

1                   **TRANSFERABLE DEVELOPMENT RIGHTS AMENDMENTS**

2                                   2012 GENERAL SESSION

3                                   STATE OF UTAH

4                           **Chief Sponsor: Wayne L. Niederhauser**

5                                   House Sponsor: Kraig Powell

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6

7   **LONG TITLE**

8   **General Description:**

9           This bill authorizes a municipality or county to adopt an ordinance permitting the  
10 transfer of a transferable development right and prohibits a municipality or county from  
11 allowing the use of a transferable development right unless the municipality or county  
12 has adopted the ordinance.

13 **Highlighted Provisions:**

14           This bill:

- 15           ▶ defines terms;
- 16           ▶ authorizes a municipality or county to adopt an ordinance permitting the transfer of  
17 a transferable development right;
- 18           ▶ prohibits a municipality or county from allowing the use of a transferable  
19 development right unless the municipality or county has adopted the ordinance; and
- 20           ▶ makes technical corrections.

21 **Money Appropriated in this Bill:**

22           None

23 **Other Special Clauses:**

24           None

25 **Utah Code Sections Affected:**

26 AMENDS:

27           **10-9a-103**, as last amended by Laws of Utah 2011, Chapters 47, 92, 107, and 407



28           **10-9a-509.7**, as enacted by Laws of Utah 2007, Chapter 199  
 29           **17-27a-103**, as last amended by Laws of Utah 2011, Chapters 47, 92, 107, and 407  
 30           **17-27a-509.7**, as enacted by Laws of Utah 2007, Chapter 199



31  
 32 *Be it enacted by the Legislature of the state of Utah:*

33           Section 1. Section **10-9a-103** is amended to read:

34           **10-9a-103. Definitions.**

35           As used in this chapter:

36           (1) "Affected entity" means a county, municipality, local district, special service  
 37 district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal  
 38 cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified  
 39 public utility, a property owner, a property owners association, or the Utah Department of  
 40 Transportation, if:

41           (a) the entity's services or facilities are likely to require expansion or significant  
 42 modification because of an intended use of land;

43           (b) the entity has filed with the municipality a copy of the entity's general or long-range  
 44 plan; or

45           (c) the entity has filed with the municipality a request for notice during the same  
 46 calendar year and before the municipality provides notice to an affected entity in compliance  
 47 with a requirement imposed under this chapter.

48           (2) "Appeal authority" means the person, board, commission, agency, or other body  
 49 designated by ordinance to decide an appeal of a decision of a land use application or a  
 50 variance.

51           (3) "Billboard" means a freestanding ground sign located on industrial, commercial, or  
 52 residential property if the sign is designed or intended to direct attention to a business, product,  
 53 or service that is not sold, offered, or existing on the property where the sign is located.

54           (4) (a) "Charter school" means:

55           (i) an operating charter school;

56           (ii) a charter school applicant that has its application approved by a chartering entity in  
 57 accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; or

58           (iii) an entity who is working on behalf of a charter school or approved charter

59 applicant to develop or construct a charter school building.

60 (b) "Charter school" does not include a therapeutic school.

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

65 (6) "Constitutional taking" means a governmental action that results in a taking of  
66 private property so that compensation to the owner of the property is required by the:

67 (a) Fifth or Fourteenth Amendment of the Constitution of the United States; or

68 (b) Utah Constitution Article I, Section 22.

69 (7) "Culinary water authority" means the department, agency, or public entity with  
70 responsibility to review and approve the feasibility of the culinary water system and sources for  
71 the subject property.

72 (8) "Development activity" means:

73 (a) any construction or expansion of a building, structure, or use that creates additional  
74 demand and need for public facilities;

75 (b) any change in use of a building or structure that creates additional demand and need  
76 for public facilities; or

77 (c) any change in the use of land that creates additional demand and need for public  
78 facilities.

79 (9) (a) "Disability" means a physical or mental impairment that substantially limits one  
80 or more of a person's major life activities, including a person having a record of such an  
81 impairment or being regarded as having such an impairment.

82 (b) "Disability" does not include current illegal use of, or addiction to, any federally  
83 controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.  
84 802.

