



**ORDINANCE NO. 2010- 30**

**AN ORDINANCE AMENDING THE UTAH COUNTY LAND USE ORDINANCE BY ADDING SECTION 5-16, TRANSFER OF DEVELOPMENT RIGHTS SENDING OVERLAY ZONE AND TRANSFER OF DEVELOPMENT RIGHTS RECEIVING OVERLAY ZONE, TO THE UTAH COUNTY LAND USE ORDINANCE, AND AMENDING THE OFFICIAL UTAH COUNTY ZONE MAP BY ADDING A TRANSFER OF DEVELOPMENT RIGHTS SENDING OVERLAY ZONE AND ADDING A TRANSFER OF DEVELOPMENT RIGHTS RECEIVING OVERLAY ZONE**

**WHEREAS**, the Utah County Commission directed the Utah County Planning Commission to initiate a review of the Utah County Land Use Ordinance (UCLUO) to consider adding transfer of development rights provisions to the UCLUO and to the Official Utah County Zone Map to protect agriculture and to more appropriately address the goals and policies of Utah County, including those contained in the Utah County General Plan; and

**WHEREAS**, the Planning Commission addressed the proposed amendments to the UCLUO and Official Utah County Zone Map, during the regularly scheduled agenda meeting of the Planning Commission, and scheduled and held a public hearing regarding the proposed amendments; and

**WHEREAS**, the Planning Commission recommended that the UCLUO and Official Utah County Zone Map be amended, in accordance with the amendments as set forth herein; and

**WHEREAS**, the Board of County Commissioners addressed the proposed amendments to the UCLUO and Official Utah County Zone Map, during the regularly scheduled agenda meeting of the Board of County Commissioners, and scheduled and held a public hearing regarding the proposed amendments; and

**WHEREAS**, the Board of County Commissioners has received and carefully reviewed the recommendation from the Utah County Planning Commission regarding the proposed amendment to the UCLUO and Official Utah County Zone Map, including information found in the file and any public comments contained therein; and

**WHEREAS**, the Board of County Commissioners finds that the proposed amendment to the UCLUO and Official Utah County Zone Map will further the goals and policies of Utah County, including those contained in the General Plan; and

**WHEREAS**, the Board of County Commissioners finds that the proposed amendment to the UCLUO and Official Utah County Zone Map is in the best interest of the health, safety, and general welfare of the citizens of Utah County.

**THE COUNTY LEGISLATIVE BODY OF UTAH COUNTY ORDAINS AS FOLLOWS:**

**Part I:**

**Section 5-16 of the Utah County Land Use Ordinance is hereby enacted, to read as follows:**

**SECTION 5-16 TRANSFER OF DEVELOPMENT RIGHTS SENDING OVERLAY ZONE AND TRANSFER OF DEVELOPMENT RIGHTS RECEIVING OVERLAY ZONE**

Sub-Sections:

- 5-16-101. Purpose.
- 5-16-102. Definitions.
- 5-16-103. Sending Site Eligibility.
- 5-16-104. Development Credit Determination.
- 5-16-105. Sending Site Procedure.
- 5-16-106. Receiving Site Eligibility.
- 5-16-107. Receiving Site Procedures.
- 5-16-108. Scope and Permitted Uses.

**5-16-101. PURPOSE.**

The goals of the Transfer of Development Rights Sending Overlay Zone and the Transfer of Development Rights Receiving Overlay Zone are:

- (1) To encourage the preservation of agriculture; and open space by allowing the transfer of density from such property.
- (2) To preserve agricultural lands for continued agriculture production and for future open space, trails and park systems.
- (3) To provide compensation to the owners of property from which development rights are transferred.
- (4) To preserve recharge areas for underground water aquifers

**5-16-102. DEFINITIONS.**

- (1) "Base Zoning" means existing zoning without the addition of the overlay zones.
- (2) "Conservation Easement" means an easement, covenant, restriction, or condition in a deed, will, or other instrument signed by or on behalf of the record owner of the underlying real property for the purpose of preserving and maintaining land or water areas predominantly in a natural state, scenic, or open condition, or for recreational, agricultural, cultural, wildlife habitat, or other use or condition consistent with the protection of open land. Conservation easement(s) granted under this Ordinance shall be subject to The Land Conservation Easement Act, Sections 57-18-1 (et seq.), Utah Code Annotated, 1953 as amended.
- (3) "Development Approval" means final plat approval by the Board of County Commissioners of Utah County for large scale developments.
- (4) "Development Credit" means a credit measured in residential units that denotes the amount of density on sending site property which may be transferred. Development credits represent all the

development potential on the site.

