



## **CREDIT Provisions & Assurances**

Effective May 2012

**This Letter must be distributed by property owner to all parties working at said property.**

The Utah Prairie Dog Habitat Credit Exchange "UPDHCE" is an approved mechanism operating in compliance with Endangered Species Act "ESA" regulations and policy to allow permanent development of occupied Utah prairie dog habitat through permanent conservation of other Utah prairie dog habitat elsewhere. The UPDHCE is recognized by all regulatory authorities and permissible through Section 7 Consultations throughout the range of the species and under the Habitat Conservation Plan of Iron County. The UPDHCE provides clearance to land from Utah prairie dog encumbrances in perpetuity.

### **BACKGROUND**

Utah prairie dogs were listed as endangered under the Endangered Species Act in 1973 due to plague, drought, pest control programs, and human-related habitat alterations. Following significant population increases, the species was down-listed to threatened in 1984. As a federally threatened species, the ESA protects Utah prairie dogs by making "take" unlawful (ESA, section 9). Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct with respect to any species listed under the ESA (section 3(19)). In addition, "harm" and "harass" are defined in federal regulations as:

"Harass" means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

"Harm" means an act which actually kills or injures wildlife. Such acts may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3).

The ESA provides for applicants to receive incidental take authorization for otherwise lawful activities that are likely to result in take of listed species, including the Utah prairie dog (ESA sections 7(a)(2) and 10(a)(1)(B)). As such, Iron County, Utah, has an incidental take permit in association with a

Habitat Conservation Plan (HCP) (ESA section 10(a)(2)(a) to authorize take from economic non-federal development activities within Iron County. For actions with a federal nexus (e.g., federal funds, federal land, federal permits or authorizations), the federal agency will consult with the U.S. Fish and Wildlife Service (ESA section 7(a)(2), and receive a biological opinion that provides incidental take statements and conservation measures to compensate for impacts to Utah prairie dogs and their habitats.

Incidental take of Utah prairie dogs may be mitigated by several mechanisms. The UPDHCE provides mitigation credits to prospective economic developers by offsetting losses through the protection of Utah prairie dog habitats in other locations. Therefore, prospective economic developers can purchase credits from the Utah Prairie Dog Habitat Credit Exchange (UPDHCE) program in order to comply with the ESA, the process detailed by the Iron County HCP and ESA section 7 consultations.

## **USE OF CREDITS**

### ***Iron County HCP***

The credits purchased from the UPDHCE can be used to mitigate for take of the Utah prairie dog under the Iron County HCP once the following permitting procedures have been completed:

- The property owner or developer (i.e., applicant) submits to the **Utah Division of Wildlife Resources (UDWR) Southern Regional Office 435/865-6100 1470 N Airport Road, Cedar City, UT 84720** a copy of documentation from the UPDHCE verifying the purchase of sufficient credits to mitigate the temporary or permanent take of Utah prairie dogs associated with the subject project.
- The applicant receives a letter from the UDWR confirming that the property is considered "cleared" and incidental take is authorized in accordance with the Iron County HCP.
- The applicant receives a building permit from Iron County, following the provisions of the Iron County HCP Building Permit Process.

### ***Section 7 Consultation***

The credits purchased from the UPDHCE can be used to mitigate for take of the Utah prairie dog in association with a section 7 consultation with the USFWS once the following procedures are completed:

- Section 7 consultation with the USFWS is completed.
- The applicant works with the UPDHCE and USFWS to determine the number and cost of mitigation credits necessary to meet the conservation measures agreed to in the section 7 consultation.
- The applicant sends a letter to USFWS confirming the purchase of credits from the UPDHCE.

## **CREDIT PROVISIONS**

- **This Letter must be distributed by property owner to all parties** working at said property.
- **CLEARANCE:** CREDITS Clear Land of Utah Prairie Dog Encumbrances in Perpetuity.
- **TRANSFERABILITY:** CREDITS are non-transferable once applied to the property.
- **PERPETUITY:** No further ESA restrictions apply to future development, specific to impacts to the Utah prairie dog. If other species are listed under the ESA prior to completion of construction, additional ESA measures may be required.
- **DEVELOPMENT:** With Letter of Clearance, normal, otherwise lawful, on-site construction activities may commence without restriction, despite the presence of Utah prairie dogs.
- **UTAH PRAIRIE DOGS:**
  - **INCIDENTAL TAKE:** CREDITS allow construction to proceed with normal development activities, despite the presence of Utah prairie dogs. Under the Iron County HCP, CREDITS provide for INCIDENTAL TAKE of the Utah Prairie Dogs existing on-site, INCIDENTAL (secondary) to normal development activities, otherwise legal. INCIDENTAL TAKE is the harm or harassment of Utah prairie dogs related to or accompanying normal otherwise lawful development activities, occurring by chance and without intention. CREDITS do not authorize anyone to intentionally move, harm, harass, shoot, injure, kill, poison, or trap Utah prairie dogs.
  - **TRAPPING:** If the project development time frame does not preclude the ability to trap and remove Utah prairie dogs from the development site (i.e., development begins between July 1 and August 31), then translocation must be scheduled with the UDWR Southern Regional Office prior to construction (**435/865-6100**). The applicant must flag the construction site boundaries from which Utah prairie dogs will be moved. If possible UDWR will trap and relocate existing non-lactating dogs weighing at least 500 grams

