



Staff Report for Administrative Subdivision Approval

Weber County Planning Division

Synopsis

Application Information

Application Request:	Consideration and action for final approval of Pole Patch Phase 3, a three lot subdivision.
Application Type:	Administrative
Agenda Date:	Wednesday, February 12, 2020
Applicant:	David Wadman/Spencer Bradley (Authorized Representative)
Subdivision File Number:	LVP110119

Property Information

Approximate Address:	5080 Jessie Creek Dr.
Project Area:	29.82 Acres
Zoning:	A-1
Existing Land Use:	Vacant
Proposed Land Use:	Residential
Parcel ID:	16-004-0005
Township, Range, Section:	Township 7 North, Range 1 West, Section 7

Adjacent Land Use

North:	Box Elder County, Undeveloped	South:	Pleasant View City, Residential
East:	A-1 Undeveloped	West:	Box Elder County, Undeveloped

Staff Information

Report Presenter:	Scott Perkes sperkes@co.weber.ut.us 801-399-8772
Report Reviewer:	RG

Applicable Ordinances

- Title 101 (General Provisions) Section 7 (Definitions)
- Title 102 (Administration) Chapter 1 (General Provisions) Section 2 (Planning Director Authority)
- Title 104 (Zones) Chapter 5 (Agricultural (A-1) Zone)
- Title 106 (Subdivisions) Chapters 1-8 as applicable

Background and Summary

The applicant has submitted a request for final approval of Pole Patch Phase 3 Subdivision (see **Exhibit A**), a small subdivision consisting of three lots. The proposed subdivision will divide a 29.28 acre parcel and create three residential lots that are currently vacant. Each of the three proposed lots will gain access from a 60' x 297' private access easement that was recently approved under Alternative Access File# AAE2019-08. The proposed subdivision conforms to both the zoning and subdivision requirements including adequate lot width and area. See **Exhibit B** for the proposed subdivision plat and improvement plans.

Analysis

General Plan: The proposed subdivision conforms to the Western Weber General Plan by creating large lots (5+ acres) which will preserve the low density rural residential setting.

Zoning: The subject property is located in the Agricultural (A-1) Zone. The purpose and intent of the A-1 Zone is found in LUC §104-5-1:

"The purpose of the A-1 Zone is to designate farm areas, which are likely to undergo a more intensive urban development, to set up guidelines to continue agricultural pursuits, including the keeping of farm animals, and to direct orderly low-density residential development in a continuing rural environment."

Small Subdivision: LUC § 101 defines a “Small Subdivision” as “A subdivision consisting of three or fewer lots and for which no streets will be created or realigned”. This proposed subdivision consists of three lots and no new streets are being created or realigned. Based on these provisions, the proposed subdivision qualifies for administrative approval as a small subdivision.

Lot area, width and yard regulations: Lot 1 will contain 5.5 acres and will be 279.28 ft. wide. Lot 2 will contain 5.37 acres and will be 453 ft. wide. Lot 3 will contain 18.06 acres and will be 575 ft. wide.

The site development standards for the A-1 Zone are as follows:

Minimum Lot Area: 40,000 sq. ft.
Minimum Lot Width: 150 Feet

The Yard Regulations for a single family dwelling in the A-1 zone are as follows:

Front: 30 feet
Sides: A minimum of 10 feet with a total of two side yards not less than 24 feet
Rear: 30 feet

There are no existing structures within Lots 1, 2, or 3. All three lots meet the minimum area and width requirements of the A-1 Zone.

Culinary Water: Culinary water will be supplied by Pleasant View City (see **Exhibit C** for the will-serve letter). Per the Pleasant View City Engineer and the Utah State Division of Environmental Quality, individual booster pumps will be required for each of the three lots in order to provide adequate water pressure (see **Exhibit D** and plat note #4). In addition to Plat Note #4, the Utah State Department of Environmental Quality and Pleasant View City Engineer have imposed the following condition of approval:

1. Per the Utah State Department of Environmental Quality, legal notice shall be recorded on each lot at the time of final subdivision plat recording to alert the presence of individual home booster pumps. This notice shall reference the applicable Pleasant View City ordinances.