(5) "Development Credit Certificate" means the certificate issued by the Utah County Community Development Department that represents the total number of development credits recognized for and derived from the sending site that may be transferred.

(6) "Development Right" means the right held by a fee simple property owner to build on a legally established parcel of real property. This right is limited by applicable zoning ordinances.

(7) "Receiving Site (TDR-R)" means a parcel of real property located in the Transfer of Development Rights Receiving Overlay Zone which also meets all of the criteria of this land use ordinance for a receiving site. A receiving site is the site to which development credits may be transferred.

(8) "Sending Site (TDR-S)" means a parcel of real property located in the Transfer of Development Rights Sending Overlay Zone which also meets all of the criteria of this land use ordinance for a sending site. A sending site is the site from which development credits may be transferred.

(9) "Transfer" means any action which results in the sale of development credits.

#### **5-16-103. SENDING SITE ELIGIBILITY.**

All properties located within the Transfer of Development Rights Sending Overlay Zone which meet all of the criteria of this land use ordinance for a sending site are eligible to transfer development credits. The sending site shall not be located within an existing large scale development, shall meet the definition of a "zoning lot", shall be in private ownership, shall have retained all water, water rights, and water shares historically used to irrigate the property, and shall meet the area requirements as described in this land use ordinance.

#### **5-16-104. DEVELOPMENT CREDIT DETERMINATION.**

(1) The total number of development credits available to an eligible sending site parcel shall be determined as follows:

- a. Parcel with CE-1 base zoning in private ownership that is at least fifty (50) acres in area in one parcel or by parcels in the same ownership that are contiguous and abutting and comprise at least fifty (50) acres:
  - i. Development credits shall be one per each fifty (50) acres of property, provided that the parcel is not currently encumbered with a dwelling or other permanent buildings (not including structures used only for production agriculture).
- b. Parcel with RA-5 base zoning in private ownership that is at least five (5) acres in area in one parcel or by parcels in the same ownership that are contiguous and abutting and comprise at least five (5) acres:
  - i. Development credits shall be one per each five (5) acres of property, provided that the parcel is not currently encumbered with a dwelling or other permanent buildings (not including structures used only for production agriculture).

(2) The calculation of development credits will be made by the Community Development Department of Utah County, and will be evidenced by a Development Credit Certificate. If the calculation results in a fraction it shall be rounded down to the nearest whole number. Development Credit Certificates shall only be issued for whole development credits. If the sending site is divided by a zoning boundary, the development credits shall be calculated

separately for each such zoning classification. All Development Credit Certificates issued by Utah County shall be valid for a period of two (2) years from the date of issuance. Thereafter, the certificates shall be null and void. After the expiration of a Development Credit Certificate, the Sending Site owner may reapply for a certificate following the application process contained herein, including the payment of a new application fee.

**5-16-105. SENDING SITE PROCEDURE.**

(1) TDR-S property owners may choose to develop their property under base zoning, or they may choose to sell, or transfer their development rights.

(2) TDR-S fee property owners must request a Development Credit Certificate from the Utah County Community Development Director to become eligible for the transfer program. The Development Credit Certificate will state the number of development credits available for sale or transfer. The property owner shall complete and submit to the Community Development Department a Development Credit Certificate application signed by all property owners which includes the following information:

- a. A title report for each sending parcel;
- b. A record of survey map prepared by a Utah licensed engineer or surveyor showing property boundaries, area, legal description, zoning boundaries, all existing structures, easements, rights of way, trails, waterways, lakes, endangered species of plant or animal locations, riparian habitat, the location of any land that is contiguous to or abuts the shoreline of Utah Lake, wetlands, submerged lands, and any areas already in a conservation easement;
- c. A description of the current use of the properties;
- d. A statement of intent indicating whether the property ownership, after TDR certification, will be retained in private ownership or dedicated to a public or private nonprofit agency;
- e. A description of and proof of water rights historically utilized on the properties;
- f. A completed density calculation worksheet for estimating the number of available base residential development rights to be transferred;
- g. The name of the proposed holder of the conservation easement and a copy of the proposed conservation easement; and
- h. The application fee.

