

**\*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

**Applicant:** Development Services

**Staff Coordinator:** Aaron Ardmore

### **ALTERNATIVE ACTIONS**

1. **Continue** to a future date to obtain additional information or to further consider information presented. *The next available meeting date is February 14, at 6:00 P.M.*

2. **Recommend Denial** of the requested text amendment. *This action would not be consistent with the recommendations of the Staff Report. The Planning Commission should state new findings.*

**Relevant History:** In June 2023 staff began to study problematic lots on the east bench of the city. As Public Works identified lots with a variety of geological hazards, Planning staff began to create an ordinance to allow the transfer of development rights from these lots to elsewhere in the city. A draft of this ordinance and overview of its goals was presented to a combined Planning Commission and City Council on October 11<sup>th</sup>, 2023; and had a positive response. A refined proposal was taken through staff review and is now up for adoption.

**Neighborhood Issues:** This is a citywide application; no feedback has been gathered from the Neighborhood District Program.

### **Summary of Key Issues:**

- The city has an interest in protecting the public from problematic lots on the east bench.
- To give property owners value on their subdivided lots, development rights could be sold to another property owner or and/or transferred to other property.
- Sending sites have been identified by Provo Engineering.
- This code will give the authority and define the process to protect the health, safety, and welfare of current and future residents, while also preserving hillside open space through a TDR program.

**Staff Recommendation:** That the Planning Commission recommend approval of the proposed ordinance to the City Council.

## **OVERVIEW**

Development Services and Engineering departments are proposing that a new Transfer of Development Rights (TDR) Overlay Zone be adopted so that it may be applied to specific lots with geological risks or other natural hazards. The purpose of the overlay is to discourage development in hazardous areas and allow property owners to retain value in lots that have been found to have inherent risks on or near their properties.

The zone language was written by planning staff in conjunction with engineering staff to incorporate specific lots on the east bench of Provo, which were originally platted back in the 1970s when there was significantly less review for geological conditions. These lots have been found to be in danger associated with debris flow, landslide, rockfall, and/or fault rupture through zone area studies. It is in the interest of Provo, and future homeowners, to discourage building homes on the identified lots and allow the property owners to sell or transfer their right to develop to a safer property.

The provisions of the proposed ordinance are somewhat self-explanatory, but in summary provide the framework to preserve the identified hazardous lots as open space and allow the same or greater number of housing units to be built in other areas of the city.

Adoption of this overlay is the first step to protecting these properties from development. If approved, staff would return with a zone map amendment to apply the TDR-S (sending site) to the identified lots. It would be up to private property owners to request a TDR-R (receiving site) overlay when in talks with an owner of a TDR-S lot to purchase their development rights.

## **STAFF ANALYSIS**

Staff believe that this proposal will help to meet the goals of the city and the objectives listed in the General Plan; and provide a good solution for property owners that own a problematic lot. To illustrate this, staff have reviewed the proposed overlay zone against the standards for code amendments in Section 14.02.020, Provo City Code, as follows: (staff responses in bold)

Before recommending an amendment to this Title, the Planning Commission shall determine whether such amendment is in the interest of the public, and is consistent with the goals and policies of the Provo City General Plan. The following guidelines shall be used to determine consistency with the General Plan:

(a) Public purpose for the amendment in question.

**Staff response: The public purpose for the amendment is to protect the general health, safety and welfare of the public by discouraging development of lots in hazardous areas.**

(b) Confirmation that the public purpose is best served by the amendment in question.

**Staff response: Staff believe that this amendment is the most fair and reasonable way to discourage development of residences in areas with known hazards, while still allowing the property owners to have value in their land.**

(c) Compatibility of the proposed amendment with General Plan policies, goals, and objectives.

