

TRANSFER OF DENSITY

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

General Description:

This bill modifies county and municipal land use, development, and management provisions relating to the transfer of development rights.

Highlighted Provisions:

This bill:

- ▶ authorizes counties and municipalities to designate areas as sending and receiving zones and to allow the transfer of development rights from a landowner in a sending zone to a landowner in a receiving zone;
- ▶ defines terms; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-9a-103, as last amended by Chapters 14, 163, 240, 257 and 289, Laws of Utah 2006

17-27a-103, as last amended by Chapters 14, 163, 240, 257 and 289, Laws of Utah

2006

ENACTS:

10-9a-509.5, Utah Code Annotated 1953

17-27a-509.5, Utah Code Annotated 1953

30

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

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

33 **10-9a-103. Definitions.**

34 As used in this chapter:

35 (1) "Affected entity" means a county, municipality, independent special district under
36 Title 17A, Chapter 2, Independent Special Districts, local district under Title 17B, Chapter 2,
37 Local Districts, school district, interlocal cooperation entity established under Title 11, Chapter
38 13, Interlocal Cooperation Act, specified public utility, a property owner, a property owners
39 association, or the Utah Department of Transportation, if:

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

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

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

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

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

53 (4) "Charter school" includes:

54 (a) an operating charter school;

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

57 (c) an entity who is working on behalf of a charter school or approved charter applicant

58 to develop or construct a charter school building.

59 (5) "Chief executive officer" means the:

60 (a) mayor in municipalities operating under all forms of municipal government except
61 the council-manager form; or

62 (b) city manager in municipalities operating under the council-manager form of
63 municipal government.

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

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

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

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

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

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

78 (b) "Disability" does not include current illegal use of, or addiction to, any federally
79 controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.
80 802.

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

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

86 (12) "Identical plans" means building plans submitted to a municipality that are
87 substantially identical to building plans that were previously submitted to and reviewed and
88 approved by the municipality and describe a building that is:

89 (a) located on land zoned the same as the land on which the building described in the
90 previously approved plans is located; and

91 (b) subject to the same geological and meteorological conditions and the same law as
92 the building described in the previously approved plans.

93 (13) "Land use application" means an application required by a municipality's land use
94 ordinance.

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

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

99 (16) "Land use permit" means a permit issued by a land use authority.

100 (17) "Legislative body" means the municipal council.

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

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

106 (20) "Nominal fee" means a fee that reasonably reimburses a municipality only for time
107 spent and expenses incurred in:

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

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

111 (21) "Noncomplying structure" means a structure that:

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

113 (b) because of one or more subsequent land use ordinance changes, does not conform

114 to the setback, height restrictions, or other regulations, excluding those regulations, which
115 govern the use of land.

116 (22) "Nonconforming use" means a use of land that:

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

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

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

122 (23) "Official map" means a map drawn by municipal authorities and recorded in a
123 county recorder's office that:

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

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

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

130 (24) "Person" means an individual, corporation, partnership, organization, association,
131 trust, governmental agency, or any other legal entity.

132 (25) "Plan for moderate income housing" means a written document adopted by a city
133 legislative body that includes:

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

136 (b) an estimate of the need for moderate income housing in the city for the next five
137 years as revised biennially;

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

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

141 (e) a description of the city's program to encourage an adequate supply of moderate

142 income housing.

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

145 (27) "Public hearing" means a hearing at which members of the public are provided a
146 reasonable opportunity to comment on the subject of the hearing.

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

149 (29) "Record of survey map" means a map of a survey of land prepared in accordance
150 with Section 17-23-17.

151 (30) "Receiving zone" means an area of a municipality that the municipality's land use
152 authority designates as an area in which an owner of land may receive transferrable
153 development rights.

154 [~~(30)~~] (31) "Residential facility for elderly persons" means a single-family or
155 multiple-family dwelling unit that meets the requirements of Section 10-9a-516, but does not
156 include a health care facility as defined by Section 26-21-2.

157 [~~(31)~~] (32) "Residential facility for persons with a disability" means a residence:

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

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

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

163 [~~(32)~~] (33) "Sanitary sewer authority" means the department, agency, or public entity
164 with responsibility to review and approve the feasibility of sanitary sewer services or onsite
165 wastewater systems.

166 (34) "Sending zone" means an area of a municipality that the municipality's land use
167 authority designates as an area from which an owner of land may transfer transferrable
168 development rights to an owner of land in a receiving zone.

169 [~~(33)~~] (35) "Special district" means an entity established under the authority of Title

170 17A, Special Districts, and any other governmental or quasi-governmental entity that is not a
171 county, municipality, school district, or unit of the state.

172 [~~(34)~~] (36) "Specified public utility" means an electrical corporation, gas corporation,
173 or telephone corporation, as those terms are defined in Section 54-2-1.

