

## **Transfer of Development Rights Cases Studies**

**Prepared for Nibley City**

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### **Case Study #1 Mapleton, Utah**

**Summary:** The Mapleton Transfer of Development Rights (TDR) case is probably the best example of a completed TDR program in the State of Utah. Approximately 750 acres of land have been preserved through the program. The conserved land is on the east bench of the City. The conserved land is intended to be used for open space, trails, viewsheds, and habitats. The program is wrapping up and no longer accepting additional land for conservation purposes. Not all TDR certificates have been used, and it is expected that in the future, limited additional developments will have bonus density from TDR. The Mapleton program offers higher TDR credit densities for properties that are given (fee title) to the City. Lesser density is awarded for areas that remain in private property ownership but have conservation easements recorded on them.

Part of the reason the program stopped was that the public was only seeing the added density part. They did not see the conserved areas' full value and trails in conservation areas.

#### **Lessons Learned:**

- TDRs work.
- TDRs can conserve large areas of land.
- The program potentially could have continued if there were ongoing (periodic) public educational efforts and training for elected officials/Planning Commission.
- The receiving density is always challenging for the public/receiving area neighbors to support.
- TDR certificates are a good way to manage "bonus density" or offer additional residential units for a new public resource (conserved open space).
- Conservation easements are an excellent way to manage the conserved lots (making the conservation binding).

#### **Background**

- The TDR ordinance starting the program was adopted in 1998.
- The purpose was to preserve open space/sensitive areas throughout the City with a primary focus on protecting the Mapleton bench from development.
- The program stopped establishing additional TDRs in 2010.
- The TDR zone is an overlay zone called the Transfer of Development Rights Overlay Zone

#### **Applicability**

- The program and ordinance are specific to Mapleton City only.
- Both sending and receiving areas must be within the City.

#### **Process**

- Property designation is by General Plan or per TDR ordinance.
- Receiving areas are designated by zone, listed in the ordinance.
- Sending areas are designated as TDR-S (TDR-S) or OS-P (Open Space Parks).
- Sending areas have both a TDR certificate and conservation easement.
- Sending areas require a rezone to be conserved.
- A certificate is issued after fees are paid, and the easement is recorded on the property documents (title/plat).

- The Planning Commission makes a recommendation on the TDR.
- City Council makes land use decisions for TDR.
- TDR program should follow the General Plan.
- Structures and development disqualify land from being a sending area.

### **Incentives for Conservation**

- Density credits for conservation areas are given as follows:
  - Land within the Critical Environment zone is as follows:
    - For the land which records a conservation easement in the TDR program, the density credits are three times the base density.
    - For the land which is given to the City as a transfer of title, the TDR program density credits are five times the base density.
  - Land outside the Critical Environment (zone) one density credit is based on what the current zoning would allow.
- The Planned Development (PD) Zone is a potential receiver of the TDR.
- The following zones may become TDR receiving areas
  - A-2 – Agricultural Residential
  - RA-1 – Residential Agricultural
  - PRC – Planned Residential Community
  - PRD – Planned Residential Development
  - PD – Planned Development
  - SDP – Specific Development Plan
  - R-2-B – Residential Zone
- The maximum density for the receiving areas is no more than double the underlying zone.
- For receiving areas a certificate of received TDR is awarded after the fees are paid.

Weblinks to information:

City presentation:

<https://www.mapleton.org/wp-content/uploads/2019/11/Transferable-Development-Right-TDR-Program-Summary.pdf>

City ordinance:

[https://codelibrary.amlegal.com/codes/mapletonut/latest/mapleton\\_ut/0-0-0-7456](https://codelibrary.amlegal.com/codes/mapletonut/latest/mapleton_ut/0-0-0-7456)

## Case Study #2 Spanish Fork, Utah

**Summary:** The Spanish Fork City (City) Transfer of Development Rights (TDR) program is still developing. The purpose of the TDR program is to preserve a large agricultural area called the "River Bottoms" Spanish Fork City has been working to create the program for more than three years ago.

The City has gone through a very rigorous process which has included:

- research
- public outreach (videos, meetings, presentations, and online documents)
- stakeholder input (including landowners)
- draft ordinance
- public hearing

In November 2021, the City held a public hearing for the proposed TDR ordinance. Most of the public comments were against the program. The City decided to table the item and consider the next steps temporarily. During an April 2022 conversation with the City Planner (Dave Anderson), he mentioned they were preparing to reboot the program.