85 (10) "Educational facility":

86 (a) means:

87 (i) a school district's building at which pupils assemble to receive instruction in a  
88 program for any combination of grades from preschool through grade 12, including  
89 kindergarten and a program for children with disabilities;

90 (ii) a structure or facility:  
91 (A) located on the same property as a building described in Subsection (10)(a)(i); and  
92 (B) used in support of the use of that building; and

93 (iii) a building to provide office and related space to a school district's administrative  
94 personnel; and

95 (b) does not include:

96 (i) land or a structure, including land or a structure for inventory storage, equipment  
97 storage, food processing or preparing, vehicle storage or maintenance, or similar use that is:

98 (A) not located on the same property as a building described in Subsection (10)(a)(i);  
99 and

100 (B) used in support of the purposes of a building described in Subsection (10)(a)(i); or

101 (ii) a therapeutic school.

102 (11) "Elderly person" means a person who is 60 years old or older, who desires or  
103 needs to live with other elderly persons in a group setting, but who is capable of living  
104 independently.

105 (12) "Fire authority" means the department, agency, or public entity with responsibility  
106 to review and approve the feasibility of fire protection and suppression services for the subject  
107 property.

108 (13) "Flood plain" means land that:

109 (a) is within the 100-year flood plain designated by the Federal Emergency  
110 Management Agency; or

111 (b) has not been studied or designated by the Federal Emergency Management Agency  
112 but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because  
113 the land has characteristics that are similar to those of a 100-year flood plain designated by the  
114 Federal Emergency Management Agency.

115 (14) "General plan" means a document that a municipality adopts that sets forth general  
116 guidelines for proposed future development of the land within the municipality.

117 (15) "Geologic hazard" means:

118 (a) a surface fault rupture;

119 (b) shallow groundwater;

120 (c) liquefaction;

- 121 (d) a landslide;
- 122 (e) a debris flow;
- 123 (f) unstable soil;
- 124 (g) a rock fall; or
- 125 (h) any other geologic condition that presents a risk:
- 126 (i) to life;
- 127 (ii) of substantial loss of real property; or
- 128 (iii) of substantial damage to real property.
- 129 (16) "Hookup fee" means a fee for the installation and inspection of any pipe, line,
- 130 meter, or appurtenance that connects to a municipal water, sewer, storm water, power, or other
- 131 utility system.
- 132 (17) "Identical plans" means building plans submitted to a municipality that:
- 133 (a) are clearly marked as "identical plans";
- 134 (b) are substantially identical to building plans that were previously submitted to and
- 135 reviewed and approved by the municipality; and
- 136 (c) describe a building that:
- 137 (i) is located on land zoned the same as the land on which the building described in the
- 138 previously approved plans is located;
- 139 (ii) is subject to the same geological and meteorological conditions and the same law
- 140 as the building described in the previously approved plans;
- 141 (iii) has a floor plan identical to the building plan previously submitted to and reviewed
- 142 and approved by the municipality; and
- 143 (iv) does not require any additional engineering or analysis.
- 144 (18) "Impact fee" means a payment of money imposed under Title 11, Chapter 36a,
- 145 Impact Fees Act.
- 146 (19) "Improvement assurance" means a surety bond, letter of credit, cash, or other
- 147 security:
- 148 (a) to guaranty the proper completion of an improvement;
- 149 (b) that is required as a condition precedent to:
- 150 (i) recording a subdivision plat; or
- 151 (ii) beginning development activity; and

152 (c) that is offered to a land use authority to induce the land use authority, before actual  
153 construction of required improvements, to:

- 154 (i) consent to the recording of a subdivision plat; or
- 155 (ii) issue a permit for development activity.

156 (20) "Improvement assurance warranty" means a promise that the materials and  
157 workmanship of improvements:

- 158 (a) comport with standards that the municipality has officially adopted; and
- 159 (b) will not fail in any material respect within a warranty period.

160 (21) "Internal lot restriction" means a platted note, platted demarcation, or platted  
161 designation that:

- 162 (a) runs with the land; and
- 163 (b) (i) creates a restriction that is enclosed within the perimeter of a lot described on  
164 the plat; or
- 165 (ii) designates a development condition that is enclosed within the perimeter of a lot  
166 described on the plat.

167 (22) "Land use application" means an application required by a municipality's land use  
168 ordinance.

169 (23) "Land use authority" means a person, board, commission, agency, or other body  
170 designated by the local legislative body to act upon a land use application.

171 (24) "Land use ordinance" means a planning, zoning, development, or subdivision  
172 ordinance of the municipality, but does not include the general plan.

173 (25) "Land use permit" means a permit issued by a land use authority.

174 (26) "Legislative body" means the municipal council.

175 (27) "Local district" means an entity under Title 17B, Limited Purpose Local  
176 Government Entities - Local Districts, and any other governmental or quasi-governmental  
177 entity that is not a county, municipality, school district, or the state.

