The Road to "Development" is Paved with Good Intentions

April 17, 2025, Ivins City Council Meeting
Written Comments by Robert Roush
Ivins City 2025 Annexation Policy Plan
Area 4 of the Proposed 2025 Expansion Map
240ac of USFWS Section 6 Funded Land

1. Introduction

The following prepared written comments are for the April 17, 2025, Ivins City Council Public Hearing regarding the proposed 2025 Annexation Policy Plan. The purpose of these prepared comments is to request, as a part of the City Council Public Hearing, that Ivins City remove from the draft 2025 Annexation Plan a particular defined area of environmentally protected land as further described herein. Accordingly, this discussion applies only to the 240ac of USFWS Section 6 Funded Land within Area 4 of the 2025 Ivins City Annexation Policy Plan Expansion Area Map ("2025 Expansion Map"). Although there may be other land within Areas 1 and 4 of the 2025 Expansion Map with similar attributes, this discussion is confined solely to the 240ac of land acquired with USFWS Section 6 Funds within Expansion Area 4, referred to herein as the "Section 6 Land".

During the April 3, 2025, City Council meeting regarding the Council's discussion of the Planning Commission's recommendation on the Ivins City Annexation Policy Plan and Map, there were brief comments made concerning possible adjustments to the draft 2025 Expansion Map to remove certain areas within Area's 1 and/or 2 at the possible request of Terry Martin. In the event any removal occurs, I would also request as an adjacent landowner, that the Section 6 Land also be removed from the draft 2025 Expansion Map.

In terms of certainty, among all of the remote and improbable possibilities associated with the Section 6 Land, there are 2 possibilities that are absolutely certain i) land not included in a expansion area map cannot be annexed, and ii) in the future the City can amend its Annexation Policy Plan to include the Section 6 Land if further protection of such land is warranted.

The City Council essentially has 2 choices. Either i) **include** the Section 6 Land on the 2025 Expansion Map, or ii) **do not include** the Section 6 Land on the 2025 Expansion Map.

Given the insurmountable inherent development challenges associated with the Section 6 Land as described more fully herein, below are the only 2 possible real-world outcomes for the Section 6 Land –

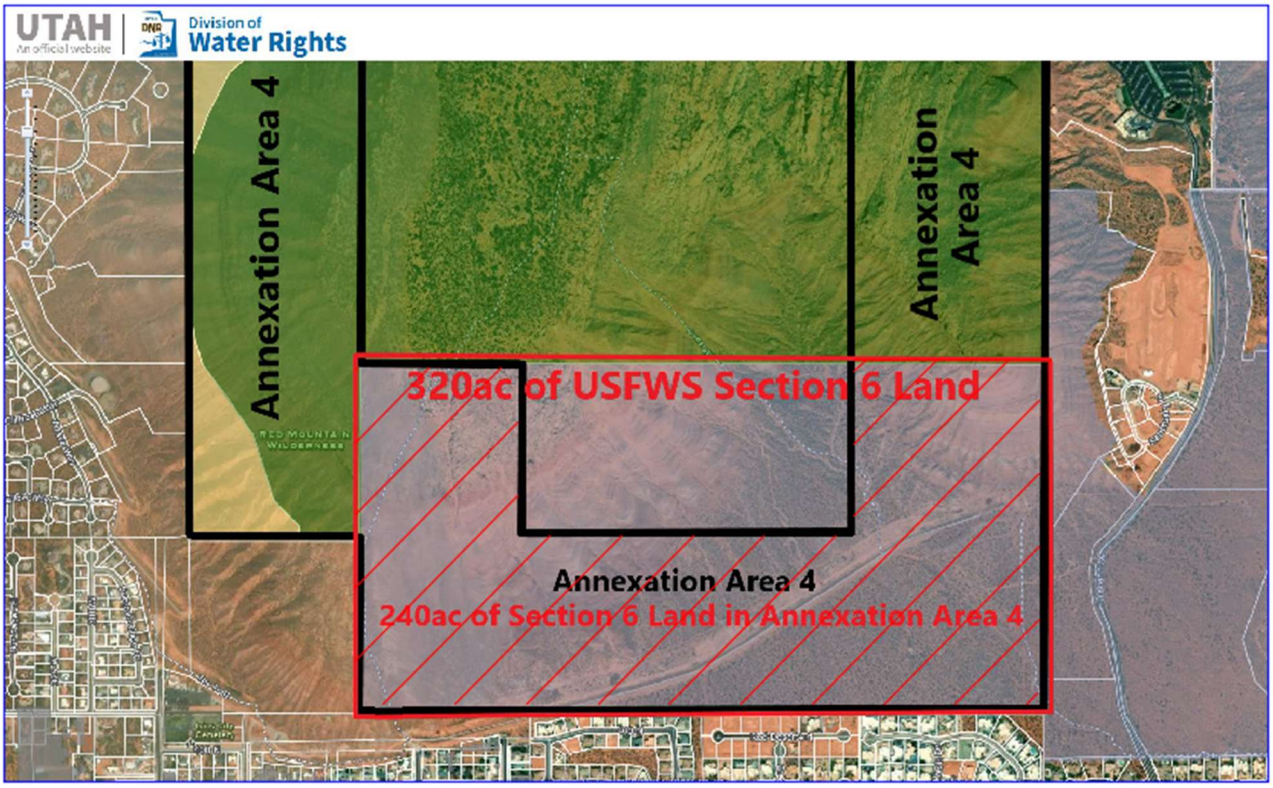
Included On 2025 Expansion Map	=	**Possible** Annexation	=	**Possible** Development
Not Included On 2025 Expansion Map	=	**No Possible** Annexation	=	**No Possible** Development