(3) TDR-S fee property owners must certify to the County that they are in compliance with all statutes, rules, and regulations pertaining to the wetlands on their property. Any noncompliance with applicable regulations shall remain the responsibility of the property owner and shall be resolved prior to approval of the property as a sending site.

(4) Upon receipt of a Development Credit Certificate a TDR-S property owner is eligible to negotiate the sale, or transfer of the development credits. The owner, and any subsequent owner, shall also have the right to voluntarily terminate the development credits, by delivery of the development credit certificates to Utah County and recording of the conservation easement, after which the development credits shall be terminated and thereafter can not be used for any purpose.

(5) A development credit may be sold, conveyed, or otherwise transferred for the purpose of increasing density on a receiving site on the records of the Utah County Community Development Department by the owner(s). The sale, conveyance, or transfer shall occur upon surrender of the development certificate which authorizes the Utah County Community Development Director, or designee, to transfer the Development Credit Certificate to the stated

transferee by reissuing the Development Credit Certificate in the transferee's name, and recording the re-issue certificate in the real property records of Utah County.

(6) Prior to the approval of a development on a receiving site which utilizes the development credits from the sending site, or at the time that the owner voluntarily terminates the development credits, a conservation easement shall be recorded covering the entire sending site, or if only a portion of the available development credits are being utilized or terminated then the easement shall cover a pro-rata portion of the sending site, as determined by the Utah County Community Development Department Director, or designee, selecting the portion deemed to be the most beneficial in accomplishing the purposes of this chapter. Use of development credits should be aggregated, to reduce the need to record conservation easements for small properties.

(7) With regard to the sending site, after the conservation easement is recorded, no uses other than those enumerated in the conservation easement are allowed.

(8) The final transfer of development credits will be completed upon development approval on a receiving site, or upon voluntary termination of the development credits.

(9) Prior to the use of any development credit, the TDR-S property owners shall provide to the Utah County Community Development Department a current title report showing that the sending property and the related development credits are free and clear of all liens and encumbrances, or that such liens and encumbrances are subordinate to the conservation easement and to the development credits.

(10) TDR-S property owners shall be responsible for notification of the county tax assessor regarding possible changes in property value.

#### **5-16-106. RECEIVING SITE ELIGIBILITY.**

All properties located within the Transfer of Development Rights Receiving Overlay Zone which meet all of the criteria of this land use ordinance for a receiving site are eligible to receive development credits. The receiving site shall not be located within an existing large scale development, shall not be located within any property subject to vested development rights, shall meet the definition of a "zoning lot", and shall be in private ownership. Any person or legal entity eligible to hold title to real property shall have the right to purchase development credits.

#### **5-16-107 RECEIVING SITE PROCEDURES.**

(1) If any development within the Transfer of Development Rights Receiving Overlay Zone requests a density greater than the density allowed in the underlying zone, the increased density shall be realized through development credits from a sending site. Any development requesting the higher densities shall bring evidence of development credits from a sending site in the form of ownership, or the legal option to purchase, at the time of development application. The applicant must provide proof of ownership of development credits from the sending site prior to final approval of the development. Development of a receiving site shall be subject to all of the provisions of the base zoning and all of the provisions of this land use ordinance, except that additional density may be approved through the transfer of development rights to the receiving site. A receiving site may accept development rights from one or more sending sites, up to the maximum density permitted.

(2) The number of development credits required shall be equal to the difference between the proposed density and the density allowed by the base zoning, up to the maximum percentage increase in density.

(3) Any large scale development approval process, using development credits, shall follow the

standard procedures as prescribed in this land use ordinance.

(4) The maximum percentage increase in density from the density allowed in the base zoning, through the use of development credits, shall be 100%.