178 (28) "Lot line adjustment" means the relocation of the property boundary line in a  
179 subdivision between two adjoining lots with the consent of the owners of record.

180 (29) "Moderate income housing" means housing occupied or reserved for occupancy  
181 by households with a gross household income equal to or less than 80% of the median gross  
182 income for households of the same size in the county in which the city is located.

183 (30) "Nominal fee" means a fee that reasonably reimburses a municipality only for time  
184 spent and expenses incurred in:

185 (a) verifying that building plans are identical plans; and

186 (b) reviewing and approving those minor aspects of identical plans that differ from the  
187 previously reviewed and approved building plans.

188 (31) "Noncomplying structure" means a structure that:

189 (a) legally existed before its current land use designation; and

190 (b) because of one or more subsequent land use ordinance changes, does not conform  
191 to the setback, height restrictions, or other regulations, excluding those regulations, which  
192 govern the use of land.

193 (32) "Nonconforming use" means a use of land that:

194 (a) legally existed before its current land use designation;

195 (b) has been maintained continuously since the time the land use ordinance governing  
196 the land changed; and

197 (c) because of one or more subsequent land use ordinance changes, does not conform  
198 to the regulations that now govern the use of the land.

199 (33) "Official map" means a map drawn by municipal authorities and recorded in a  
200 county recorder's office that:

201 (a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for  
202 highways and other transportation facilities;

203 (b) provides a basis for restricting development in designated rights-of-way or between  
204 designated setbacks to allow the government authorities time to purchase or otherwise reserve  
205 the land; and

206 (c) has been adopted as an element of the municipality's general plan.

207 (34) "Person" means an individual, corporation, partnership, organization, association,  
208 trust, governmental agency, or any other legal entity.

209 (35) "Plan for moderate income housing" means a written document adopted by a city  
210 legislative body that includes:

211 (a) an estimate of the existing supply of moderate income housing located within the  
212 city;

213 (b) an estimate of the need for moderate income housing in the city for the next five

214 years as revised biennially;

215 (c) a survey of total residential land use;

216 (d) an evaluation of how existing land uses and zones affect opportunities for moderate  
217 income housing; and

218 (e) a description of the city's program to encourage an adequate supply of moderate  
219 income housing.

220 (36) "Plat" means a map or other graphical representation of lands being laid out and  
221 prepared in accordance with Section 10-9a-603, 17-23-17, or 57-8-13.

222 (37) "Potential geologic hazard area" means an area that:

223 (a) is designated by a Utah Geological Survey map, county geologist map, or other  
224 relevant map or report as needing further study to determine the area's potential for geologic  
225 hazard; or

226 (b) has not been studied by the Utah Geological Survey or a county geologist but  
227 presents the potential of geologic hazard because the area has characteristics similar to those of  
228 a designated geologic hazard area.

229 (38) "Public agency" means:

230 (a) the federal government;

231 (b) the state;

232 (c) a county, municipality, school district, local district, special service district, or other  
233 political subdivision of the state; or

234 (d) a charter school.

235 (39) "Public hearing" means a hearing at which members of the public are provided a  
236 reasonable opportunity to comment on the subject of the hearing.

237 (40) "Public meeting" means a meeting that is required to be open to the public under  
238 Title 52, Chapter 4, Open and Public Meetings Act.

239 (41) "Receiving zone" means an area of a municipality that the municipality  
240 designates, by ordinance, as an area in which an owner of land may receive a transferable  
241 development right.

242 [~~(41)~~] (42) "Record of survey map" means a map of a survey of land prepared in  
243 accordance with Section 17-23-17.

244 [~~(42)~~] "Receiving zone" means an area of a municipality that the municipality's land use

245 ~~authority designates as an area in which an owner of land may receive transferrable~~  
246 ~~development rights.]~~

247 (43) "Residential facility for elderly persons" means a single-family or multiple-family  
248 dwelling unit that meets the requirements of Section 10-9a-516, but does not include a health  
249 care facility as defined by Section 26-21-2.

250 (44) "Residential facility for persons with a disability" means a residence:

251 (a) in which more than one person with a disability resides; and

252 (b) (i) is licensed or certified by the Department of Human Services under Title 62A,  
253 Chapter 2, Licensure of Programs and Facilities; or

254 (ii) is licensed or certified by the Department of Health under Title 26, Chapter 21,  
255 Health Care Facility Licensing and Inspection Act.

