

Provo City Planning Commission

Report of Action

January 31, 2024

*ITEM 3 Development Services requests approval of an Ordinance Text Amendment for the adoption of a Transferable Development Rights (TDR) Overlay Zone. Citywide Application. Aaron Ardmore (801) 852-6404 aardmore@provo.org PLOTA20230219

The following action was taken by the Planning Commission on the above described item at its regular meeting of January 31, 2024:

RECOMMENDED APPROVAL

On a vote of 8:0, the Planning Commission recommended that the Municipal Council approve the above noted application.

Motion By: Robert Knudsen

Second By: Daniel Gonzales

Votes in Favor of Motion: Robert Knudsen, Daniel Gonzales, Jonathon Hill, Raleen Wahlin, Lisa Jensen, Andrew South, Barbara DeSoto, Melissa Kendall

Daniel Gonzales was present as Chair.

- Includes facts of the case, analysis, conclusions and recommendations outlined in the Staff Report, with any changes noted; Planning Commission determination is generally consistent with the Staff analysis and determination.

TEXT AMENDMENT

The text of the proposed amendment is attached as Exhibit A.

STAFF PRESENTATION

The Staff Report to the Planning Commission provides details of the facts of the case and the Staff's analysis, conclusions, and recommendations.

CITY DEPARTMENTAL ISSUES

- The Coordinator Review Committee (CRC) has reviewed the application and given their approval.

NEIGHBORHOOD MEETING DATE

- A neighborhood meeting was held on 01/31/2024.
- The Neighborhood District Chair determined that a neighborhood meeting would not be required.
- No information was received from the Neighborhood District Chair.
- Citywide Application; all Neighborhood District Chairs received notification.

NEIGHBORHOOD AND PUBLIC COMMENT

- This item was Citywide or affected multiple neighborhoods.

CONCERNS RAISED BY PUBLIC

Any comments received prior to completion of the Staff Report are addressed in the Staff Report to the Planning Commission. Key issues raised in written comments received subsequent to the Staff Report or public comment during the public hearing included the following: None.

APPLICANT RESPONSE

Key points addressed in the applicant's presentation to the Planning Commission included the following: Planning staff responded to questions from the Planning Commission.

PLANNING COMMISSION DISCUSSION

Key points discussed by the Planning Commission included the following:

- The Planning Commission asked questions about the proposed ordinance, specifically, regarding public input, Council review, and ability to establish TDR-S and TDR-R Zones.
- The suggestion was made to remove Subsection 14.33B.120(2), staff agreed to strike that line.
- The Commission discussed the proposal and thought it would be a good solution that can benefit both parties of the transaction and they are interested in seeing how the receiving areas are implemented.



Planning Commission Chair



Director of Development Services

See Key Land Use Policies of the Provo City General Plan, applicable Titles of the Provo City Code, and the Staff Report to the Planning Commission for further detailed information. The Staff Report is a part of the record of the decision of this item. Where findings of the Planning Commission differ from findings of Staff, those will be noted in this Report of Action.

Legislative items are noted with an asterisk (*) and require legislative action by the Municipal Council following a public hearing; the Planning Commission provides an advisory recommendation to the Municipal Council following a public hearing.

Administrative decisions of the Planning Commission (items not marked with an asterisk) **may be appealed** by submitting an application/notice of appeal, with the required application and noticing fees to Development Services, 445 W Center Street, Provo, Utah, **within fourteen (14) calendar days of the Planning Commission's decision** (Provo City office hours are Monday through Thursday, 7:00 a.m. to 6:00 p.m.).

BUILDING PERMITS MUST BE OBTAINED BEFORE CONSTRUCTION BEGINS

EXHIBIT A

CHAPTER 14.33B TDR – TRANSFERABLE DEVELOPMENT RIGHTS OVERLAY ZONE

- 14.33B.010 Purpose and Objectives
- 14.33B.020 Definitions
- 14.33B.030 Use in Combination
- 14.33B.040 Permitted Uses
- 14.33B.050 Development Standards
- 14.33B.060 Provision of Facilities
- 14.33B.070 Establishment of Sending and Receiving Areas
- 14.33B.080 Application Requirements
- 14.33B.090 Sending Site Requirements
- 14.33B.100 Receiving Site Requirements
- 14.33B.110 Development Approval Process
- 14.33B.120 Conservation Easement Required
- 14.33B.130 Development Credit Determination

14.33B.010 Purposes and Objectives.

The purposes of this TDR overlay zone are to:

1. Protect the general health, safety, and welfare of current and future residents;
2. Preserve open space, scenic views, and natural features on hillside areas;
3. Discourage development in sensitive and natural hazard areas;
4. Allow property owners of sensitive lands development rights in other areas of the city, and;
5. Provide a method whereby development rights may be transferred from sending sites to receiving sites to meet the above purposes.

