

Public Works Director



John Angell

MEMORANDUM

October 11, 2022

To: County Council
 Janna Young, Interim County Manager

From: John Angell, Summit County Public Works Director
 Derrick Radke, PE

Re: Public Works Policy on Cattle Guard Maintenance

Prior to approximately 3 years ago in July of 2019, Summit County Public Works maintained the cattle guards which existed across several County roads. Tim Richins, the then County Roads Superintendent, was made aware of a policy of Duchesne County regarding cattleguard installation and maintenance and asked why Summit County did not do something similar because the cost and time commitment to maintain these cattleguards was significant. At about the same time, Thousand Peak Ranch contacted Tim and requested we clean out the cattleguards that exist on Holiday Park Road. I consulted with Deputy County Attorney Jami Brackin about Utah’s “Fence-In” status and whether or not the County was responsible for the maintenance. Jami responded, “Fence-in requires that the cattle owner ensure that the cattle don’t roam and specifically don’t go on public roads. We don’t have any obligation to pay for or install cattle guards (although we could install them and have the owners pay for our work). Generally, they’d have to get an Excavation/Structure Permit to do the work and pay for that themselves...”. I let the previous County Manager, Tom Fisher, know of our decision not to maintain cattleguards going forward.

Public Works has had several requests from property owners in the Chalk Creek Basin, and East Canyon since that time and we have informed the person making the request of our policy.

Summit County has 26 cattleguards:

Icey Spring	1	Weber Canyon	5
Three Mile Canyon	1	East Canyon	1
Huff Creek	1	Upper Chalk Cr	9
So. Fork (Chalk Crk)	2	Lone tree	4
3-Mile Road	1	Bitner Road	1

These are in various conditions, from newly installed (by South Fork of Chalk Creek Landowner) to very poor (East Canyon and Weber Canyon).



The cost of a new cattle guard is \$10,000 to \$15,000 for a 20' to 24' wide, plus the foundation at \$5,000 to \$8,000. Cleaning one out takes one to two days each for a crew of 3 or 4, dump truck and backhoe, estimating \$2,500 to \$3,000 in time and materials each. Frequency depends on traffic, drainage, road and surface type.

It is our understanding based on some research, that Utah is a "Fence-In" state, thus requiring landowners to contain their livestock, with some exceptions.

Utah Code 4-25-8:

Owner liable for trespass of animals -- Exception -- Intervention by county representative.

(1) The owner of any neat cattle, horse, ass, mule, sheep, goat, or swine that trespasses upon the premises of another person, except in cases where the premises are not enclosed by a lawful fence in a county or municipality that has adopted a fence ordinance, is liable in a civil action to the owner or occupant of the premises for any damage inflicted by the trespass.

(2) A county representative may intervene to remove the animal and the county is entitled to fair compensation for costs incurred. If the animal is not claimed within 10 days after written notification is sent to its owner, a county representative may sell the animal to cover costs incurred.

(3) Notwithstanding Subsections (1) and (2), the owner of any neat cattle, horse, ass, mule, sheep, goat, or swine that trespasses upon the premises of another person is not liable in a civil action to the owner or occupant of the premises for damage inflicted by the trespass if:

(a) the animal enters the premises from an historic livestock trail, as defined in Section 57-13b-102;

In the Utah Supreme Court Case of Bastian v. King...

"The Utah fencing statutes place liability for trespassing livestock on the owners of livestock unless the county enacts a fence law. Section 4-25-8 states:

The owner of any neat cattle, horse, ass, mule, sheep, goat, or swine that trespasses upon the premises of another person, except in cases where the premises are not

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inclosed by a lawful fence in a county which has adopted a fence ordinance, is liable in a civil action to the owner or occupant of such premises for any damage inflicted by the trespass.

Garfield County has not enacted a fence ordinance, as authorized by § 4-25-7,[1] thus placing the burden on livestock owners to prevent their livestock from trespassing.”

The Eastern Summit County Code Chapter 11-2-2 Agriculture: addresses Fencing as it relates to non-agricultural development immediately adjacent to existing agricultural operations. This chapter was re-evaluated in July of 2020 by the County Council. The staff report prepared by Ray Milner is attached as reference as it has good information somewhat relevant to this discussion (not cattleguard specific though).

11-2-2 Agriculture:

C. Livestock Fencing: New, nonagricultural development immediately adjacent to an existing agricultural operation (defined by this title as "agriculture") shall not be approved unless the developer and/or subsequent owners of property within the development assume the responsibility for fencing or paying one-half (1/2) of the cost thereof for fencing out livestock in accordance with the Utah code. All major developments, including residential subdivisions, commercial and industrial operations and other projects that border agriculture lands shall be subject to the following fencing considerations:

1. At the discretion of the adjoining agricultural landowner, the developer may be required to pay for one-half (1/2) of the cost, including labor and materials for a fence if:
 - a. The fence is or becomes a partition fence separating the project site from the adjoining agricultural landowner's property;
 - b. The cost of the fence is reasonable for the type of fence commonly found in that particular area.
2. Notwithstanding the above fencing requirement, the developer may, at his or her own discretion, cost and expense, construct a perimeter fence to enclose the development.