Secondary Water: The applicant has verified that secondary water is not available in the Pole Patch area. Per the Pleasant View City Culinary Water Will-Serve Letter (**Exhibit C**), culinary water is available for the three proposed lots. However, as indicated in this letter, culinary water may not be used for secondary water purposes. LUC 106-4-2(m) requires applicants to furnish adequate secondary water and delivery systems to all lots in a proposed subdivision **ONLY IF** the culinary water provider requires secondary water connections as a condition to their providing culinary water service.

Pleasant View City entered into a development agreement with the applicant (**Exhibit E**) (entered into on October 24, 2019) allowing for culinary water connections to be made for the three proposed lots in the subdivision without a condition requiring the connection of secondary water. Per this development agreement, the County is able to review and approve the proposed subdivision without the provision of secondary water connections.

In reference to the development agreement restrictions on the use of culinary water for secondary water purposes, and as determined through conversation with Bill Cobabe (Pleasant View City Administrator), staff recommends as a condition of approval:

1. The subdivision plat shall include the following plat note:

“At the time of this plat’s approval, secondary water is not available for this subdivision. Culinary water is to be provided by Pleasant View City per a development agreement between Pleasant View City and the developer (dated October 24th 2019. Recorded as Entry #3012850). Owners are advised to contact Pleasant View City to coordinate water connection requirements.”

Sanitary Sewer Services: will be provided by Central Weber Sewer Improvement District. At present, the applicant has submitted an annexation petition to Central Weber Sewer Improvement District. While this application is currently being processed, both the Pleasant View City Engineer and the General Manager of the Central Weber Sewer Improvement District have indicated that the proposed subdivision may be reviewed, approved, and recorded. However, both of these review agencies have imposed the following conditions:

1. No building permits may be approved until such time that the proposed subdivision has completed the annexation process.

2. No building permits shall be issued until the ownership, operation, and maintenance of the current non-conforming sewer system is transferred from the Pole Patch HOA to Pleasant View City.

Alternative Access: Access to the three proposed lots will be provided by a 60' x 297' private access easement that was recently approved under Alternative Access File# AAE2019-08.

Review Agencies: The proposed has been reviewed by the appropriate review agencies. With exception to the sewer connection requirements laid out by the Pleasant View City Engineer and General Manager of the Central Weber Sewer Improvement District, all remaining review agency items must be addressed prior to recording the final plat.

Tax Clearance: Property taxes have been paid in full. There are no records of past delinquent tax history for this parcel.

Public Notice: Per LUC §106-1-6(c), notices have been sent out to all property owners of record within 500 feet of the subject property within not less than seven calendar days prior to the first Administrative Review Meeting to consider this application. Follow-up meetings to consider this application have had a meeting agenda and packet materials posted 24 hours in advance to the County website and State Public Notice website.

Staff Recommendation

Staff recommends approval of Pole Patch Phase 3 Subdivision, a three lot subdivision. This recommendation for approval is subject to all review agency requirements in addition to the conditions described within this staff report and as summarized below:

1. Per the Utah State Department of Environmental Quality, legal notice shall be recorded on each lot at the time of final subdivision plat recording to alert the presence of individual home booster pumps. This notice shall reference the applicable Pleasant View City ordinances.
2. The subdivision plat shall include a plat note referencing the development agreement dated October 24, 2019. This plat note will serve as notice to future owners of the subdivided lots regarding the prohibition of using culinary water for secondary water purposes.
3. No building permits may be approved until such time that the proposed subdivision has completed the annexation process.
4. No building permits shall be issued until the ownership, operation, and maintenance of the current non-conforming sewer system is transferred from the Pole Patch HOA to Pleasant View City.

This recommendation is based on the following findings:

1. The proposed subdivision conforms to the Western Weber General Plan and zoning requirements for the A-1 zone.
2. With the recommended conditions, the proposed subdivision complies with applicable County ordinances.