If in the future it becomes advantageous for Ivins City to Annex the Section 6 Land to maintain and/or provide additional environmental protection for such land into perpetuity, **the City can at a future time amend the Annexation Policy Plan to include such land**.

In addition, in the event the City Council decision is to include the Section 6 Land on the 2025 Expansion Map, **a statement that no future Ivins City Utilities would be provided to any portion of the 240ac of Section 6 Land, would also protect against any future development of such land.**

The Section 6 Land has the distinction of four different environmental protections - i) it was purchased with USFWS Section 6 funding, ii) it is located within the Red Cliffs Desert Reserve, iii) it is located within the Red Cliffs National Conservation Area, and iv) it is located within Snow Canyon State Park with the State of Utah, Division of Natural Resources as the owner of the land. In addition to these "quadruple" environmental protections, biologically the Section 6 Land has one of the highest density populations of the endangered Desert Tortoise within the Red Cliffs Desert Reserve. These multiple environmental protections, along with the stated concurrence of Ivins City, mandate that the Section 6 Land is undevelopable and is to be held as open space into perpetuity.

The location of the 240ac of Section 6 Land is shown as the red crosshatched portion of Area 4 of the 2025 Expansion Map in the drawing below –

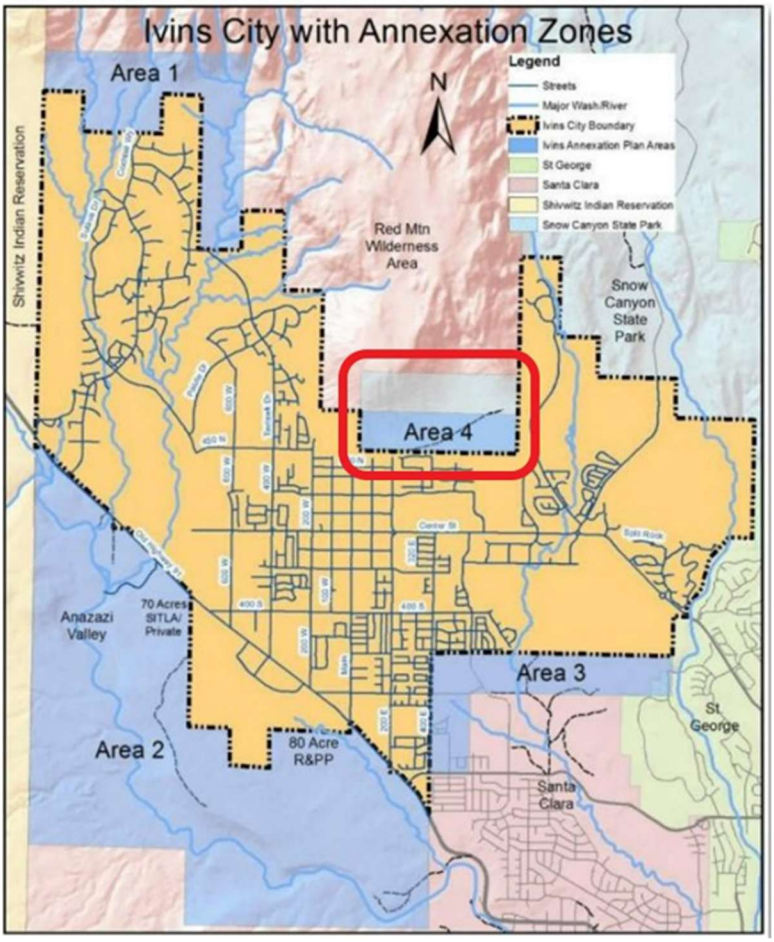


2. Ivins City Council 2024 General Plan Public Hearing - Annexation Related History

To provide context and backstory, the relevant history of this annexation discussion goes back to the October 3, 2024, Ivins City Council Public Hearing ("Public Hearing") regarding the draft 2024 General Plan, Agenda Items 4) A. and 4) B. The video of this Public Hearing meeting is available on the Ivins City website at https://ivinsutah.gov/.

Although the subject of annexation was not technically part of this Public Hearing, the 2005 Annexation Area Map was included on Page 3 of the draft 2024 General Plan showing a portion of the Section 6 Land in Area 4. This resulted in multiple written comments and considerable concerned citizen attendance at the Public Hearing. As a result, limited annexation related discussions occurred during the Public Hearing regarding the Section 6 Land in Area 4, as well as other adjacent land to the City, as shown in the 2005 Annexation Area Map included as a part of the draft 2024 General Plan. A copy of this 2005 Annexation Area Map is shown below.

2005 Annexation Area Map Shown
on Page 3 of the Draft 2024 General Plan



Note that the quantity of land in Annexation Area 4 of the 2005 Annexation Plan totaled 160ac of land (which was subsequently procured with USFWS Section 6 funding). Whereas the proposed draft 2025 Annexation Plan contains the same 160ac, plus an additional 80ac, for a total of 240ac of land procured with USFWS Section 6 funding known herein as the Section 6 Land.