There is no reference to fencing regulation in the Snyderville Basin that I can find.

As noted above, Duchesne County (as well as other Utah Counties) has adopted regulations regarding cattleguard installation and maintenance. These regulations are attached as a copy from their website. In summary, cattleguards are allowed by permit only; either a maintenance fee is posted, or a maintenance agreement is entered into; and if the cattleguard is not maintained, the County removes it.

Public Works would recommend a similar Ordinance addressing cattleguards be developed by staff and brought back to the County Council for a Public Hearing and consideration of approval.

We look forward to discussing this issue with you.

If you have any questions before then, please contact John or me.

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STAFF REPORT

To: Summit County Council
From: Ray Milliner, County Planner
Date of Meeting: July 8, 2020
Type of Item: Code Amendment – Public Hearing Possible Action
Process: Legislative

RECOMMENDATION: Staff recommends that the Summit County Council review the proposal to amend Chapter 11-2-2 “livestock fencing” of the Eastern Summit County Development Code and approve the attached Ordinance.

Proposal

Chapter 11-2-2.C of the Eastern Summit County Development Code regulates fencing of livestock as it related to nonagricultural development adjacent to an existing agricultural operation. Currently the Eastern Summit County Development Code is not consistent with the requirements in Utah State Code. The analysis section below is a communication created with the Legal Department discussing the differences between the County Code and the State Code, and pointing out some of the weaknesses of the current County regulations. Considering the discrepancy between the County Code and State Code, staff is recommending that the County Council adopt changes to bring County Code into conformity with the State.

ANALYSIS

General Rule: First, Utah follows common law with respect to fencing of livestock and places liability for trespassing livestock on the owners of the livestock. Utah Code Annotated (“UCA”), §4-25-8 states the following: “the owner of any neat cattle, horse, ass, mule, sheep, goat, or swine that trespasses upon the premises of another person, except in cases where the premises are not enclosed by a lawful fence in a county or municipality that has adopted a fence ordinance, is liable in a civil action to the owner or occupant of such premises for any damage inflicted by the trespass.” (Utah case law has also upheld this principle. In *Bastian v. King*, 661 P.2d 953 (1983), the plaintiff, a crop-owner in Garfield County, sued the defendant, the owner of cattle, for damage to plaintiff’s crops after defendant’s cattle ate and destroyed the crops. There was a dilapidated fence in place and defendant knew that the cattle might get out, but took the position that it was the plaintiff’s job to fence the cattle out. The Utah Supreme Court cited both §4-25-7 and §4-25-8 and found that, since the county did not have its own fence law on the book, then, under Utah law, the burden is on the livestock owner to prevent livestock from trespassing. The court also cited to several other Utah cases, which

have held that Utah’s fencing laws are not an unconstitutional delegation of power to counties and are not too vague).

Exceptions: There are two exceptions to application of this general rule.

First, UCA §4-25-2 gives counties the authority through ordinance to enact its own general policy within the county for the fencing of farms, subdivisions, or other private property, to allow domestic animals to graze without trespassing on farms, subdivisions or other private property. So, a county may adopt a fence ordinance that is different from the general “fence in” rule in Utah. The law allows a county to divide the county and prescribe different fencing regulations in different areas but requires that we specifically call out what constitutes a lawful fence.

Second, in 2005, the Legislature enacted an exception to the above general rule for historical livestock trails and provides a defense for an owner of livestock whose livestock damages property abutting an historical livestock trail and the abutting property is not adequately fenced at the time the trespass occurs. An “historical trail” is defined as “property over which livestock has historically traveled to or from a grazing area or market.” In these cases, the livestock owner is not liable in a civil action for damage inflicted by the trespass.

To summarize then, Utah is a “fence in” state with the exceptions for animals entering the premises from an historic livestock trail where the premise is not enclosed by an adequate fence or where a county has enacted its own fence ordinance. If no fence ordinance exists, then the county must default to Utah’s fence-in law.

Summit County

Eastern Summit County: In Eastern Summit County, we have livestock fencing provisions found in Section 11-2-2 of the Development Code, its own livestock fencing law, so it, rather than the Utah code, applies. To summarize it:

First, all new, non-agricultural development immediately adjacent to an existing agricultural operation (as it’s defined in the Code) shall not be approved unless the developer or subsequent property owners assume the responsibility of fencing or paying ½ the cost to erect a fence for fencing OUT livestock.