(5) No development approval will be final until a sending site permanent conservation easement is recorded in the records of the Utah County Recorder for the number of development credits used to achieve the higher density for the project. The conservation easement shall be in a form acceptable to Utah County, and shall prohibit any future development of the sending site property, even if the zoning of the sending site is changed to allow greater density or more intense use. The conservation easement shall also require that all water, water rights, and water shares historically used to irrigate the property be permanently retained and used on the sending site. The easement shall be held by a non-governmental non-profit entity acceptable to Utah County. The easement shall require that the easement area be maintained as it exists when the easement is created, including natural areas, wildlife preserves, trails, or other identified environmental or open land resources, or that it be used for its present agricultural production, for recreation use, for wild land conservation, for open space, or for other agreed upon non-residential and non-urban land use, as approved by the Board of Commissioners of Utah County and the holder of the conservation easement, as described in the easement. The easement shall include a reference to the extinguishment of the development rights transferred from the sending site. If additional rights are transferred after the recordation of a conservation easement, the easement shall be amended to reflect the extinguishment of those additional rights and shall be recorded thereafter. All parties who have an interest in the property must sign the conservation easement. The conservation easement must be approved by Utah County, as reflected by an approved as to form signature of the Board of County Commissioners. If the holder of a conservation easement proposes to transfer the easement to another entity, the recipient of any transferred interest shall meet the requirements of this section and shall be approved, in advance, in writing, by Utah County. Any instrument purporting to convey a conservation easement pursuant to this section, without the written approval by Utah County on the instrument, is void.

#### **5-16-108 SCOPE AND PERMITTED USES.**

(1) Unless specifically exempted by this the provisions of this Section 5-16, uses within the Transfer of Development Rights Sending Overlay Zone and uses within the Transfer of Development Rights Receiving Overlay Zone shall also be subject to the standards and regulations contained in chapter 3 of this land use ordinance, the standards and regulations contained in this land use ordinance, and the standards and regulations of the base zoning.

(2) All structures and uses of land which are listed as permitted uses and permitted conditional uses in the base zoning districts shall also be permitted uses or approved conditional uses in the territory covered by the Transfer of Development Rights Sending Overlay Zone and the Transfer of Development Rights Receiving Overlay Zone if they meet the standards of both the Transfer of Development Rights Sending Overlay Zone and the Transfer of Development Rights Receiving Overlay Zone and the requirements of the base zoning.

#### **5-16-109 AGRICULTURE PROTECTION AREA EXCEPTION.**

Any property located in an agriculture protection area as of the effective date of the ordinance enacting this Section 5-16, which has not provided to the Community Development Office, in a format acceptable to the Community Development Director, a written consent signed by all property owners located within the agriculture protection area, agreeing to be bound by and

consenting to all of the provisions of this Section 5-16 and the creation of and zoning of properties to the Transfer of Development Rights Sending Overlay Zone and the Transfer of Development Rights Receiving Overlay Zone, shall not be included in the Transfer of Development Rights Sending Overlay Zone or the Transfer of Development Rights Receiving Overlay Zone, shall not be subject to this Section 5-16, and shall not qualify as a sending site nor as a receiving site until such property owner provides to the Community Development Office, in a format acceptable to the Community Development Director, a written consent signed by all property owners located within the agriculture protection area, agreeing to be bound by and consenting to all of the provisions of this Section 5-16 and the creation of and zoning of properties to the Transfer of Development Rights Sending Overlay Zone and the Transfer of Development Rights Receiving Overlay Zone, or such property owner withdraws from the agriculture protection area, and the County thereafter enacts an ordinance including such property in the Transfer of Development Rights Sending Overlay Zone or the Transfer of Development Rights Receiving Overlay Zone.

**Part II:**

The Official Utah County Zone Map, a part of the "Utah County Land Use Ordinance", is hereby amended to show and specify that the land described in Exhibit "A" as being located in the Transfer of Development Rights Receiving Overlay Zone is located in the Transfer of Development Rights Receiving Overlay Zone and the land described in Exhibit "A" as being located in the Transfer of Development Rights Sending Overlay Zone is located in the Transfer of Development Rights Sending Overlay Zone, and shall be subject to the regulations applicable to said zones. The properties located in the respective zones are further depicted on Exhibit "B", Map of the Transfer of Development Rights Sending Overlay Zone and Transfer of Development Rights Receiving Zone. Exhibits "A" and "B" are attached hereto and made a part hereof by this reference.

**Part III:**

The Utah County Land Use Ordinance, as amended herein, is hereby adopted in book form and a copy of said Utah County Land Use Ordinance is hereby ordered to be filed in the office of the Utah County Clerk/Auditor.