### Lessons Learned:

- It is easy for the public and landowners to misconstrue a TDR program. **Myths** that were presented in the public hearing (by the public) include:
  - The program is mandatory.
  - It is a taking (e.g. taking land without purchasing).
  - Landowners would not be compensated.
  - The program increases development (which would not have normally occurred in the area)
- The public/landowner educational process is critical.
  - Spanish Fork has done a lot of public outreach meetings, social media, and videos.
- Although they don't have to, sometimes functioning TDR programs are difficult to get started and may take years.
- A TDR program is worth doing, especially if you have a critical area that is desired to be saved.
- Spanish Fork also requires a severance rights document as a mechanism to bring permanency to the removal of development rights for sending properties. This may be a strategy to investigate further.
- The Spanish Fork ordinance doesn't address the potential need to adjust development regulations (lot sizes, setbacks, etc) in receiving areas.

### Background

- The purpose is to conserve the rural "River Bottoms" area to the south of the City.
- The City started the background work in 2018/19 and was ready with an ordinance in 2021 (2020 Covid may have interrupted it).
- Concerns from Public Hearing held in November 2021 include:
  - Farmers want full value for the land.
  - Farmers want autonomy and 'the City not to tell them what to do'.
  - Farmers want their children to receive the land or have a say.
  - Adjacent land is being developed, 'so why can't my land be developed'.
  - Concerns with density in receiving areas.
  - Concerns about the permanency of TDRs for landowners.
- The City intends to learn from the public hearing and move the program forward.

**Applicability**

- The program and ordinance are applied to the River Bottoms area which has a small area within the City, but most of it is located within Unincorporated Utah County. Unincorporated land would have to be annexed to participate in the program.
- The receiving areas must be within the City and may go to several locations.

**Process (based on draft ordinance November 2021)**

- The sending areas will be designated on the Land Use Map of the General Plan.
- A Deed of Severance and a Conservation Easement shall be recorded on the sending property from which development rights were severed, and the property can only be used as outlined in this section
- All areas within the Floodway or with 30% slopes or greater will not be eligible for TDR.
- The Community Development Director shall establish and maintain a system for monitoring the determination, severance, ownership, assignment, and transfer of TDRs.
- To determine if the land is eligible for TDR, the landowner files a Determination of Eligibility Application.
- "A severance of development rights occurs after the owner of the sending property receives a signed TDR Certificate with the number of allotted TDRs from the City and records a Deed of Severance. The Deed of Severance must transfer development rights to one or more parties, which may include the grantor, and may, but is not required to, affix development rights to one or more receiving properties."
- The Deed of Severance and Conservation Easement is recorded at the County Recorder.

**Incentives for Conservation**

- Density credits for sending areas are as follows:
  - 1 unit per acre for areas in the 100-year floodplain.
  - 2 units per acre for areas outside of the 100-year floodplain.
  - Lands with slopes greater than 30% or within the floodway are not eligible for sending areas.
- Density in the receiving areas as per this table. Density increase is significant in some areas.

Base Zoning	Base Density	Receiving Density	Density Multiplier	Density Increase	Maximum Density
R-1-12	2.61	2	1	2	4.61
R-1-9	3.48	2	1	2	5.48
R-1-8	3.92	2	1	2	5.92
R-1-6	5.23	2	1	2	7.23
R-3	12	2	3	6	18
R-4	20	4	4	16	36
R-5	18	4	2	8	26

- Density multipliers are based on proximity to an existing or future freeway interchange, lighted highway intersection, major transit facility, downtown main street, existing or future transit station, existing or future commercial center, existing or future employment center, an existing or future mixed-use center.
- A transfer of development rights occurs when the owner of the development rights records a Deed of Transfer against the receiving property in the County's land records.
- Upon recordation of the Deed of Transfer, the transferable development rights are conveyed to one or more parties and/or are affixed to one or more receiving properties stated in the Deed of Transfer.

**Weblinks to information:**

City presentation:

[https://www.spanishfork.org/document\\_center/Economic%20Development/Planning/RB\\_TDR\\_Handout.pdf](https://www.spanishfork.org/document_center/Economic%20Development/Planning/RB_TDR_Handout.pdf)

[https://www.spanishfork.org/document\\_center/Economic%20Development/Planning/RB\\_TDR\\_Program.pdf](https://www.spanishfork.org/document_center/Economic%20Development/Planning/RB_TDR_Program.pdf)

[https://m.facebook.com/SpanishForkCity/videos/tdr-program-discussion/534125647897815/?so=permalink&rv=related\\_videos&locale=ne\\_NP&rdr](https://m.facebook.com/SpanishForkCity/videos/tdr-program-discussion/534125647897815/?so=permalink&rv=related_videos&locale=ne_NP&rdr)

**Draft City ordinance:**

[https://www.spanishfork.org/document\\_center/Economic%20Development/Planning/RB\\_TDR\\_Ordinance.pdf](https://www.spanishfork.org/document_center/Economic%20Development/Planning/RB_TDR_Ordinance.pdf)

### **Case Study #3 Weber County, Utah**

**Summary:** The Weber County TDR program is intended to conserve land by sending potential TDR units to the Destination and Recreation Resort Zone-1 (DDR-1). The DDR-1 includes Snowbasin Ski Resort and Powder Mountain Ski Resort lands. The TDR program zoning is listed in multiple locations, including the County Code (municode) Sec 104-29-3 Transferable Development Right (TDR) Eligibility through Sec 104-29- Sec 104-29-6 Transferable Development Right Easement. In addition, it is part of the Chapter 44 Ogden Valley Destination and Recreation Resort Zone DRR-1. Chapter 44 is the most detailed. It is unclear how the two ordinances work together (or not).

