

1 **TRANSFERABLE DEVELOPMENT RIGHTS AMENDMENTS**

2 2012 GENERAL SESSION

3 STATE OF UTAH

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

5 House Sponsor: Kraig Powell

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 rights ~~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.
404 802.

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;

410 (ii) a structure or facility:

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:

416 (i) land or a structure, including land or a structure for inventory storage, equipment
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;

442 (d) a landslide;

443 (e) a debris flow;

444 (f) unstable soil;

445 (g) a rock fall; or

446 (h) any other geologic condition that presents a risk:

447 (i) to life;

448 (ii) of substantial loss of real property; or

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450 (18) "Internal lot restriction" means a platted note, platted demarcation, or platted
451 designation that:

452 (a) runs with the land; and

453 (b) (i) creates a restriction that is enclosed within the perimeter of a lot described on
454 the plat; or

455 (ii) designates a development condition that is enclosed within the perimeter of a lot
456 described on the plat.

457 (19) "Hookup fee" means a fee for the installation and inspection of any pipe, line,
458 meter, or appurtenance to connect to a county water, sewer, storm water, power, or other utility
459 system.

460 (20) "Identical plans" means building plans submitted to a county that:

461 (a) are clearly marked as "identical plans";

462 (b) are substantially identical building plans that were previously submitted to and
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;

477 (b) that is required as a condition precedent to:

478 (i) recording a subdivision plat; or

479 (ii) beginning development activity; and

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

482 (i) consent to the recording of a subdivision plat; or

483 (ii) issue a permit for development activity.

484 (23) "Improvement assurance warranty" means a promise that the materials and
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
665a **H→ [-density] rights ←H**
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).

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

Office of Legislative Research and General Counsel