Utah Prairie Dog Habitat Credits Exchange Program, CREDIT Provisions & Assurances May 2012 ©  
Erica Wightman, Program Coordinator, 435/979-1984;

Administered by Panoramaland & Color Country Resource Conservation & Development Councils (RC&D) 501c3 Non-Profit

during the trapping season July 1 to August 31. If the development time frame precludes the ability to trap and remove Utah prairie dogs, then development may proceed as long as all provisions in the Use of Credits and Credit Provisions section of this letter are successfully completed.

## **CREDIT ASSURANCES**

### **How Utah Prairie Dog CREDITS Clear Land in Perpetuity -**

Development of Utah prairie dog habitat can be authorized under the Iron County HCP if the loss of that habitat can be properly mitigated; one way to do this is by protecting other habitats. The UPDHCE works like a bank or brokerage providing a way to accomplish this.

*Conservation banks are a viable tool for advancing the recovery of listed species. The offset structure enabled by conservation banks provides a mechanism for the FWS and others to balance the needs of constituents in a clear and effective manner.”* -National Mitigation Banking Association

### **What's a CREDIT?**

- Credits are units of exchange defined as the ecological value associated with 1-acre (4,000 m<sup>2</sup>) of Utah prairie dog habitat or ecosystem. Credits are generated through conservation easements on existing Utah prairie dog habitat preserved in perpetuity as a means to offset mitigation and contribute to species recovery. Credit values and mitigation ratios were developed and evaluated by an Inter-Agency Review Team and 3<sup>rd</sup> party.

The Resource Conservation & Development Council purchases perpetual conservation easements & habitat credits from willing landowners with at least 20 Utah prairie dogs on 40 acres; the landowner retains title and management of the land. This transaction preserves Utah prairie dog habitat away from impact sites, thereby earning Utah prairie dog Conservation Credits (CREDITS). The landowner is paid by the RC&D for preserving Utah prairie dog habitat and retains title and agricultural rights. The RC&D holds the conservation easement on the preserved land and coordinates stewardship of the land with the primary landowner. Each landowner, in conjunction with the RC&D, is able to develop a customized management plan that protects habitat values for Utah prairie dogs while allowing continued agricultural activities. CREDITS established through permanent conservation of occupied Utah prairie dog habitat are held by the RC&D.

## The CREDIT Buyer

Developers or landowners (Buyers) causing permanent or temporary impacts to Utah prairie dog habitat may purchase CREDITS from the RC&D to offset those impacts and receive permanent clearance satisfying mitigation requirements of the ESA. CREDITS allow development to proceed without delay or restriction because ESA regulatory requirements have been satisfied.

- An evaluation of the land to be developed must be performed, at no cost, by the RC&D, USFWS or UDWR to determine the habitat quality & species population and CREDIT requirements. The assessment will determine if the land is Low, Medium or High quality Utah prairie dog habitat. The number of CREDITS needed to offset the loss of this habitat, mitigate, will be based on that assessment.
- Interested developers or landowners should submit an application to the RC&D to purchase CREDITS. CREDITS may be “banked” by the developer to apply to future projects; survey of land is required before project commencement to determine assess CREDIT requirements based on the existing habitat & ecosystem to be impacted. CREDITS are sold at the going market rate and proceeds from CREDIT sales are retained by the RC&D to support continuance of the HCEP and related management requirements. Developers and others whose actions will impact Utah prairie dog habitat and who desire to clear property of Utah prairie dog encumbrances in perpetuity are encouraged to take part in the UPDHCE program.
- When CREDITS are purchased under a HCP, upon receipt of payment a letter of clearance will be issued by the UDWR or HCP Administrator. The letter will specify the property and is transferable from owner to owner. When the landowner applies to the County for the building permit the letter informs the County that the landowner that the property has been surveyed, the mitigation fee associated with that property has been paid and is cleared to develop. The letter will indicate that the land has been cleared of Utah prairie dog encumbrances in perpetuity and no further mitigation (cost) will be required. The Credits allow development to proceed with his/her project without further delay or restriction because the Endangered Species Act mitigation requirements have been satisfied.