256 (45) "Rules of order and procedure" means a set of rules that govern and prescribe in a  
257 public meeting:

258 (a) parliamentary order and procedure;

259 (b) ethical behavior; and

260 (c) civil discourse.

261 (46) "Sanitary sewer authority" means the department, agency, or public entity with  
262 responsibility to review and approve the feasibility of sanitary sewer services or onsite  
263 wastewater systems.

264 (47) "Sending zone" means an area of a municipality that the [~~municipality's land use~~  
265 ~~authority~~] municipality designates, by ordinance, as an area from which an owner of land may  
266 transfer [~~transferrable development rights to an owner of land in a receiving zone~~] a  
267 transferable development right.

268 (48) "Specified public agency" means:

269 (a) the state;

270 (b) a school district; or

271 (c) a charter school.

272 (49) "Specified public utility" means an electrical corporation, gas corporation, or  
273 telephone corporation, as those terms are defined in Section 54-2-1.

274 (50) "State" includes any department, division, or agency of the state.

275 (51) "Street" means a public right-of-way, including a highway, avenue, boulevard,

276 parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or other  
277 way.

278 (52) (a) "Subdivision" means any land that is divided, resubdivided or proposed to be  
279 divided into two or more lots, parcels, sites, units, plots, or other division of land for the  
280 purpose, whether immediate or future, for offer, sale, lease, or development either on the  
281 installment plan or upon any and all other plans, terms, and conditions.

282 (b) "Subdivision" includes:

283 (i) the division or development of land whether by deed, metes and bounds description,  
284 devise and testacy, map, plat, or other recorded instrument; and

285 (ii) except as provided in Subsection (52)(c), divisions of land for residential and  
286 nonresidential uses, including land used or to be used for commercial, agricultural, and  
287 industrial purposes.

288 (c) "Subdivision" does not include:

289 (i) a bona fide division or partition of agricultural land for the purpose of joining one of  
290 the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land, if  
291 neither the resulting combined parcel nor the parcel remaining from the division or partition  
292 violates an applicable land use ordinance;

293 (ii) a recorded agreement between owners of adjoining unsubdivided properties  
294 adjusting their mutual boundary if:

295 (A) no new lot is created; and

296 (B) the adjustment does not violate applicable land use ordinances;

297 (iii) a recorded document, executed by the owner of record:

298 (A) revising the legal description of more than one contiguous unsubdivided parcel of  
299 property into one legal description encompassing all such parcels of property; or

300 (B) joining a subdivided parcel of property to another parcel of property that has not  
301 been subdivided, if the joinder does not violate applicable land use ordinances;

302 (iv) a recorded agreement between owners of adjoining subdivided properties adjusting  
303 their mutual boundary if:

304 (A) no new dwelling lot or housing unit will result from the adjustment; and

305 (B) the adjustment will not violate any applicable land use ordinance; or

306 (v) a bona fide division or partition of land by deed or other instrument where the land

307 use authority expressly approves in writing the division in anticipation of further land use  
308 approvals on the parcel or parcels.

309 (d) The joining of a subdivided parcel of property to another parcel of property that has  
310 not been subdivided does not constitute a subdivision under this Subsection (52) as to the  
311 unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's  
312 subdivision ordinance.

313 (53) "Therapeutic school" means a residential group living facility:

314 (a) for four or more individuals who are not related to:

315 (i) the owner of the facility; or

316 (ii) the primary service provider of the facility;

317 (b) that serves students who have a history of failing to function:

318 (i) at home;

319 (ii) in a public school; or

320 (iii) in a nonresidential private school; and

321 (c) that offers:

322 (i) room and board; and

323 (ii) an academic education integrated with:

324 (A) specialized structure and supervision; or

325 (B) services or treatment related to a disability, an emotional development, a  
326 behavioral development, a familial development, or a social development.

327 (54) [~~"Transferrable"~~] "Transferable development right" means [~~the entitlement to~~  
328 ~~develop land within a sending zone that would vest according to the municipality's existing~~  
329 ~~land use ordinances on the date that a completed land use application is filed seeking the~~  
330 ~~approval of development activity on the land]~~ a right to develop and use land that originates by  
331 an ordinance that authorizes a land owner in a designated sending zone to transfer land use  
332 density from a designated sending zone to a designated receiving zone.

333 (55) "Unincorporated" means the area outside of the incorporated area of a city or  
334 town.