The time stamp and summary description of 5 video segments from the Public Hearing are as follows. Please note that the description of each video segment provided below is my personal summary of the understanding of the discussion. You are encouraged to view these video segments of the Public Hearing to confirm your understanding as well. It requires approximately 14 minutes to view the 5 video segments. For your convenience, I also have available the 5 corresponding audio clips of these video segments.

a) *Minute Mark 22:30 to 26:50 (approx. 4.3 min)*

Mayor Harts detailed explanation of the inherent multiple environmental protections of the Section 6 Land contained in Area 4 of the 2005 Annexation Plan. He stated that the land is designated as "permanent open space" and is "essentially undevelopable". In addition, that Ivins City has "no interest" in developing Area 4 and is interested in having Area 4 "remain permanent open space" as a treasure to the City.

b) *Minute Mark 26:50 to 27:40 (less than 1 min)*
Mayor Harts brief discussion of "if" the Section 6 Land were to ever be developed it would be developed under two options, either i) as Unincorporated County (*as it currently exists*) with very few restrictions on the type of development, or ii) be annexed into Ivins City and governed under Ivins City's rules.

c) *Minute Mark 1:03:30 to 1:05:50 (approx. 2.3 min)*
Mayor Harts expanded discussion of "if" the Section 6 Land were to ever be developed as Unincorporated County land there will be few regulations being imposed by Washington County. In addition, a future prospective developer of such land would look to Ivins City to access City utilities to minimize County related development costs.

> *Attached at the end of this document is the Washington County Development Requirements pamphlet titled "**THE BIG FIVE**". This is a summary of the five mandatory development requirements to develop land within the Unincorporated County. These pertinent development requirements include Water, Sewer, Access, Power, and Zoning. "All zoning is approved by the Washington County Legislative Body" and "All zones have permitted and conditional uses" for Agriculture, Residential, and Commercial use. It is worth noting that these County imposed requirements represent an impossible hurdle to any practical development of the Section 6 Land.*

Council Member Anderson brought up the reality that if adjacent land to the City is not landlocked, the City can be at risk of possibly being "sidestepped" by another city annexing adjacent land. Given the Section 6 Land is landlocked, Ivins City has no concern of having the Section 6 Land being sidestepped by any other municipality.