**Staff response: This proposal is compatible with, and directly addresses, the following goals:**

- **General Plan Chapter 3, goal 2a “encourage development in areas that are less prone to natural hazards”.**
- **General Plan Chapter 7, goal 5 “continue to plan and work to mitigate the impacts of emergencies and hazards”.**
- **General Plan Chapter 8, goal 2a “create a strategic plan that includes tools and funding opportunities in order to conserve, connect, and protect vulnerable lands and open space”.**
- **Hillside and Canyons Plan goal 3b “limit development in environmentally sensitive areas”.**

(d) Consistency of the proposed amendment with the General Plan’s “timing and sequencing” provisions on changes of use, insofar as they are articulated.

**Staff response: There are no timing and sequencing issues related to this request.**

(e) Potential of the proposed amendment to hinder or obstruct attainment of the General Plan’s articulated policies.

**Staff response: Staff believes that this proposal would not hinder or obstruct General Plan policies.**

(f) Adverse impacts on adjacent landowners.

**Staff response:**

(g) Verification of correctness in the original zoning or General Plan for the area in question.

**Staff response: Does not apply.**

(h) In cases where a conflict arises between the General Plan Map and General Plan Policies, precedence shall be given to the Plan Policies.

**Staff response: Does not apply.**

## **CONCLUSIONS**

Staff have taken this proposed amendment through the Coordinator Review Committee (CRC) and worked closely with Provo Engineering to ensure best practices are followed. This report should show that the TDR Overlay Zone is not only a good idea for Provo but is critical to protect our citizens.

## **ATTACHMENTS**

1. Proposed Language
2. Rockfall Hazard Map
3. Debris Flow Hazard Map
4. Landslide Hazard Map
5. Fault Line Hazard Map

## ATTACHMENT 1 – PROPOSED LANGUAGE

### **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) If only a portion of the development rights attached to a sending site are transferred, the area of the easement shall be the same as the total area of all the lots which could be otherwise established on the site but for the transfer of development rights.
- (3) 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.
- (4) 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.
- (5) 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.

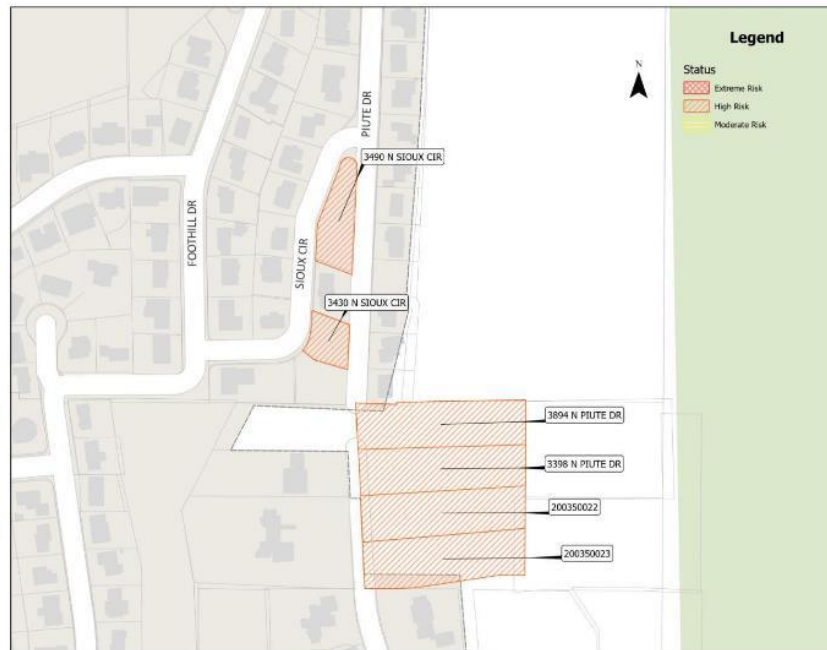
(i) Extreme risk lots shall be indicated by a red overlay on the official zone map.