174 [~~(35)~~] (37) "Street" means a public right-of-way, including a highway, avenue,
175 boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement,
176 or other way.

177 [~~(36)~~] (38) (a) "Subdivision" means any land that is divided, resubdivided or proposed
178 to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the
179 purpose, whether immediate or future, for offer, sale, lease, or development either on the
180 installment plan or upon any and all other plans, terms, and conditions.

181 (b) "Subdivision" includes:

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

184 (ii) except as provided in Subsection [~~(36)~~] (38)(c), divisions of land for residential and
185 nonresidential uses, including land used or to be used for commercial, agricultural, and
186 industrial purposes.

187 (c) "Subdivision" does not include:

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

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

194 (A) no new lot is created; and

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

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

197 (A) revising the legal description of more than one contiguous unsubdivided parcel of

198 property into one legal description encompassing all such parcels of property; or

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

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

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

204 (B) the adjustment will not violate any applicable land use ordinance.

205 (d) The joining of a subdivided parcel of property to another parcel of property that has
206 not been subdivided does not constitute a subdivision under this Subsection [~~(36)~~] (38) as to
207 the unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's
208 subdivision ordinance.

209 (39) "Transferrable development right" means the entitlement to develop land within a
210 sending zone that would vest according to the municipality's existing land use ordinances on
211 the date that a completed land use application is filed seeking the approval of development
212 activity on the land.

213 [~~(37)~~] (40) "Unincorporated" means the area outside of the incorporated area of a city
214 or town.

215 [~~(38)~~] (41) "Zoning map" means a map, adopted as part of a land use ordinance, that
216 depicts land use zones, overlays, or districts.

217 Section 2. Section **10-9a-509.5** is enacted to read:

218 **10-9a-509.5. Transferrable development rights.**

219 A municipality may adopt an ordinance:

220 (1) designating sending zones and receiving zones within the municipality; and

221 (2) allowing the transfer of transferrable development rights from an owner of land
222 within a sending zone to an owner of land within a receiving zone.

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

224 **17-27a-103. Definitions.**

225 As used in this chapter:

226 (1) "Affected entity" means a county, municipality, independent special district under
227 Title 17A, Chapter 2, Independent Special Districts, local district under Title 17B, Chapter 2,
228 Local Districts, school district, interlocal cooperation entity established under Title 11, Chapter
229 13, Interlocal Cooperation Act, specified property owner, property owners association, public
230 utility, or the Utah Department of Transportation, if:

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

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

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

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

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

244 (4) "Charter school" includes:

245 (a) an operating charter school;

246 (b) a charter school applicant that has its application approved by a chartering entity in
247 accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; and

248 (c) an entity who is working on behalf of a charter school or approved charter applicant
249 to develop or construct a charter school building.

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

252 (6) "Conditional use" means a land use that, because of its unique characteristics or
253 potential impact on the county, surrounding neighbors, or adjacent land uses, may not be

254 compatible in some areas or may be compatible only if certain conditions are required that
255 mitigate or eliminate the detrimental impacts.

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

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

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

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

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

266 (b) "Disability" does not include current illegal use of, or addiction to, any federally
267 controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.
268 802.

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

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

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

275 (13) "Identical plans" means building plans submitted to a county that are substantially
276 identical building plans that were previously submitted to and reviewed and approved by the
277 county and describe a building that is:

278 (a) located on land zoned the same as the land on which the building described in the
279 previously approved plans is located; and

280 (b) subject to the same geological and meteorological conditions and the same law as
281 the building described in the previously approved plans.

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

285 (15) "Intrastate pipeline company" means a person or entity engaged in natural gas
286 transportation that is not subject to the jurisdiction of the Federal Energy Regulatory
287 Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

288 (16) "Land use application" means an application required by a county's land use
289 ordinance.

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

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

294 (19) "Land use permit" means a permit issued by a land use authority.

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

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

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

302 (23) "Nominal fee" means a fee that reasonably reimburses a county only for time spent
303 and expenses incurred in:

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

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

307 (24) "Noncomplying structure" means a structure that:

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

309 (b) because of one or more subsequent land use ordinance changes, does not conform

310 to the setback, height restrictions, or other regulations, excluding those regulations that govern
311 the use of land.

312 (25) "Nonconforming use" means a use of land that:

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

314 (b) has been maintained continuously since the time the land use ordinance regulation
315 governing the land changed; and

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

318 (26) "Official map" means a map drawn by county authorities and recorded in the
319 county recorder's office that:

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

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

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

326 (27) "Person" means an individual, corporation, partnership, organization, association,
327 trust, governmental agency, or any other legal entity.