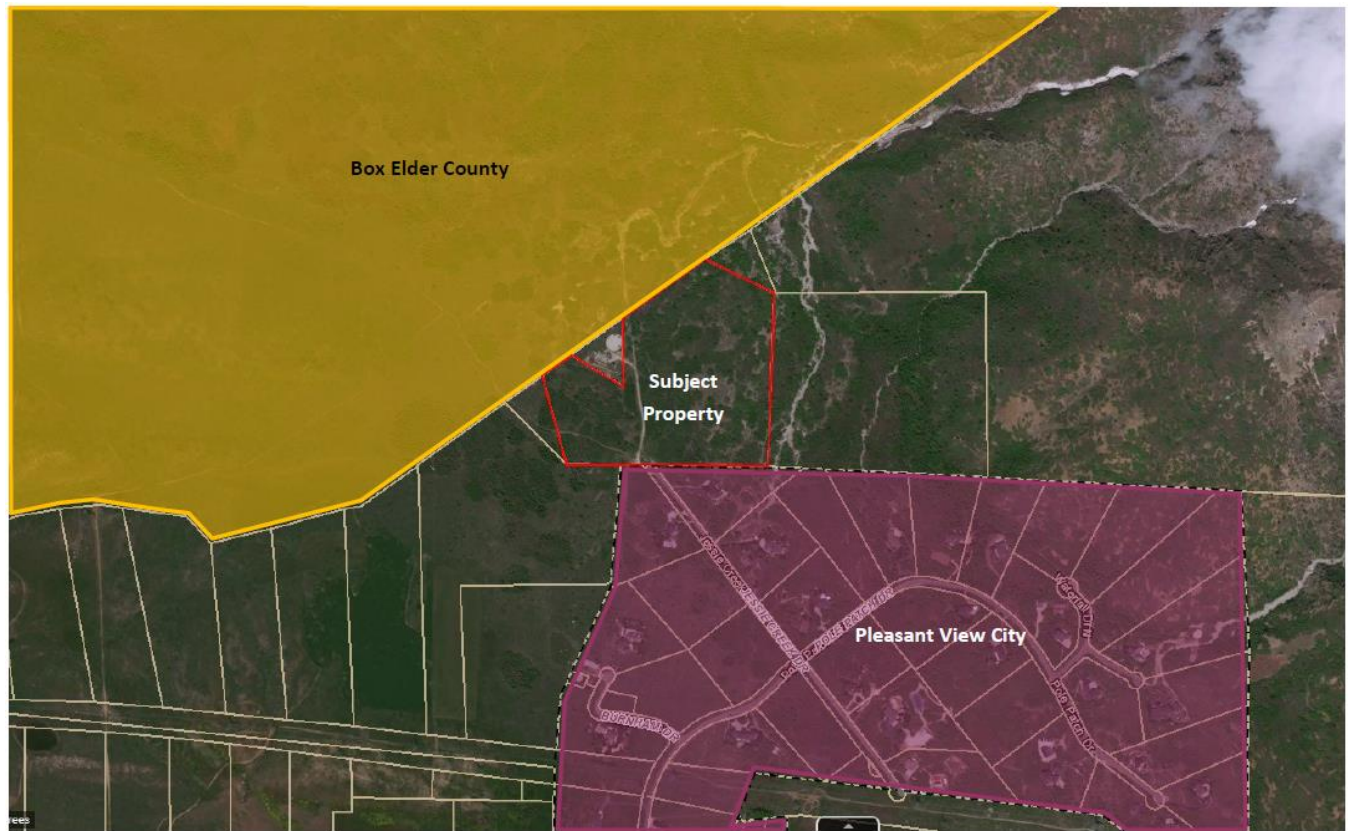
Administrative Approval

Administrative final approval of Pole Patch Phase 3 Subdivision, a three lot subdivision, including the concurrent consideration and action of the Pole Patch Phase 3 alternative access via private right-of-way for Lots 1, 2, and 3, is hereby granted based upon its compliance with the Weber County Land Use Code. This approval is subject to the requirements of applicable review agencies and the conditions of approval listed in this staff report.