335 (56) "Water interest" means any right to the beneficial use of water, including:

336 (a) each of the rights listed in Section 73-1-11; and

337 (b) an ownership interest in the right to the beneficial use of water represented by:

338 (i) a contract; or

339 (ii) a share in a water company, as defined in Section 73-3-3.5.

340 (57) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts  
341 land use zones, overlays, or districts.

342 Section 2. Section **10-9a-509.7** is amended to read:

343 **10-9a-509.7. Transferable development rights.**

344 (1) A municipality may adopt an ordinance:

345 ~~[(1)]~~ (a) designating sending zones and receiving zones within the municipality; and

346 ~~[(2)]~~ (b) allowing the transfer of ~~[transferable]~~ a transferable development ~~[rights]~~  
347 right from ~~[an owner of land within]~~ a sending zone to ~~[an owner of land within]~~ a receiving  
348 zone.

349 (2) A municipality may not allow the use of a transferable development right unless the  
350 municipality adopts an ordinance described in Subsection (1).

351 Section 3. Section **17-27a-103** is amended to read:

352 **17-27a-103. Definitions.**

353 As used in this chapter:

354 (1) "Affected entity" means a county, municipality, local district, special service  
355 district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal  
356 cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified  
357 property owner, property owners association, public utility, or the Utah Department of  
358 Transportation, if:

359 (a) the entity's services or facilities are likely to require expansion or significant  
360 modification because of an intended use of land;

361 (b) the entity has filed with the county a copy of the entity's general or long-range plan;  
362 or

363 (c) the entity has filed with the county a request for notice during the same calendar  
364 year and before the county provides notice to an affected entity in compliance with a  
365 requirement imposed under this chapter.

366 (2) "Appeal authority" means the person, board, commission, agency, or other body  
367 designated by ordinance to decide an appeal of a decision of a land use application or a  
368 variance.

369 (3) "Billboard" means a freestanding ground sign located on industrial, commercial, or  
370 residential property if the sign is designed or intended to direct attention to a business, product,  
371 or service that is not sold, offered, or existing on the property where the sign is located.

372 (4) (a) "Charter school" means:

373 (i) an operating charter school;

374 (ii) a charter school applicant that has its application approved by a chartering entity in  
375 accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; or

376 (iii) an entity who is working on behalf of a charter school or approved charter  
377 applicant to develop or construct a charter school building.

378 (b) "Charter school" does not include a therapeutic school.

379 (5) "Chief executive officer" means the person or body that exercises the executive  
380 powers of the county.

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

385 (7) "Constitutional taking" means a governmental action that results in a taking of  
386 private property so that compensation to the owner of the property is required by the:

387 (a) Fifth or Fourteenth Amendment of the Constitution of the United States; or

388 (b) Utah Constitution Article I, Section 22.

389 (8) "Culinary water authority" means the department, agency, or public entity with  
390 responsibility to review and approve the feasibility of the culinary water system and sources for  
391 the subject property.

392 (9) "Development activity" means:

393 (a) any construction or expansion of a building, structure, or use that creates additional  
394 demand and need for public facilities;

395 (b) any change in use of a building or structure that creates additional demand and need  
396 for public facilities; or

397 (c) any change in the use of land that creates additional demand and need for public  
398 facilities.

399 (10) (a) "Disability" means a physical or mental impairment that substantially limits

400 one or more of a person's major life activities, including a person having a record of such an  
401 impairment or being regarded as having such an impairment.

402 (b) "Disability" does not include current illegal use of, or addiction to, any federally  
403 controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.  
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405 (11) "Educational facility":

406 (a) means:

407 (i) a school district's building at which pupils assemble to receive instruction in a  
408 program for any combination of grades from preschool through grade 12, including  
409 kindergarten and a program for children with disabilities;

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411 (A) located on the same property as a building described in Subsection (11)(a)(i); and

412 (B) used in support of the use of that building; and

413 (iii) a building to provide office and related space to a school district's administrative  
414 personnel; and

415 (b) does not include:

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417 storage, food processing or preparing, vehicle storage or maintenance, or similar use that is:

418 (A) not located on the same property as a building described in Subsection (11)(a)(i);  
419 and

420 (B) used in support of the purposes of a building described in Subsection (11)(a)(i); or

421 (ii) a therapeutic school.

422 (12) "Elderly person" means a person who is 60 years old or older, who desires or  
423 needs to live with other elderly persons in a group setting, but who is capable of living  
424 independently.

425 (13) "Fire authority" means the department, agency, or public entity with responsibility  
426 to review and approve the feasibility of fire protection and suppression services for the subject  
427 property.