## UPDHCEP Benefits:

- 1) Clears Land in Perpetuity
- 2) Ease of Purchase (No Council Meetings to Attend, No additional requirements to meet)
- 3) Clearance in Perpetuity (No 30, 60, 90 day rules to abide by)\*
- 4) Speeds up Building Permit Process
- 5) Saves time and money by securing mitigation for future/present use, speeding up project implementation, clearing land of Utah prairie dog ESA encumbrances
- 6) No Max "Utah prairie dog" take – Cleared by the Acres
- 7) Provides a Net Benefit to the Utah prairie dog and the species' recovery by protecting habitats in perpetuity

## UPDHCEP CREDIT Structure:

- 1) Conservation easement acquisition costs  
(purchase of easement & credits, assessment, appraisal, title work, survey, baseline document, reports)
- 2) Conservation easement long-term assurances (i.e. endowment fund, monitoring, assurances)
- 3) Program administration
- 4) Mitigation ratio relative to habitat assessment (Low, Medium, High)  
Permanent Ratio: 1.7, 2.29, & 2.86 for every 1 acre of habitat impacted;  
Temporary Ratio: .34, .46, & .57 for every 1 acre of habitat impacted;  
(Offset + Recovery = Acres net benefit to the species contributing toward recovery).
- 5) Credits per acre: CR/AC (Based on habitat assessment to impacted site.)  
CR/AC Permanent: Low = 6; Medium = 8; High = 10  
CR/AC Temporary: Low = 1.2; Medium = 1.6; High = 2.0

The UPDHCE program's goal is to not only provide mitigation for Utah prairie dog habitat lost to development but to assist in the recovery efforts by encouraging and facilitating agricultural

producer and developer participation in recovery of the Utah prairie dog. This innovative market-based recovery credits system provides a mechanism by which Credit sales offset habitat degradation (for example, developers) and fund habitat preservation on private agricultural lands.

The UPDHCE program will speed permitting time for developers and municipalities, reduce conflicts between developers, municipalities, county government, and the U.S. Fish and Wildlife Service (USFWS), provide financial incentives for private agricultural producers to voluntarily preserve habitat, and increase the probability of species recovery and delisting. The program is available across the range of the Utah prairie dog in Beaver, Garfield, Iron, Kane, Piute, Sevier and Wayne counties in South-Central Utah.

\* In May of 2012, FWS amended the Iron County HCP (p. 42, item 10a) to exclude the 60-day construction window when credits are purchased from a mitigation bank. The amendment authorizes the purchase of CREDITS to "clear" the impact site in perpetuity. The amendment has received review and approval of the HCP Implementation Committee.

***Iron County Habitat Conservation Plan PERMIT #TE-36716 (p. 42, item 10a, b).***

- 10. a. *Applicant has purchased mitigation credits from an approved mitigation bank and project development time frame precludes ability to trap and remove UPDs from the development site (translocation generally can only occur during July and August). Applicant submits to UDWR a copy of documentation from operator of mitigation bank verifying purchase of sufficient credits from the mitigation bank to mitigate permanent take of Utah prairie dogs associated with the subject project There is no required construction timeframe window ..... 17*
- b. *Applicant has purchased mitigation credits from an approved mitigation bank and project development time frame does not preclude ability to trap and remove UPDs from development site (translocation can generally only occur during July and August). Applicant submits to UDWR a copy of documentation from operator of mitigation bank verifying purchase of sufficient credits from the mitigation bank to mitigate permanent take of Utah prairie dogs associated with the subject project. Translocation is scheduled with UDWR. Development permit applicant flags construction site boundaries from which UPDs are to be removed. UPDs are trapped and removed until no more than one UPD remains on parcels three acres or less in size, or two UPDs remain on parcels greater than three acres. There is no required construction timeframe window..... 11*

**Contact Information:**

Utah Dog Program Habitat Credits Exchange

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Utah Division of Wildlife

(UDWR) Southern Regional Office  
Sensitive Species Biologist or HCP Administrator  
1470 N Airport Road, Cedar City, UT 84720  
(435) 865-6100 (o)

U.S. Fish and Wildlife Service

Utah Ecological Services Field Office  
2369 Orton Circle, Suite 50 West Valley City, Utah 84119  
(801) 975-3330 (o) (801) 975-3331 (f)  
<http://www.fws.gov/utahfieldoffice/index.html>