**Part IV:**

If any of the sections, sentences, clause or provisions of this ordinance shall for any reason be adjudged inapplicable or invalid by a court of competent jurisdiction, such shall not affect or invalidate the remaining portion contained herein.

**Part V:**

This ordinance shall become effective fifteen (15) days after it is passed, and upon at least one (1) publication in a newspaper published in and having general circulation in Utah County.

PASSED and ordered published this 9th day of November, 2010.

**UTAH COUNTY COMMISSION**

**VOTE**

  
\_\_\_\_\_  
STEVE WHITE, CHAIR

aye

  
\_\_\_\_\_  
GARY J. ANDERSON, COMMISSIONER

aye

  
\_\_\_\_\_  
LARRY A. ELLERTSON, COMMISSIONER


aye



**ATTEST:**  
BRYAN E. THOMPSON  
County Clerk/Auditor

**APPROVED AS TO FORM:**  
JEFFREY R. BUHMAN  
County Attorney

By:  \_\_\_\_\_, Deputy

By:  \_\_\_\_\_, Deputy

Date of Publication: Once only, as soon as possible

**EXHIBIT "A"**

**DESCRIPTION OF THE TRANSFER OF DEVELOPMENT RIGHTS  
RECEIVING OVERLAY ZONE AND  
SENDING OVERLAY ZONE**

**TRANSFER OF DEVELOPMENT RIGHTS RECEIVING OVERLAY ZONE:**

Zoning Map would show the following, excluding all properties in federal ownership and all properties located within agriculture protection areas which have not provided to the Community Development Office, in a format acceptable to the Community Development Director, a written consent signed by all property owners located within the agriculture protection area, agreeing to be bound by and consenting to all of the provisions of this Section 5-16 and the creation of and zoning of properties to the Transfer of Development Rights Sending Overlay Zone and the Transfer of Development Rights Receiving Overlay Zone:

- a. CE-2 Zone Districts
- b. RR-5 Zone Districts
- c. TR-5 Zone Districts
- d. M&G-1 Zone Districts

**TRANSFER OF DEVELOPMENT RIGHTS SENDING OVERLAY ZONE:**

Zoning Map would show the following, excluding all properties in federal ownership and all properties located within agriculture protection areas which have not provided to the Community Development Office, in a format acceptable to the Community Development Director, a written consent signed by all property owners located within the agriculture protection area, agreeing to be bound by and consenting to all of the provisions of this Section 5-16 and the creation of and zoning of properties to the Transfer of Development Rights Sending Overlay Zone and the Transfer of Development Rights Receiving Overlay Zone,:

- a. Land zoned CE-1
- b. Land zoned RA-5



T3S

T11S  
R3W

T10S

T9S

T8S

T7S

T6S

T5S

T4S

R2W

R1W

R1E

R2E

R3E

R4E

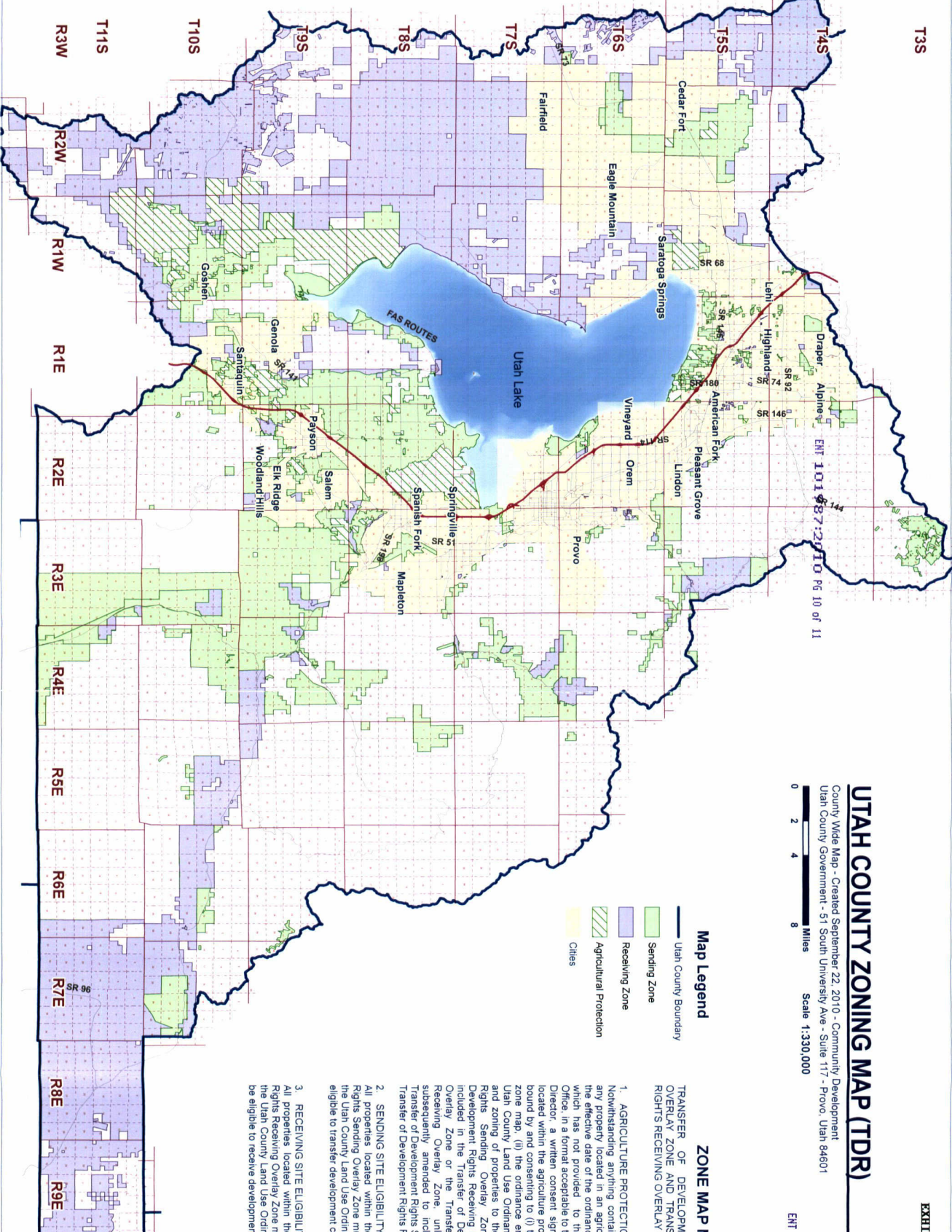
R5E

R6E

R7E

R8E

R9E



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County Wide Map - Created September 22, 2010 - Community Development  
Utah County Government - 51 South University Ave - Suite 117 - Provo, Utah 84601  
Scale 1:330,000

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# UTAH COUNTY ZONING MAP (TDR)



EXHIBIT "g"

## Map Legend

- Utah County Boundary
- Receiving Zone
- Sending Zone
- Agricultural Protection
- Cities

## ZONE MAP NOTES

1. **AGRICULTURE PROTECTION AREA EXCEPTION.**  
Notwithstanding anything contained herein to the contrary, any property located in an agriculture protection area as of the effective date of the ordinance amending this zone map, which has not provided to the Community Development Office in a format acceptable to the Community Development Director, a written consent signed by all property owners located within the agriculture protection area, agreeing to be bound by and consenting to (i) the ordinance amending this zone map, (ii) the ordinance enacting Section 5-18 of the Utah County Land Use Ordinance, and (iii) the creation of and zoning of properties to the Transfer of Development Rights Sending Overlay Zone and the Transfer of Development Rights Receiving Overlay Zone, shall not be included in the Transfer of Development Rights Sending Overlay Zone or the Transfer of Development Rights Receiving Overlay Zone, unless this zoning map is subsequently amended to include such property in the Transfer of Development Rights Sending Overlay Zone or the Transfer of Development Rights Receiving Overlay Zone.
2. **SENDING SITE ELIGIBILITY.**  
All properties located within the Transfer of Development Rights Sending Overlay Zone must meet all of the criteria of the Utah County Land Use Ordinance for a sending site to be eligible to transfer development credits.
3. **RECEIVING SITE ELIGIBILITY.**  
All properties located within the Transfer of Development Rights Receiving Overlay Zone must meet all of the criteria of the Utah County Land Use Ordinance for a receiving site to be eligible to receive development credits.