428 (14) "Flood plain" means land that:

429 (a) is within the 100-year flood plain designated by the Federal Emergency  
430 Management Agency; or

431 (b) has not been studied or designated by the Federal Emergency Management Agency  
432 but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because  
433 the land has characteristics that are similar to those of a 100-year flood plain designated by the  
434 Federal Emergency Management Agency.

435 (15) "Gas corporation" has the same meaning as defined in Section 54-2-1.

436 (16) "General plan" means a document that a county adopts that sets forth general  
437 guidelines for proposed future development of the unincorporated land within the county.

438 (17) "Geologic hazard" means:

439 (a) a surface fault rupture;

440 (b) shallow groundwater;

441 (c) liquefaction;

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454 the plat; or

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458 meter, or appurtenance to connect to a county water, sewer, storm water, power, or other utility  
459 system.

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463 reviewed and approved by the county; and

464 (c) describe a building that:

465 (i) is located on land zoned the same as the land on which the building described in the  
466 previously approved plans is located;

467 (ii) is subject to the same geological and meteorological conditions and the same law  
468 as the building described in the previously approved plans;

469 (iii) has a floor plan identical to the building plan previously submitted to and reviewed  
470 and approved by the county; and

471 (iv) does not require any additional engineering or analysis.

472 (21) "Impact fee" means a payment of money imposed under Title 11, Chapter 36a,  
473 Impact Fees Act.

474 (22) "Improvement assurance" means a surety bond, letter of credit, cash, or other  
475 security:

476 (a) to guaranty the proper completion of an improvement;

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478 (i) recording a subdivision plat; or

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481 construction of required improvements, to:

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485 workmanship of improvements:

486 (a) comport with standards that the county has officially adopted; and

487 (b) will not fail in any material respect within a warranty period.

488 (24) "Interstate pipeline company" means a person or entity engaged in natural gas  
489 transportation subject to the jurisdiction of the Federal Energy Regulatory Commission under  
490 the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

491 (25) "Intrastate pipeline company" means a person or entity engaged in natural gas  
492 transportation that is not subject to the jurisdiction of the Federal Energy Regulatory

493 Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

494 (26) "Land use application" means an application required by a county's land use  
495 ordinance.

496 (27) "Land use authority" means a person, board, commission, agency, or other body  
497 designated by the local legislative body to act upon a land use application.

498 (28) "Land use ordinance" means a planning, zoning, development, or subdivision  
499 ordinance of the county, but does not include the general plan.

500 (29) "Land use permit" means a permit issued by a land use authority.

501 (30) "Legislative body" means the county legislative body, or for a county that has  
502 adopted an alternative form of government, the body exercising legislative powers.

503 (31) "Local district" means any entity under Title 17B, Limited Purpose Local  
504 Government Entities - Local Districts, and any other governmental or quasi-governmental  
505 entity that is not a county, municipality, school district, or the state.

506 (32) "Lot line adjustment" means the relocation of the property boundary line in a  
507 subdivision between two adjoining lots with the consent of the owners of record.

508 (33) "Moderate income housing" means housing occupied or reserved for occupancy  
509 by households with a gross household income equal to or less than 80% of the median gross  
510 income for households of the same size in the county in which the housing is located.

511 (34) "Nominal fee" means a fee that reasonably reimburses a county only for time spent  
512 and expenses incurred in:

513 (a) verifying that building plans are identical plans; and

514 (b) reviewing and approving those minor aspects of identical plans that differ from the  
515 previously reviewed and approved building plans.

516 (35) "Noncomplying structure" means a structure that:

517 (a) legally existed before its current land use designation; and

518 (b) because of one or more subsequent land use ordinance changes, does not conform  
519 to the setback, height restrictions, or other regulations, excluding those regulations that govern  
520 the use of land.

521 (36) "Nonconforming use" means a use of land that:

522 (a) legally existed before its current land use designation;

523 (b) has been maintained continuously since the time the land use ordinance regulation

524 governing the land changed; and

525 (c) because of one or more subsequent land use ordinance changes, does not conform  
526 to the regulations that now govern the use of the land.

527 (37) "Official map" means a map drawn by county authorities and recorded in the  
528 county recorder's office that:

529 (a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for  
530 highways and other transportation facilities;

531 (b) provides a basis for restricting development in designated rights-of-way or between  
532 designated setbacks to allow the government authorities time to purchase or otherwise reserve  
533 the land; and

534 (c) has been adopted as an element of the county's general plan.