#### **Lessons Learned:**

- The Weber County program is adopted but hasn't necessarily seen a lot of TDRs happen (to our knowledge).
- The Weber County program is more complex than others with Transferred Base Units (TBU), Transfer Incentive Matching Units (TIMU), and/or Density Bonus Units (DBU).
- The Weber County program only works if the property owners in ski resort areas desire to transfer TDRs to their properties.
- The very nature of a TDR program is complex, ordinances and procedures should be as clear and simple as possible.
- No TDR educational information can easily be found on the internet for these specific ordinances and processes.

#### **Background**

- The Weber County program only works if the property owners in ski resort areas desire to transfer TDRs to their properties.
- The purpose is to transfer the development right potential from the Ogden Valley to the ski resort areas and preserve the Valley. Ogden Valley is seeing a lot of development in recent years and is moving closer to "mountain suburbia."

#### **Applicability**

- The receiving areas include the DDR-1 zones, including Snowbasin Ski Resort and Powder Mountain Ski Resort.
- The DDR-1 requires a minimum of 1,000 contiguous acres in Ogden Valley.
- Sending areas include

#### **Process (based on Weber County ordinance)**

- A property owner wanting to participate in TDR registers with the County. The transferrable development right register shall be maintained by the County planning division and shall be made available to any resort upon request.
- A property owner who has chosen to transfer development rights applies for a certificate. The application includes fee payments, plat, legal description, TDR site plan of land, slope analysis, title report, TDR easement, TDR rights deed, and subordination agreement stating acknowledgment of transferring development rights.
- The County issues a certificate of TDR rights.
- "The certificate shall state the number of transferable development rights approved and available for transfer and shall be valid for a period of time not to exceed 60 days from the date of issuance."
- "Prior to the expiration of a certificate of transferable development rights and prior to or at the time of application for a specific land use (e.g., subdivision or site plan approval) within a destination and recreation resort zone, all transfer documents, including an approved transfer of

development rights deed and an approved transfer of development right easement, shall be executed by appropriated signature and recordation in the office of the county recorder. Recording of the transfer of development rights deed and a transfer of development right easement shall constitute a complete transfer, therefore, enabling resort land use applications to be accepted and processed through the County planning division."

**Incentives for Conservation (from Chapter 44; see link below)**

- TDR densities are on top of existing density.
- Density credits for sending areas are as follows:
  - For the shoreline of the Pineview area, units that are transferred get a match or increase as follows:

Percentage of Units Transferred from Parcel	Match
Less Than 40%	0.0
40% to 55%	1.25
56% to 70%	1.5
71% to 85%	1.75
86% to 100%	2.0

- "For every unit transferred, to a Resort, from a CVR-1 Zone located adjacent to the shoreline of Pineview Reservoir - Weber County may match that number at a rate of three (3) units to each transferred unit. "
- "For every unit transferred, to a Resort, from an area within the Important Wildlife Area, as shown on the adopted Ogden Valley Sensitive Lands Map - Weber County may match that number at a rate of 2.0 units to each transferred unit. "
- "For every unit transferred, to a Resort, from an area within a Ridge Line Area that skylines as viewed from any scenic corridor at a distance of less than 2.5 miles, (as described in the adopted Ogden Valley Sensitive Lands Ordinance) - Weber County may match that number at a rate of 2.0 units to each transferred unit."
- "For every unit transferred, to a Resort, from any other areas within Ogden Valley, with the exception of units transferred from an elevation of 6,200 feet and above - Weber County may match that number at a rate of 1.0 unit to each transferred unit."
- Bonus densities are also offered for areas/lands with the following characteristics: cemeteries, agricultural, access to public lands, historical, community interests (identified in the General Plan), sewer facilities, parks, or cultural facilities.
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**County ordinance:**

[http://www.co.weber.ut.us/wiki/images/c/c9/Chapter\\_44.pdf](http://www.co.weber.ut.us/wiki/images/c/c9/Chapter_44.pdf)

[https://weber.municipalcodeonline.com/book?type=ordinances#name=Sec\\_104-29-6\\_Transferable\\_Development\\_Right\\_Easement](https://weber.municipalcodeonline.com/book?type=ordinances#name=Sec_104-29-6_Transferable_Development_Right_Easement)

**TDR Application:**

<https://fill.io/Weber-County-Request-to-Certify-Transferable-Development-Rights>