Date of Administrative Approval: _____

Rick Grover
Weber County Planning Director

Map 1



Exhibits

- A. Subdivision Application
- B. Subdivision Plat and Alternative Access Improvement Plans
- C. Will-Serve Letters & HOA Annexation Resolution
- D. Utah State Division of Environmental Quality Letter
- E. Development Agreement

Weber County Subdivision Application			
All subdivisions submittals will be accepted by appointment only. (801) 399-8791. 2380 Washington Blvd. Suite 240, Ogden, UT 84401			
Date Submitted / Completed	Fees (Office Use)	Receipt Number (Office Use)	File Number (Office Use)
Subdivision and Property Information			
Subdivision Name Pole Patch Phase 3			Number of Lots 3
Approximate Address 5080 Jessie Creek Dr, Ogden, UT		Land Serial Number(s) 16-004-0005	
Current Zoning A-1	Total Acreage 29.82		
Culinary Water Provider Pleasant View	Secondary Water Provider N/A	Wastewater Treatment Pleasant View	
Property Owner Contact Information			
Name of Property Owner(s) David Wadman		Mailing Address of Property Owner(s) 2920 S 925 W Ogden, UT 84401	
Phone 801-621-4185	Fax 801-621-7232		
Email Address dlwadman@wadman.com		Preferred Method of Written Correspondence Email <small>Email Fax Mail</small>	
Authorized Representative Contact Information			
Name of Person Authorized to Represent the Property Owner(s) Spencer Bradley		Mailing Address of Authorized Person 2920 S 925 W Ogden, UT 84401	
Phone 801-791-6187	Fax 801-621-7232		
Email Address sbradley@wadman.com		Preferred Method of Written Correspondence Email <small>Email Fax Mail</small>	
Surveyor/Engineer Contact Information			
Name or Company of Surveyor/Engineer Gardner Engineering		Mailing Address of Surveyor/Engineer 5150 South 375 East Suite 3 Ogden, Utah 84405	
Phone 801-476-0202	Fax		
Email Address klint@gecivil.com		Preferred Method of Written Correspondence Email <small>Email Fax Mail</small>	
Property Owner Affidavit			
<p>David Wadman</p> <p>I (We), _____, depose and say that I (we) am (are) the owner(s) of the property identified in this application and that the statements herein contained, the information provided in the attached plans and other exhibits are in all respects true and correct to the best of my (our) knowledge. I (we) acknowledge that during the subdivision review process, it may be determined that additional requirements, covenants and/or agreements may be required to be constructed or entered into.</p> <p> _____ (Property Owner)</p> <p>Subscribed and sworn to me this <u>31</u> day of <u>October</u>, 20<u>19</u></p>			
		 (Property Owner)	

Authorized Representative Affidavit

David Wadman

I (We), _____, the owner(s) of the real property described in the attached application, do authorize as my (our) representative(s), Spencer Bradley, to represent me (us) regarding the attached application and to appear on my (our) behalf before any administrative or legislative body in the County considering this application and to act in all respects as out agent in matters pertaining to the attached application.