It gets a little confusing however, because the code further states that all “major developments, including residential subdivisions, commercial and industrial operations and other projects that border agricultural lands” will be subject to the following: at the discretion of the adjoining agricultural landowner, the developer may be required to pay ½ the cost of a fence including labor and materials if the fence is a partition fence separating the two properties and the cost of the fence is reasonable. (see 11-2-2 (C) and (C)(1))

This makes little sense because all new development that isn't agricultural must fence or pay ½ for fencing but the code then says that all major development may be required to pay ½ for fencing at the discretion of the next-door agricultural owner. So what applies to new major developments or older major developments? As written, it is unclear. The code further states that the developer may, at his or her own discretion, cost, and expense, construct a perimeter fence to enclose the development. Again, how does this square with the provision regarding all new development?

The Code also talks a bit about those areas that are determined by the State Division of Wildlife Resources to be wildlife migration corridors and says that wildlife friendly fencing may be considered with the design standards as described therein.

SUMMARY

It is staff's opinion that the East Side's code on livestock fencing makes very little sense as currently drafted and that it should either be amended or taken out to make the East side of the County a "fence-in" area. If we did so, it would default to the state law provisions. The Council may consider leaving in the provisions related to wildlife friendly fencing in areas that include wildlife migration corridors.

Analysis

Section 11-5-3 of the Eastern Summit County Development Code establishes a process for amendments to the text of the Code, it states that whenever an amendment to the Code is initiated, it must be reviewed by the Planning Commission who will deliver a recommendation to the County Council. The County Council, after holding a public hearing, can approve, approve with modifications, or deny the amendment. There is no criterion.

RECOMMENDATION

Staff recommends that the Summit County Council review the proposal to amend Chapter 11-2-2 "livestock fencing" of the Eastern Summit County Development Code and approve the attached Ordinance.

Findings of Fact

1. Chapter 11-2-2.C of the Eastern Summit County Development Code regulates fencing of livestock as it related to nonagricultural development adjacent to an existing agricultural operation. Currently the Eastern Summit County Development Code is not consistent with the requirements in Utah State Code.
2. Eastern Summit County is a "fence out" area, which requires that property owners build fences to keep livestock off their property.

3. Utah is a “fence in” state with the exceptions for animals entering the premises from an historic livestock trail where the premise is not enclosed by an adequate fence or where a county has enacted its own fence ordinance.
4. If no fence ordinance exists, then the county must default to Utah’s fence-in law.
5. On June 20, 2019, the Eastern Summit County Planning Commission conducted a public hearing and recommended to the County Council that the existing language in the Eastern Summit County Development Code be removed.
6. If the language is removed, Eastern Summit County will default to Utah’s fence-in law.

Conclusions of Law:

1. The amendment is consistent with the goals, objectives, and policies of the General Plan.
2. The amendment will not permit the use of land that is not consistent with the uses of properties nearby.
3. The amendment will not permit the removal of the then existing restrictions which will unduly affect nearby property.
1. The amendment will promote the public health, safety, and welfare of the People of Eastern Summit County.

Exhibits

Exhibit A – Proposed Ordinance with Code Language.

SUMMIT COUNTY, UTAH
ORDINANCE NO. _____

AMENDING THE EASTERN SUMMIT COUNTY DEVELOPMENT CODE TO REMOVE SECTION 11-2-2.C LIVESTOCK FENCING FROM THE EASTERN SUMMIT COUNTY DEVELOPMENT CODE.

PREAMBLE

WHEREAS, Chapter 11-2-2.C of the Eastern Summit County Development Code regulates fencing of livestock as it related to nonagricultural development adjacent to an existing agricultural operation; and

WHEREAS, Currently the Eastern Summit County Development Code is not consistent with the requirements in Utah State Code”; and

WHEREAS the East Side’s code on livestock fencing makes very little sense as currently drafted and that it should either be amended or taken out to make the East side of the County a “fence-in” area; and

WHEREAS, if no fence ordinance exists, then the county must default to Utah’s fence-in law; and

WHEREAS, The Summit County Council finds there is a compelling public interest that justifies the proposed amendments to the Eastern Summit County Development Code; and

Whereas, The Eastern Summit County Planning Commission conducted a public hearing for the proposed language on June 20, 2019, and;

Whereas, The Eastern Summit County Planning Commission forwarded a positive recommendation to the County Council on June 20, 2019.

WHEREAS, a public hearing was held to receive public comment and allow for the planning staff to make presentations to the public and County Council in regard to the application on July 8, 2020;

NOW, THEREFORE, the County Legislative Body of the County of Summit, the State of Utah, hereby ordains the following:

Section 1. **EASTERN SUMMIT COUNTY DEVELOPMENT CODE** The Eastern Summit County Development Code is amended as depicted in Exhibit A.