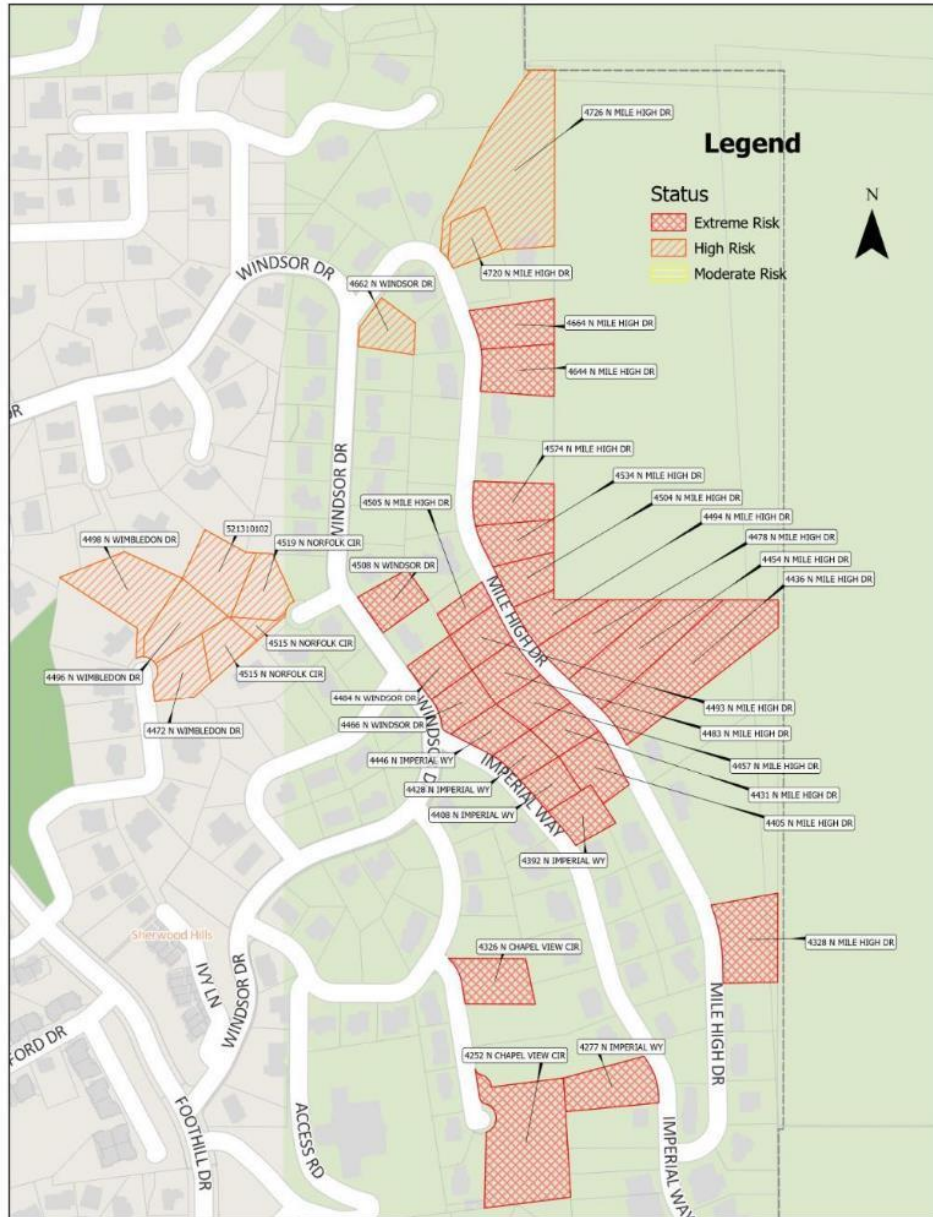
(b) *High Risk*. For every one (1) lot within a TDR-S overlay zone shown as a high risk site for development a total of two (2) development credits shall be available, as defined in this Chapter.

(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.