535 (38) "Person" means an individual, corporation, partnership, organization, association,  
536 trust, governmental agency, or any other legal entity.

537 (39) "Plan for moderate income housing" means a written document adopted by a  
538 county legislative body that includes:

539 (a) an estimate of the existing supply of moderate income housing located within the  
540 county;

541 (b) an estimate of the need for moderate income housing in the county for the next five  
542 years as revised biennially;

543 (c) a survey of total residential land use;

544 (d) an evaluation of how existing land uses and zones affect opportunities for moderate  
545 income housing; and

546 (e) a description of the county's program to encourage an adequate supply of moderate  
547 income housing.

548 (40) "Plat" means a map or other graphical representation of lands being laid out and  
549 prepared in accordance with Section 17-27a-603, 17-23-17, or 57-8-13.

550 (41) "Potential geologic hazard area" means an area that:

551 (a) is designated by a Utah Geological Survey map, county geologist map, or other  
552 relevant map or report as needing further study to determine the area's potential for geologic  
553 hazard; or

554 (b) has not been studied by the Utah Geological Survey or a county geologist but

555 presents the potential of geologic hazard because the area has characteristics similar to those of  
556 a designated geologic hazard area.

557 (42) "Public agency" means:

558 (a) the federal government;

559 (b) the state;

560 (c) a county, municipality, school district, local district, special service district, or other  
561 political subdivision of the state; or

562 (d) a charter school.

563 (43) "Public hearing" means a hearing at which members of the public are provided a  
564 reasonable opportunity to comment on the subject of the hearing.

565 (44) "Public meeting" means a meeting that is required to be open to the public under  
566 Title 52, Chapter 4, Open and Public Meetings Act.

567 (45) "Receiving zone" means an unincorporated area of a county that the ~~[county's land~~  
568 ~~use authority]~~ county designates, by ordinance, as an area in which an owner of land may  
569 receive ~~[transferrable]~~ a transferable development ~~[rights]~~ right.

570 (46) "Record of survey map" means a map of a survey of land prepared in accordance  
571 with Section 17-23-17.

572 (47) "Residential facility for elderly persons" means a single-family or multiple-family  
573 dwelling unit that meets the requirements of Section 17-27a-515, but does not include a health  
574 care facility as defined by Section 26-21-2.

575 (48) "Residential facility for persons with a disability" means a residence:

576 (a) in which more than one person with a disability resides; and

577 (b) (i) is licensed or certified by the Department of Human Services under Title 62A,  
578 Chapter 2, Licensure of Programs and Facilities; or

579 (ii) is licensed or certified by the Department of Health under Title 26, Chapter 21,  
580 Health Care Facility Licensing and Inspection Act.

581 (49) "Rules of order and procedure" means a set of rules that govern and prescribe in a  
582 public meeting:

583 (a) parliamentary order and procedure;

584 (b) ethical behavior; and

585 (c) civil discourse.

586 (50) "Sanitary sewer authority" means the department, agency, or public entity with  
587 responsibility to review and approve the feasibility of sanitary sewer services or onsite  
588 wastewater systems.

589 (51) "Sending zone" means an unincorporated area of a county that the ~~[county's land~~  
590 ~~use authority]~~ county designates, by ordinance, as an area from which an owner of land may  
591 transfer ~~[transferable development rights to an owner of land in a receiving zone]~~ a  
592 transferable development right.

593 (52) "Specified public agency" means:

- 594 (a) the state;
- 595 (b) a school district; or
- 596 (c) a charter school.

597 (53) "Specified public utility" means an electrical corporation, gas corporation, or  
598 telephone corporation, as those terms are defined in Section 54-2-1.

599 (54) "State" includes any department, division, or agency of the state.

600 (55) "Street" means a public right-of-way, including a highway, avenue, boulevard,  
601 parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or other  
602 way.

603 (56) (a) "Subdivision" means any land that is divided, resubdivided or proposed to be  
604 divided into two or more lots, parcels, sites, units, plots, or other division of land for the  
605 purpose, whether immediate or future, for offer, sale, lease, or development either on the  
606 installment plan or upon any and all other plans, terms, and conditions.

607 (b) "Subdivision" includes:

608 (i) the division or development of land whether by deed, metes and bounds description,  
609 devise and testacy, map, plat, or other recorded instrument; and

610 (ii) except as provided in Subsection (56)(c), divisions of land for residential and  
611 nonresidential uses, including land used or to be used for commercial, agricultural, and  
612 industrial purposes.