> *Mentioned in this video segment is the inherent incentive that a developer has to increase its profitability by connecting into available and lower cost city utilities rather than attempting to create the necessary and more costly alternate infrastructure to provide substitute utility services.*

d) *Minute Mark 1:18:25 to 1:20:25 (approx. 2 min)*
Comments by Rob Roush regarding Ivins City holding the key to any future development of landlocked land directly adjacent to its borders, such as the Section 6 Land, by simply not allowing any future Ivins City utility connections to such land.

e) *Minute Mark 1:21:40 to 1:25:40 (approx. 4 min)*
Council Member Scott proposed inserting in the Land Use section of the 2024 General Plan –

> i) a policy statement stating it is the City's policy to preserve and maintain the current natural and recreational use of Annexation Area 4 (*Section 6 Land*) in the event of Annexation ensuring the land remains protected from development, and

ii) an action step to amend the City Annexation Policy Plan to explicitly clarify that Area 4 (*Section 6 Land*) if annexed will remain in its current use as open space with no development permitted.

Council Member Gillespie negated Council Member Scott's proposal by recommending an action step inserted in the General Plan to amend the City's Annexation Plan to clarify the City's position going forward and that will be complete with a public hearing for the public to have input.

City Attorney Pack stated that if in the worst-case scenario, Annexation Area 4 becomes privately owned and the City imposes a requirement that no development occur whatsoever, the Constitution will require that the City purchase that land. "That is a "taking" if the City completely prohibits development".

Meaning that if the land is ON the Annexation 2025 Expansion Map, the City cannot attach a statement to such land as a part of the Annexation Plan prohibiting future development unless the City is willing to purchase the land.

Mayor Hart and City Attorney Pack stated that to "Mr. Roush's point, if we say no water/no sewer, that's nothing to do with us at that point".

Meaning that the City is not under any risk of a "taking" by simply NOT allowing connection to City utilities by adjacent Unincorporated County land and making a statement of such non-connection utility prohibition as a part of the Annexation Plan.

Council Member Anderson stated that he noted at the start of the meeting that "County - we have no services", and then further stated "… I agree with Rob on that".

Meaning that the City has no obligation to provide utility services to the County in agreement with Rob's statement of the City having the right to deny utilities to Unincorporated County land to control development.

Mayor Hart stated in reference to the 2025 Annexation Plan "that could somehow be documented that no services would be provided to that area".

Meaning that the City can provide a statement on the Annexation Plan that due to the City's desire to protect certain adjacent land to the City from future development there will be no future utility services provided for -
i) such Section 6 Land shown on the 2025 Expansion Map, or
ii) such Section 6 Land NOT shown on the 2025 Expansion Map but identified in the Annexation Plan as being land located adjacent to Ivins City.

Mayor Hart then requested removal of the 2005 Annexation Area Map from the draft 2024 General Plan showing Annexation Area 4 (*consisting entirely of Section 6 Land*).

Note that <u>NOT showing</u> the Section 6 Land as a part of the 2025 Expansion Map, <u>along with</u> Mayor Hart's direction to document that no future utility services will be provided by Ivins City to the adjacent Section 6 Land as a part of the 2025 Annexation Policy Plan, provides the <u>maximum protection</u> to the Section 6 Land against any future development.

3. Public Input Opportunities Regarding the Section 6 Land Being On or Off the 2025 Expansion Map?

QUESTION – If it is the City's desire to protect the Section 6 Land from any future development into perpetuity, is it better to –

> *Alternative A* - Have the Section 6 Land on the 2025 Expansion Map, or
>
> *Alternative B* - Allow for a future amended Annexation Policy Plan to add the Section 6 Land to a future expansion area map for possible annexation **if the need arises to further protect the Section 6 Land from any future development.**

Under *Alternative A* above, if the Section 6 Land is already on the 2025 Expansion Map there would be a minimum of **2 public hearings required** to possibly annex the Section 6 Land –

> Public Hearing 1. Planning Commission public hearing to recommend to the City Council annexation of the Section 6 Land, and
>
> Public Hearing 2. City Council public hearing to possibly approve the annexation of the Section 6 Land.

Under *Alternative B* above**,** if the Section 6 Land was **NOT** on the 2025 Expansion Map there would be a minimum of **4 public hearings required** to possibly annex the Section 6 Land –

> Public Hearing 1. Planning Commission public hearing to recommend to the City Council an amendment of a future Annexation Policy Plan to include the Section 6 Land on a future annexation expansion area map, and
>
> Public Hearing 2. City Council public hearing to approve the amendment of a future Annexation Policy Plan to include the Section 6 Land on a future annexation expansion area map, and
>
> Public Hearing 3. Planning Commission public hearing to recommend to the City Council the annexation of the Section 6 Land, and
>
> Public Hearing 4. City Council public hearing to possibly approve the annexation of the Section 6 Land.