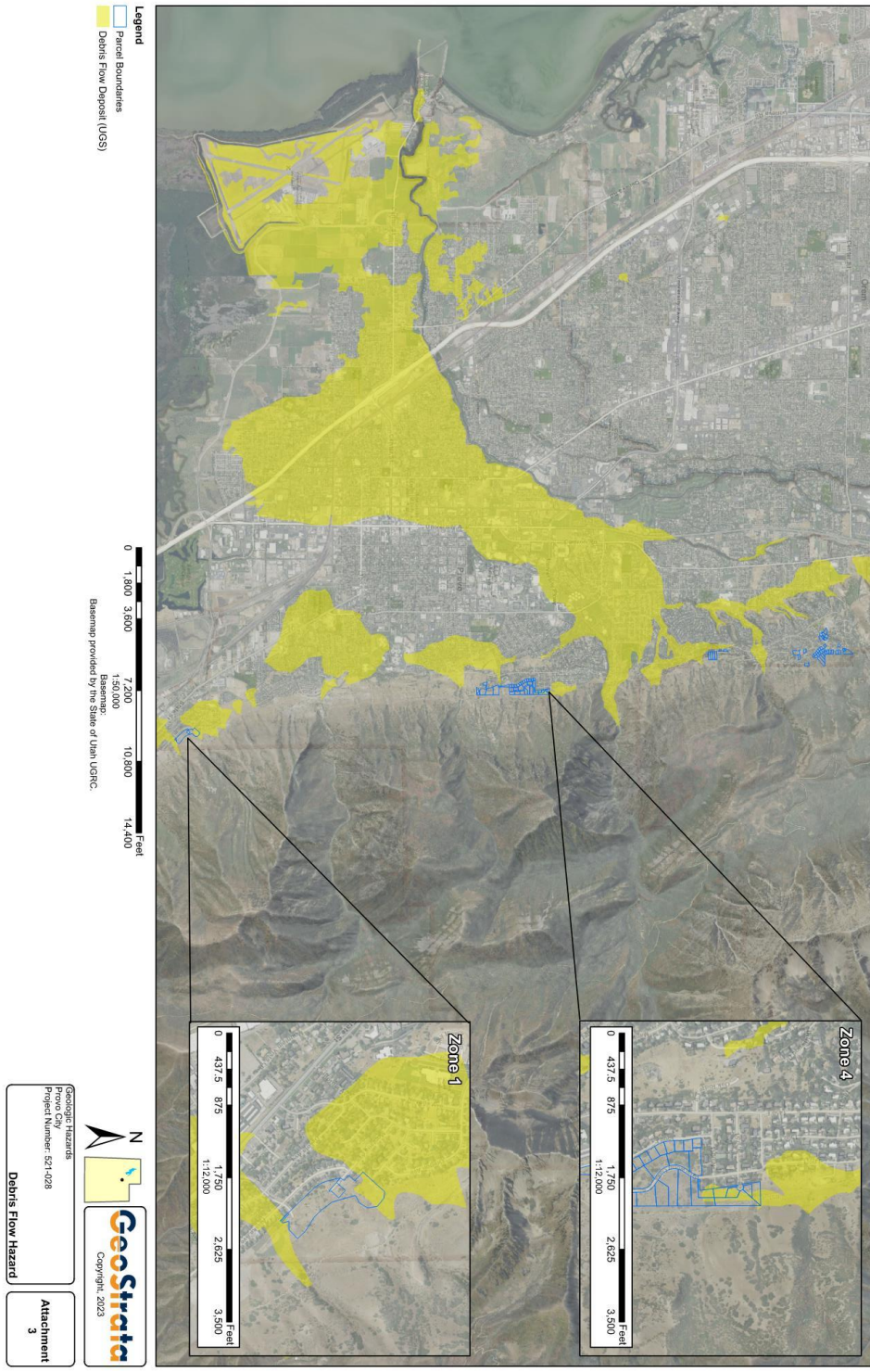




ATTACHMENT 2 – ROCKFALL HAZARD MAP



ATTACHMENT 3 – DEBRIS FLOW HAZARDS MAP



ATTACHMENT 4 – LANDSLIDE HAZARD MAP





ATTACHMENT 5 – FAULT LINE HAZARD MAP