613 (c) "Subdivision" does not include:

- 614 (i) a bona fide division or partition of agricultural land for agricultural purposes;
- 615 (ii) a recorded agreement between owners of adjoining properties adjusting their  
616 mutual boundary if:

- 617 (A) no new lot is created; and
- 618 (B) the adjustment does not violate applicable land use ordinances;
- 619 (iii) a recorded document, executed by the owner of record:
- 620 (A) revising the legal description of more than one contiguous unsubdivided parcel of
- 621 property into one legal description encompassing all such parcels of property; or
- 622 (B) joining a subdivided parcel of property to another parcel of property that has not
- 623 been subdivided, if the joinder does not violate applicable land use ordinances;
- 624 (iv) a bona fide division or partition of land in a county other than a first class county
- 625 for the purpose of siting, on one or more of the resulting separate parcels:
- 626 (A) an electrical transmission line or a substation;
- 627 (B) a natural gas pipeline or a regulation station; or
- 628 (C) an unmanned telecommunications, microwave, fiber optic, electrical, or other
- 629 utility service regeneration, transformation, retransmission, or amplification facility;
- 630 (v) a recorded agreement between owners of adjoining subdivided properties adjusting
- 631 their mutual boundary if:
- 632 (A) no new dwelling lot or housing unit will result from the adjustment; and
- 633 (B) the adjustment will not violate any applicable land use ordinance; or
- 634 (vi) a bona fide division or partition of land by deed or other instrument where the land
- 635 use authority expressly approves in writing the division in anticipation of further land use
- 636 approvals on the parcel or parcels.
- 637 (d) The joining of a subdivided parcel of property to another parcel of property that has
- 638 not been subdivided does not constitute a subdivision under this Subsection (56) as to the
- 639 unsubdivided parcel of property or subject the unsubdivided parcel to the county's subdivision
- 640 ordinance.
- 641 (57) "Therapeutic school" means a residential group living facility:
- 642 (a) for four or more individuals who are not related to:
- 643 (i) the owner of the facility; or
- 644 (ii) the primary service provider of the facility;
- 645 (b) that serves students who have a history of failing to function:
- 646 (i) at home;
- 647 (ii) in a public school; or

648 (iii) in a nonresidential private school; and

649 (c) that offers:

650 (i) room and board; and

651 (ii) an academic education integrated with:

652 (A) specialized structure and supervision; or

653 (B) services or treatment related to a disability, an emotional development, a  
654 behavioral development, a familial development, or a social development.

655 (58) "Township" means a contiguous, geographically defined portion of the  
656 unincorporated area of a county, established under this part or reconstituted or reinstated under  
657 Section 17-27a-306, with planning and zoning functions as exercised through the township  
658 planning commission, as provided in this chapter, but with no legal or political identity  
659 separate from the county and no taxing authority, except that "township" means a former  
660 township under Laws of Utah 1996, Chapter 308, where the context so indicates.

661 (59) [~~"Transferrable]~~ "Transferable development right" means [~~the entitlement to~~  
662 ~~develop land within a sending zone that would vest according to the county's existing land use~~  
663 ~~ordinances on the date that a completed land use application is filed seeking the approval of~~  
664 ~~development activity on the land]~~ a right to develop and use land that originates by an  
665 ordinance that authorizes a land owner in a designated sending zone to transfer land use density  
666 from a designated sending zone to a designated receiving zone.

667 (60) "Unincorporated" means the area outside of the incorporated area of a  
668 municipality.

669 (61) "Water interest" means any right to the beneficial use of water, including:

670 (a) each of the rights listed in Section 73-1-11; and

671 (b) an ownership interest in the right to the beneficial use of water represented by:

672 (i) a contract; or

673 (ii) a share in a water company, as defined in Section 73-3-3.5.

674 (62) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts  
675 land use zones, overlays, or districts.

676 Section 4. Section **17-27a-509.7** is amended to read:

677 **17-27a-509.7. Transferable development rights.**

678 (1) A county may adopt an ordinance:

679            [(1)] (a) designating sending zones and receiving zones within the unincorporated area  
680 of the county; and

681            [(2)] (b) allowing the transfer of [~~transferrable~~] a transferable development [rights]  
682 right from [~~an owner of land within~~] a sending zone to [~~an owner of land within~~] a receiving  
683 zone.

684            (2) A county may not allow the use of a transferable development right unless the  
685 county adopts an ordinance described in Subsection (1).

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**Legislative Review Note**  
as of 1-17-12 2:18 PM

**Office of Legislative Research and General Counsel**