328 (28) "Plan for moderate income housing" means a written document adopted by a
329 county legislative body that includes:

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

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

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

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

337 (e) a description of the county's program to encourage an adequate supply of moderate

338 income housing.

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

341 (30) "Public hearing" means a hearing at which members of the public are provided a
342 reasonable opportunity to comment on the subject of the hearing.

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

345 (32) "Receiving zone" means an unincorporated area of a county that the county's land
346 use authority designates as an area in which an owner of land may receive transferrable
347 development rights.

348 [~~32~~] (33) "Record of survey map" means a map of a survey of land prepared in
349 accordance with Section 17-23-17.

350 [~~33~~] (34) "Residential facility for elderly persons" means a single-family or
351 multiple-family dwelling unit that meets the requirements of Section 17-27a-515, but does not
352 include a health care facility as defined by Section 26-21-2.

353 [~~34~~] (35) "Residential facility for persons with a disability" means a residence:

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

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

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

359 [~~35~~] (36) "Sanitary sewer authority" means the department, agency, or public entity
360 with responsibility to review and approve the feasibility of sanitary sewer services or onsite
361 wastewater systems.

362 (37) "Sending zone" means an unincorporated area of a county that the county's land
363 use authority designates as an area from which an owner of land may transfer transferrable
364 development rights to an owner of land in a receiving zone.

365 [~~36~~] (38) "Special district" means any entity established under the authority of Title

366 17A, Special Districts, and any other governmental or quasi-governmental entity that is not a
367 county, municipality, school district, or unit of the state.

368 ~~[(37)]~~ (39) "Specified public utility" means an electrical corporation, gas corporation,
369 or telephone corporation, as those terms are defined in Section 54-2-1.

370 ~~[(38)]~~ (40) "Street" means a public right-of-way, including a highway, avenue,
371 boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement,
372 or other way.

373 ~~[(39)]~~ (41) (a) "Subdivision" means any land that is divided, resubdivided or proposed
374 to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the
375 purpose, whether immediate or future, for offer, sale, lease, or development either on the
376 installment plan or upon any and all other plans, terms, and conditions.

377 (b) "Subdivision" includes:

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

380 (ii) except as provided in Subsection ~~[(39)]~~ (41)(c), divisions of land for residential and
381 nonresidential uses, including land used or to be used for commercial, agricultural, and
382 industrial purposes.

383 (c) "Subdivision" does not include:

384 (i) a bona fide division or partition of agricultural land for agricultural purposes;

385 (ii) a recorded agreement between owners of adjoining properties adjusting their
386 mutual boundary if:

387 (A) no new lot is created; and

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

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

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

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

394 (iv) a bona fide division or partition of land in a county other than a first class county
395 for the purpose of siting, on one or more of the resulting separate parcels:

396 (A) an unmanned facility appurtenant to a pipeline owned or operated by a gas
397 corporation, interstate pipeline company, or intrastate pipeline company; or

398 (B) an unmanned telecommunications, microwave, fiber optic, electrical, or other
399 utility service regeneration, transformation, retransmission, or amplification facility; or

400 (v) a recorded agreement between owners of adjoining subdivided properties adjusting
401 their mutual boundary if:

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

403 (B) the adjustment will not violate any applicable land use ordinance.

404 (d) The joining of a subdivided parcel of property to another parcel of property that has
405 not been subdivided does not constitute a subdivision under this Subsection [~~(39)~~ (41) as to
406 the unsubdivided parcel of property or subject the unsubdivided parcel to the county's
407 subdivision ordinance.

408 [~~(40)~~ (42) "Township" means a contiguous, geographically defined portion of the
409 unincorporated area of a county, established under this part or reconstituted or reinstated under
410 Section 17-27a-306, with planning and zoning functions as exercised through the township
411 planning commission, as provided in this chapter, but with no legal or political identity
412 separate from the county and no taxing authority, except that "township" means a former
413 township under Chapter 308, Laws of Utah 1996 where the context so indicates.

414 (43) "Transferrable development right" means the entitlement to develop land within a
415 sending zone that would vest according to the county's existing land use ordinances on the date
416 that a completed land use application is filed seeking the approval of development activity on
417 the land.

418 [~~(41)~~ (44) "Unincorporated" means the area outside of the incorporated area of a
419 municipality.

420 [~~(42)~~ (45) "Zoning map" means a map, adopted as part of a land use ordinance, that
421 depicts land use zones, overlays, or districts.

422 Section 4. Section **17-27a-509.5** is enacted to read:

423 **17-27a-509.5. Transferrable development rights.**

424 A county may adopt an ordinance:

425 (1) designating sending zones and receiving zones within the unincorporated area of
426 the county; and

427 (2) allowing the transfer of transferrable development rights from an owner of land
428 within a sending zone to an owner of land within a receiving zone.