14.33B.020 Definitions.

For the purposes of this Chapter, the following words and terms shall be defined, as follows:

“Base Zone Density” means the maximum number of dwelling units permitted by the zoning classification of a sending or receiving site and not including any density increase from the overlay zone.

“Development Rights” means the potential for the improvement of a legally established parcel of land, measured in dwelling units, existing as a result of the underlying zone of the parcel.

“Receiving Area” means a geographic area designated by the Provo City Zoning Map within which one or more receiving sites may be located.

“Receiving Site” means a legally created parcel of land which has been zoned TDR-R and to which development rights are transferred in accordance with the requirements of this chapter.

“Sending Area” means a geographic area designated by the Provo City Zoning Map within which one or more sending sites may be located.

“Sending Site” means a legally created parcel of land which has been zoned TDR-S and from which development rights are transferred in accordance with the requirements of this chapter.

“Transfer of Development Rights” means the conveyance of one or more development rights by deed, easement, or other legal instrument to another parcel of land in accordance with the requirements of this chapter.

14.33B.030 Use in Combination.

The TDR Zone shall overlay and be used in combination with existing conventional zones. If there is a conflict between the provisions of this Chapter and the requirements of Title 14 or 15, Provo City Code, the requirements of this Chapter shall take precedence. Property to which the TDR Zone has been applied shall be developed only in conformance with the applicable, approved project plan, subdivision, or other approved development plans. Written references to a zone that is overlain by the TDR Zone shall include the underlying zone along with the acronym of the overlay zone, e.g., R1.10TDR-R or R1.10TDR-S.

14.33B.040 Permitted Uses.

Uses permitted in the TDR Zone shall be limited to those listed as permitted uses by the provisions of the underlying zone with which the TDR Zone has been combined.

14.33B.050 Development Standards.

Development in the TDR Zone shall conform to the development standards required by the provisions of the underlying zone with which the TDR Zone is combined, except in cases where a density bonus has been granted.

14.33B.060 Provision of Facilities.

The requirements of the Adequate Public Facilities section of Chapter 15.03, Provo City Code, shall be met.

14.33B.070 Establishment of Sending and Receiving Areas.

(1) The City Council may establish sending and receiving areas as TDR Zoning within the official zoning map in accordance with Section 14.02.020, Provo City Code. The designation “TDR-S” shall be the prefix for the overlay zone for sending sites, the designation “TDR-R” shall be the prefix for the overlay zone for receiving sites.

(2) Sending areas shall be limited to property that has been found to have natural hazards within or adjacent to property boundaries, verified by the City Engineer.

(3) Receiving areas shall be limited to vacant properties in the RA, R1, VLDR, or LDR zones.

(4) The City Council may authorize the use of a TDR-R in conjunction with a rezone request to a RA, R1, VLDR, or LDR Zone if the request is consistent with the General Plan and this Chapter.

14.33B.080 Application Requirements.

In addition to submittal requirements in Section 14.02.020, Provo City Code, an eligible landowner or authorized representative for a sending site (TDR-S) must provide the following:

- (1) A written description of the physical characteristics of the property that constitutes a hazard;
- (2) A geological study or other evidence of the stated hazard, stamped by a licensed engineer, and;
- (3) A conservation easement document, or
- (4) The property or parcel has been designated by the Provo City Engineer as hazardous.

14.33B.090 Sending Site Requirements.

(1) Development rights shall be created and transferred only by means of documentation, including a conservation easement, and a TDR-S credit certificate, which meet the requirements of this Chapter.

(2) In order to be eligible to transfer one or more development rights from a parcel of land, such parcel shall be located within a sending area, designated in Section 14.33B.130 and as shown on the official zoning map.

14.33B.100 Receiving Site Requirements.

(1) Development rights shall be received only by means of documentation, including a TDR-R credit certificate, and a development plan, which meet the requirements of this Chapter.

(2) In order to transfer one or more development rights to a parcel of land, such parcel shall be located within a receiving area, designated on the official zoning map.

14.33B.110 Development Approval Process.

(1) The following is the Sending Site approval process that must be followed to send development right (TDR-S) credits:

- (a) TDR-S property owners may choose to develop their property as platted and in accordance with city engineering requirements, or they may choose to sell, transfer, or joint venture their development rights.
- (b) TDR-S property owners may request a TDR-S credit certificate from the Provo City Development Services Director. The TDR-S certificate shall list the density or number of units for the TDR-S site.
- (c) A TDR-S credit certificate may only be sold, conveyed, or otherwise transferred by the owner(s) or their legal representative.