Section 2. **Effective Date.** This Ordinance shall take effect immediately after publication.

Enacted this ____ day of _____, 2020.

ATTEST:

SUMMIT COUNTY COUNCIL

Kent Jones
Summit County Clerk

Doug Clyde, Chair

APPROVED AS TO FORM

David L. Thomas
Chief Civil Deputy

VOTING OF COUNTY COUNCIL:

Councilmember Carson	_____
Councilmember Robinson	_____
Councilmember Wright	_____
Councilmember Armstrong	_____
Councilmember Clyde	_____

11-2-2: AGRICULTURE:

~~C. Livestock Fencing: New, nonagricultural development immediately adjacent to an existing agricultural operation (defined by this title as "agriculture") shall not be approved unless the developer and/or subsequent owners of property within the development assume the responsibility for fencing or paying one-half ($\frac{1}{2}$) of the cost thereof for fencing out livestock in accordance with the Utah code. All major developments, including residential subdivisions, commercial and industrial operations and other projects that border agriculture lands shall be subject to the following fencing considerations:~~

~~1. At the discretion of the adjoining agricultural landowner, the developer may be required to pay for one-half ($\frac{1}{2}$) of the cost, including labor and materials for a fence if:~~

- ~~a. The fence is or becomes a partition fence separating the project site from the adjoining agricultural landowner's property;~~
- ~~b. The cost of the fence is reasonable for the type of fence commonly found in that particular area.~~

~~2. Notwithstanding the above fencing requirement, the developer may, at his or her own discretion, cost and expense, construct a perimeter fence to enclose the development.~~

~~3. In project areas including wildlife migration corridors or critical wildlife habitat, as determined by the state division of wildlife resources (DWR), wildlife friendly fencing may be considered with the following recommended design standards:~~

- ~~a. Total fence height should not exceed forty two inches (42").~~
- ~~b. The space between the two (2) top wires (of a wire fence) should be at least twelve inches (12") apart with the top wire preferable being a smooth wire without barbs.~~
- ~~c. The bottom wire should be at least thirteen inches (13") from the ground and smooth.~~

Duchesne County Code

6-1-3: GATES AND CATTLE GUARDS:

A. Permitted: It is unlawful for any landowner to close or restrict any county roads, rights of way and easements to the general public. The landowner may install and shall maintain gates and/or cattle guards across the county roads, rights of way and easements on the terms and conditions set forth in this section. (1998 Code § 12.04.030)

B. Gates: The installation of a gate across the county roads, rights of way and easements shall be by permit only, and subject to the following terms and conditions:

1. Applications for permit shall be made to the county road department, pursuant to section [6-1-7](#) of this chapter.
2. Gates shall meet certain specifications as set forth by the road department.
3. The gates shall remain unlocked at all times.
4. A gate shall be allowed only if the nature of road traffic on that particular roadway is such that the existence of a gate across the roadway is not a major inconvenience to the travelers on the public rights of way. Such determination shall be reasonable and shall be made by the county commission, based upon level of traffic and proper compliance with regulations.
5. Upon the installation of a gate, if the nature of the traffic on the roadway changes to the extent that the gate is becoming a hindrance to the traffic on said roadway, then said gate shall be removed. (1998 Code § 12.04.040)

C. Cattle Guards: On those roadways where the traffic is of such nature that gates are a major inconvenience, the county shall allow the installation of cattle guards on the following conditions:

1. The installation of the cattle guard shall be by permit only, and obtained as outlined in section [6-1-7](#) of this chapter.
2. The cattle guard proposal shall meet the approval of the road department.
3. The property owner shall provide the cattle guard at the landowner's expense, together with a four thousand dollar (\$4,000.00) fee to cover future maintenance and repair. Said fee may be waived; provided, that the landowner enters into an agreement with the county to provide maintenance and repair of the cattle guard for the period of time that the cattle guard is required.
4. If the landowner enters into the agreement to provide maintenance and repair, and the fee is waived, the landowner shall be responsible for the repair and maintenance of the cattle guard as needed and/or at the direction of the county road department supervisor for ten (10) years from the date of installation, at which time the landowner shall, at his own expense, refurbish the cattle guard. Upon approval of the supervisor of the county road department, the county shall assume the responsibility for maintenance. Upon the expiration of twenty (20) years from the date of installation, the county shall reevaluate the need for the cattle guard.
5. If the cattle guard is not properly maintained or replaced when it becomes damaged, or it is determined that the cattle guard is no longer necessary, the county shall have the right to remove said cattle guard from the roadway. (1998 Code § 12.04.050)