David Wadman

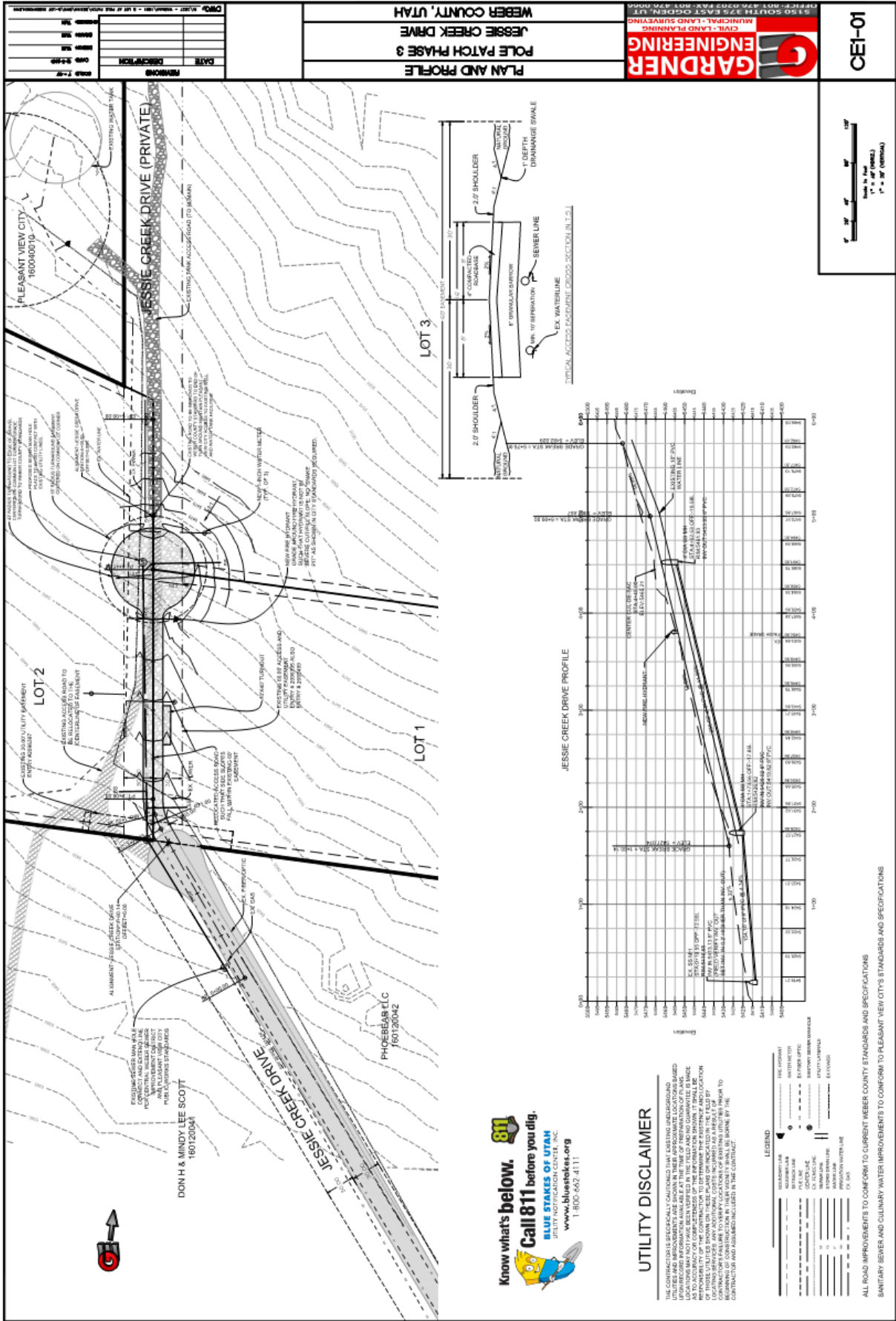
(Property Owner)

(Property Owner)

Dated this 31 day of October, 2019, personally appeared before me signer(s) of the Representative Affidavit who duly acknowledged to me that they executed the same.

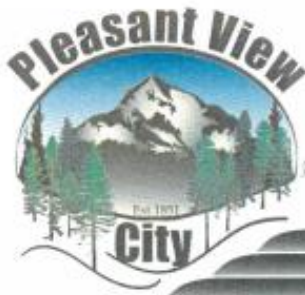


Jerilyn Martin
Notary



ALL ROAD IMPROVEMENTS TO CONFORM TO CURRENT WEBER COUNTY STANDARDS AND SPECIFICATIONS
SANITARY SEWER AND CULINARY WATER IMPROVEMENTS TO CONFORM TO PLEASANT VIEW CITY'S STANDARDS AND SPECIFICATIONS

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520 W. Elberta Dr.
 Pleasant View, Ut 84414
 Main Office (801) 782-8529
 Police Dept. (801) 782-6736

October 31, 2019

Mr. Spencer Bradley and Mr. Bradon Martin
 (sent via email)

RE: Will Serve Letter – Pleasant View City Sanitary Sewer

Dear Spencer and Bradon:

This letter is written to provide notice of capacity and ability to serve your development with sanitary sewer. This letter fulfills the City's obligation to provide sanitary sewer and is in accordance with the Development Agreement approved by the City Council and recorded at the Weber County Recorder's office, which is binding on the City as well as the property owners. The City reiterates the following points:

1. The property may only develop into three (3) residential lots. No further subdivision of the property is approved for culinary water connections.
2. It is the responsibility of the property owners to make application for and connection to City-owned services.
3. Any and all infrastructure to be dedicated to the City must be built to City standards. Engineering is to be done at the property owner's expense. All engineering is subject to review and approval by the City.
4. All impact fees and other associated development fees must be paid prior to issuance of a building permit.
5. All other current State and other regulations apply, including (but not limited to) all Division of Drinking Water requirements. Any exceptions to these requirements must be approved by the appropriate agency prior to approval of improvement plans.
6. Legal provision for disposal of sanitary sewerage must be provided prior to the City allowing any culinary water connections.

