BOOK)

Work together – make it simple and clear

1. **Must disclose interests–on public file**

2. **Cannot accept gift over $50**
3. **Cannot disclose protected records**

4. **Conflict of interest –Financial vs. Political -must disclose then can vote**

5. **Ex parte communication**

Legislative Session 2012

HB249 – Clarifies SF occupancy and sets up a grievance system

HB 273 – Changes notice requirements for public improvement specifications

HB 302 – Land Use Penalties

SB118- Transfer of Development Rights

SB165- Redevelopment Agencies

SB174 – Counties only- exemption from plat requirements for agriculture

HB502- Incorporation Amendments

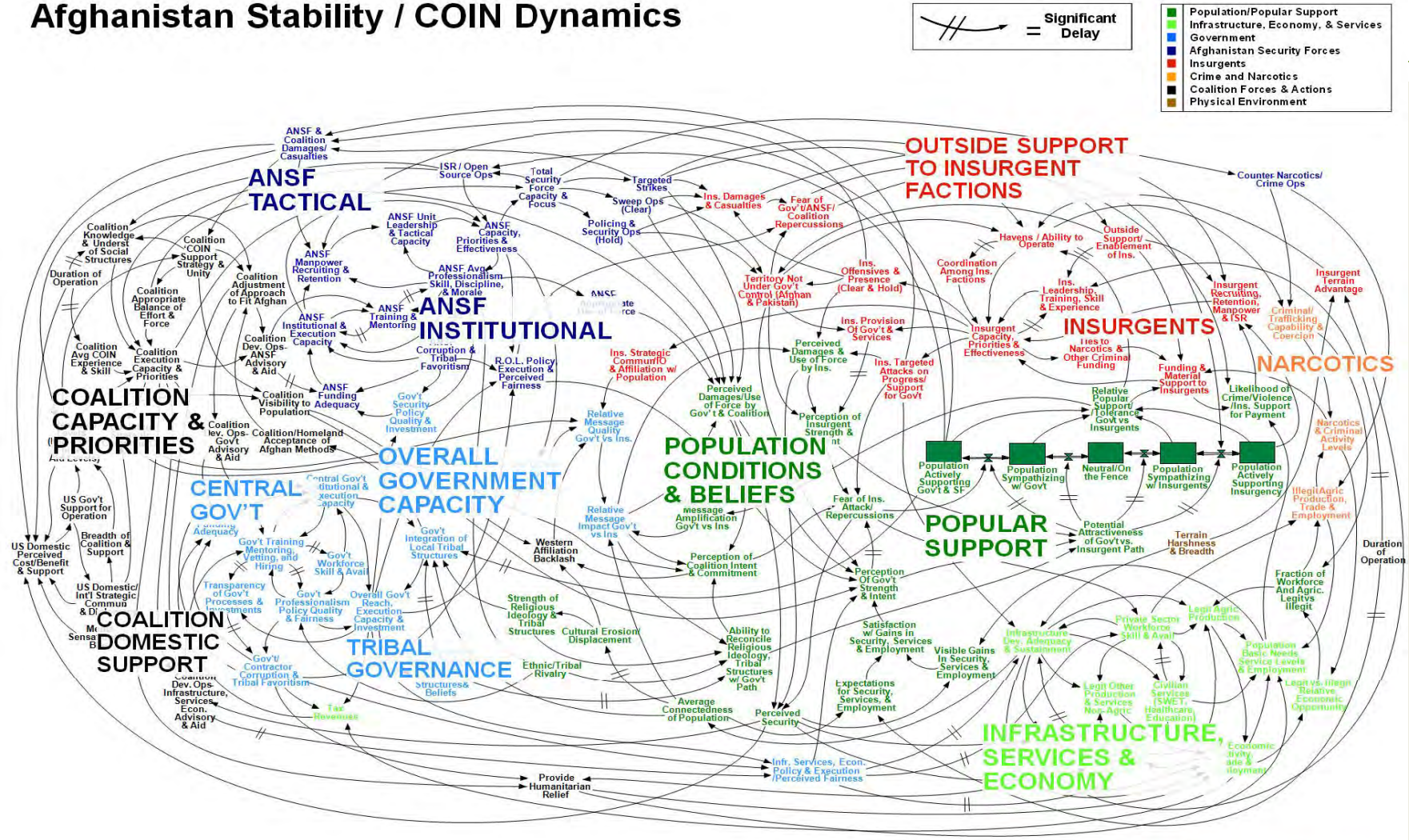
SB177- Gramma – provides training & amends record provisions

League Services for You

Annual Conference –September 12-14, Salt Lake City
Mid year Conference-April St. George
Web site with resources
Books/Publications
Regional Land Use Trainings with ULUI
Spring and Fall schedule online @ULCT.ORG

- Plannersweb.com
- utah-apa.org
- le.utah.gov – state codes

Afghanistan Stability / COIN Dynamics



WORKING DRAFT – V3

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