Given the multiple environmental protections of the Section 6 Land, it would likely be a long, drawn-out process for this land to possibly be moved from its current "quadruple" environmentally protected status to that of possibly becoming available as future developable land. This elongated time frame will provide ample time for Ivins City to evaluate on an ongoing basis, the prevailing possible future development risk, and if necessary, amend a future Annexation Plan to possibly include the Section 6 Land at a future time to provide enhanced future protection against any development.

In addition, reflecting on the recent overwhelming 2024 General Plan related survey results regarding the significant importance of open space to the citizens of Ivins, it seems the opportunity of providing more public input, rather than less public input, should form the basis of consideration by the City in deciding whether if, or when, to ever put the Section 6 Land on a future annexation expansion area map.

4. Summary of the Advantages and Disadvantages of NOT Having the Section 6 Land on the 2025 Expansion Map

A. Advantages of NOT having the Section 6 Land on the 2025 Annexation Expansion Map

a) Does not prevent the City from initiating the Annexation Policy Plan amendment process at a future time to better protect the Section 6 Land by putting it on a future annexation expansion area map in the event there is a change in future environmentally protected land conditions.

b) Requires increased public involvement in the outcome of getting the Section 6 Land before a future City Council annexation decision to provide additional protection.

c) Removes any implied obligation by Ivins City to "readily" accept any future annexation of the Section 6 Land.

d) Will help bolster the resolve of a future City Council to deter any development of the Section 6 Land after any possible removals of Federal, State, and/or County environmental protection.

e) Places Ivins City in a much better negotiating position to better protect the Section 6 Land by influencing the development of any land adjacent to the Section 6 Land -

i) due to the City's ability to provide a greater unit density in an acceptable location to the City, as well as water, available sewer, and other typical associated municipal utility services, and

ii) as compared to a future developer facing significantly greater Unincorporated County per unit development costs and unknown development risks.

B. Disadvantages of NOT having the Section 6 Land on the 2025 Annexation Expansion Map
*Please note that thus far I have been unable to identify any "**practical real world**" disadvantages of NOT having the Section 6 Land on the 2025 Expansion Map because –*

a) As stated previously the Section 6 Land is acknowledged by the City as permanent open space and is undevelopable as a result of its four different environmental protections - i) it was purchased with USFWS Section 6 funding, ii) it is located within the Red Cliffs Desert Reserve, iii) it is located within the Red Cliffs National Conservation Area, and iv) it is located within Snow Canyon State Park with the State of Utah, Division of Natural Resources as the owner of the land. In addition to these environmental protections the Section 6 Land has one of the highest density populations of the endangered Desert Tortoise within the Red Cliffs Desert Reserve.

b) The Section 6 Land is located within the Unincorporated County, and more importantly is completely landlocked. There is no possible future access from the existing subdivisions within Ivins City that border the Section 6 Land. In addition, the eastern border of the Section 6 Land is several hundred feet west of Tuacahn Road across land owned by the State of Utah and a part of Snow Canyon State Park.

c) There are no other local or regional providers of municipal utilities that can sidestep Ivins City to annex the Section 6 Land and provide utilities to such land.

d) Without any future annexation by Ivins City, the Section 6 Land will forever remain a part of the Unincorporated County as it currently exists.

e) There are no known productive water sources or existing water rights within the Section 6 Land.

f) The only "non" Ivins City access to water is an "uncertain" deep producing well(s) located within the Section 6 Land. Note that a new minimal water supply system consisting of a 1,000ft deep well with 10" casing, associated pumping station, and pressurized water storage tank capabilities to provide adequate **fire fighting capability**, as well as typical potable water use, is estimated to be a minimum of several million dollars, and could be significantly higher dependent upon the required capacity. More importantly per Utah Water Law, because there are no unallocated water supplies available, there is the additional significant "unknown" expense of securing replacement water rights from an active replacement water source, beyond the Section 6 Land and within the same aquifer zone, of equivalent capacity and quantity as the "possible" costly new well(s). To reasonably recover the significant financial cost of both a new water supply system and the required associated replacement water rights would require a larger, rather than smaller, area of higher density development.

g) More detrimental than the inherent financial and physical water related risks to any Unincorporated County development of the Section 6 Land, is the County and WCWCD mandated **septic system density of only 1 home per 8 acres** (per Hansen, Allen & Luce Study, July 1997, Page ES - 4). In addition, it is interesting to note that the County's septic system density is getting more restrictive over time in terms of the required minimum number of acres per home due to increased nitrate concerns systemwide throughout the County. Spreading the water infrastructure expense and other associated development costs over a density of 1 home per 8 acres is financially prohibitive to any Unincorporated County development in this area.