- (d) The sale, conveyance, or transfer shall occur upon surrender of the TDR-S credit certificate which authorizes the Development Services Director, or designee, to transfer the development credits to the stated transferee by reissuing the TDR-S credit certificate in the transferee's name, and recording a TDR-S certificate with the County Recorder's Office.
- (e) With each transfer or sale, a Conservation Easement and/or deed restriction shall be recorded covering the entire parcel.
- (f) When all available TDR-S credits on a sending site have been purchased, no uses other than those enumerated in the Conservation Easement are allowed. Responsibility for any required maintenance or abatement remains with the fee title owner.
- (g) The final transfer of TDR-S credits will be completed upon development approval on a receiving site and the recording of a deed restriction and/or Conservation Easement against the sending site or if the owner of the TDR-S credits chooses to forfeit development rights and records a deed restriction and/or Conservation Easement on the entire sending site.
- (h) TDR-S property owners shall notify any lien or mortgage holders of the sale of the TDR-S credits, and such notification shall be demonstrated by written approval submitted to the City prior to transfer.
- (i) TDR-S property owners shall be responsible for notification to the county tax assessor regarding possible changes in property value.

(2) The following is the Receiving Site approval process that must be followed to receive TDR credits:

- (a) All regulations in Title 14 and 15, Provo City Code, regarding zoning, subdividing, and approval processes are in effect on a receiving site. If any development within the TDR-R Zone requests an increase in density from the base zone density, it must be realized through TDR-S credits.
- (b) Any development requesting a higher density than the base zone density shall be reviewed by the City Council.
- (c) Any development requesting higher density than the base zone density shall bring evidence of TDR-S credits in the form of options to purchase, ownership, or joint ventures at the time of development review and evidence of ownership prior to final approval.
 - i. Areas may develop at the base zone density without purchasing TDR-S credits.
 - ii. Any development approval process using TDR-S credits shall adhere to all other underlying zoning requirements.

- (d) A request to utilize development rights on a receiving site shall be in the form of a preliminary subdivision application or a concept plan application in accordance with Provo City Code.
- (e) The Planning Commission shall approve a request to utilize development rights on a receiving site if the request:
 - i. Does not exceed the density limitations permitted in the underlying zone, unless density is provided with evidence of TDR-S credits;
 - ii. Is in accordance with the provisions of this chapter;
 - iii. Is in accordance with the subdivision and site plan regulations;
 - iv. Is consistent with other policies and goals of the General Plan; and
 - v. Achieves a compatible development with surrounding uses.
- (f) A certificate of receiving credits shall be issued to the property owner upon final approval by the Development Services Director indicating the total number of development rights which may be transferred to the property in accordance with this Chapter.

14.33B.120 Conservation Easement Required

This section shall apply only to properties where the development rights have been transferred from the property, but the ownership of the property remains private.

- (1) A conservation easement shall be established on each sending site from which development rights are transferred.
- (2) The conservation easement required by this chapter shall be in a recordable form approved by Development Services and shall meet the requirements of section 57-18-1 et. seq., of the Utah Code. The conservation easement shall also include the following terms:
 - (a) The holder of the easement shall be Provo City, another government entity, or a charitable organization which:
 - (i) Qualifies as being tax exempt under section 501(c)(3) of the Internal Revenue Code; and
 - (ii) Is organized in whole or in part for the purpose of accepting and managing conservation easements.
 - (b) The easement shall require that the easement area shall be maintained as it exists when the easement is created, including natural areas, wildlife preserves, trails, or other identified environmental or open land resources.
 - (c) 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.

(d) All parties who have a declared interest in the property, recorded at Utah County, must consent to the granting of a conservation easement.

(3) 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.

(4) Any instrument purporting to convey a conservation easement pursuant to this section, but that the City has not indicated its approval on the instrument is void and shall not be recorded or accepted by the City Recorder for recording at the County Recorder's Office.

14.33B.130 Development Credit Determination

(1) The total number of development credits available to a sending site shall be determined as follows and as shown on the official zone map of Provo City and in the maps below:

(a) *Extreme Risk.* For every one (1) lot within a TDR-S overlay zone shown as an extreme risk site for development a total of three (3) development credits shall be available, as defined in this Chapter.

(i) Extreme risk lots shall be indicated by a red overlay on the official zone map.

(b) *High Risk.* For every one (1) lot within a TDR-S overlay zone shown as a high risk site for development a total of two (2) development credits shall be available, as defined in this Chapter.

(i) High risk lots shall be indicated by an orange overlay on the official zone map.

(c) *Moderate Risk.* For every one (1) lot within a TDR-S overlay zone shown as a moderate risk site for development a total of one and a half (1.5) development credits shall be available, as defined in this Chapter.

(i) Moderate risk lots shall be indicated by a yellow overlay on the official zone map.