5. Concluding Remarks

If the Section 6 Land is NOT on the 2025 Expansion Map, and given the inherent financial challenges associated with any future Unincorporated County development of the Section 6 Land, and/or land adjacent to the Section 6 Land, *the very first phone call* from any prospective future developer of the Section 6 Land and/or adjacent land to Section 6 Land, will be to Ivins City to inquire about future annexation possibilities to access the available City utilities. At this possible future juncture, the citizens of Ivins City will then have the opportunity to decide if it is in their best interest to amend a future Annexation Policy Plan expansion area map to further protect the Section 6 Land under terms and conditions favorable to the City. However, if the Section 6 Land is already on the 2025 Annexation Expansion Map, the ability to influence and offer possible annexation to a future developer under favorable terms to the City is greatly diminished or possibly eliminated. It could be argued that it would be "unwise" for the City to knowingly put itself in a position of reduced negotiating strength regarding any potential future annexation of the Section 6 Land.

The information provided herein was gathered from several specialized disciplines as shown in the Contact Sources and References section on the following page. I very much appreciate your time and consideration in reviewing my prepared written comments and am available for any questions that you may have at any time.

Sincerely,
Rob Roush

Contact Sources and References

a) Nathan Moses, Water Resource Planning Engineer, Washington County Water Conservancy District.
b) Trevor Brown, Development Services Administrator, Washington County Water Conservancy District.
c) Eric Malouf, Water Rights Specialist, Utah Department of Natural Resources, Division of Water Rights.
d) Darren Prince, Economic Development Director, Washington County.
e) Scott Messel, Community Development Director, Washington County.
f) Kade Bringhurst, Assistant Director Water Services, St George City.
g) Klint Frei, Environmental Health Program Manager, Southwest Utah Public Health Department.
h) Washington County Development Requirements, Building in Washington County – "THE BIG FIVE".

THE BIG FIVE:

1. WATER

Any parcel of land being considered for zone change, subdivision, or building permits, must be able to prove sufficient water to support the project. Proof of water can come in the form of water rights, an existing water producing well, a metered water connection, or a perpetual easement granting water from a shared well. Will serve letters from water providers, or proof of culinary water from a well are required for residential building permits. Well water will have to be tested at the SW Utah Health Department to ensure it is safe for culinary use. If water rights are being used to prove water, the minimum allowable quantity is .90 acre feet per parcel.

2. SEWER

Any parcel of land being considered for zone change, subdivision, or building permits, must be able to prove septic feasibility. Septic feasibility is determined by the Washington County Water Conservancy District or Ash Creek Special Service District. Feasibility approval is a requirement for obtaining a septic permit. Septic feasibility is determined by soil conditions on the land, and the appropriate acreage needed to support a septic system. Once septic feasibility is obtained, the applicant can take the feasibility letter to the SW Utah Health Department and apply for a septic permit. The septic permit is issued based on the number of bedrooms the system will be supporting. A septic permit is required for all residential building permits.

3. ACCESS

Any parcel of land being considered for zone change, subdivision, or building permits, must be able to prove access. Access can be achieved via a private road, a dedicated county road, or a perpetual access easement. Access from or through BLM or Forest Service property/ roads do not qualify, unless you can obtain a perpetual access easement from those agencies. Commercial developments will require road improvements meeting Washington County Road Standards.

4. POWER

Any parcel of land being considered for zone change, subdivision, or building permits, must be able to prove sufficient power to support the project. Power can be obtained from regional power utility providers or alternative energy systems.

5. ZONING

Any parcel of land being considered for zone change, subdivision, lot line adjustments, plat amendments, or building permits, will be required to prove zoning compliance. Lots which have been illegally modified by previous owners do not exempt applicants from zoning compliance. Creating or modifying existing lots in violation of zoning will result in an unbuildable, illegal lot. Zoning is designed to create harmonious use of land within a community. Agriculture, Residential, and Commercial all have their place, but sometimes mixing these zones can create conflict. All zoning is approved by the Washing County Legislative body. All zones have permitted and conditional uses.