Should you have any questions, please feel free to contact me at 801-827-0468.

Sincerely,

Bill Cobabe
 City Administrator
 Pleasant View City

cc: Laurie Hellstrom, City Recorder
 Leonard Call, Mayor



520 W. Elberta Dr.
Pleasant View, UT 84414
Main Office (801) 782-8529
Police Dept. (801) 782-6736

October 31, 2019

Mr. Spencer Bradley and Mr. Bradon Martin
(sent via email)

RE: Will Serve Letter – Pleasant View City Culinary Water

Dear Spencer and Bradon:

This letter is written to provide notice of capacity and ability to serve your development with culinary water. This letter fulfills the City's obligation to provide culinary water and is in accordance with the Development Agreement approved by the City Council and recorded at the Weber County Recorder's office, which is binding on the City as well as the property owners. The City reiterates the following points:

1. The property may only develop into three (3) residential lots. No further subdivision of the property is approved for culinary water connections.
2. The property may not use any culinary water for landscaping or other excessive outdoor use. Incidental and other outdoor use may occur, provided the amount used does not exceed the amount noted in the agreement.
3. It is the responsibility of the property owners to make application for and connection to City-owned services.
4. Any and all infrastructure to be dedicated to the City must be built to City standards. Engineering is to be done at the property owner's expense. All engineering is subject to review and approval by the City.
5. All impact fees and other associated development fees must be paid prior to issuance of a building permit.
6. Due to the location of the property, unexpected drops in pressure and a lower than standard pressure may be expected.
7. Because this is a single-source line (that is, there is no looping or other water source for this line) there may be unexpected outages for extended periods of time. The City is looking to remedy this situation, but it may be some time before that can happen.
8. All other current State and other regulations apply, including (but not limited to) all Division of Drinking Water requirements. Any exceptions to these requirements must be approved by the appropriate agency prior to approval of improvement plans.
9. Legal provision for disposal of sanitary sewerage must be provided prior to the City allowing any culinary water connections.

Should you have any questions, please feel free to contact me at 801-827-0468.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bill Cobabe", with a stylized flourish at the end.

Bill Cobabe
City Administrator
Pleasant View City

cc: Laurie Hellstrom, City Recorder
Leonard Call, Mayor



Pole Patch Landowners Association



Pole Patch Landowners Association Resolution:

The Pole Patch Board of Directors, along with support from the members at the 2019 annual meeting, passed a Resolution to annex Parcel #160040005 – a 29 acre parcel into Pole Patch HOA. Hereto known as Pole Patch Phase 3. This resolution allows for no more than 5 lots to be developed.

Phase 3 is granted access to connect to the Pole Patch sewer lines and roadways, etc. The cost of new infrastructure, roadways, etc... to be paid by phase 3 development.

These new lots will be bound by the Pole Patch CC&Rs and bylaws and as such construction, site plans, etc. will go through the same process for approval through the Pole Patch Board. Annual assessments will begin March 1, 2020, after the lots are subdivided and road/ infrastructure has been installed. IE: if this benchmark is completed in November of 2020- annual assessment will be due starting March 1st of 2021.

For reference, Pole Patch CC&Rs and bylaws can be found at this location & are recorded with the Weber County Recorder.

<http://www.polepatch.com/documents/>

Signed,


Bruce Engelby, Board of Directors-Vice President

Oct 30, 2019
Date


David Park, Board of Directors-Secretary

31-Oct-2019
Date



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

L. Scott Baird
Executive Director

DIVISION OF DRINKING WATER
Marie E. Owens, P.E.
Director

December 13, 2019

Robert Tyson Jackson
Pleasant View City Water System
520 West Elberta Drive
Ogden, Utah 84414

Subject: **Exception to R309-540-5(4)(b)&(c) and R309-540-5(4)(b)**, Peak Instantaneous and Peak Day Pressures and Individual Home Booster Pumps, for 5122 North (Lot 1), 5135 North (Lot 2) and 5192 North (Lot 3) Jessie Creek Drive; Pleasant View City, System #29014, File #11262

Dear Mr. Jackson:

On November 26, 2019, the Division of Drinking Water (the Division) received your request for an exception to Rule R309-540-5(4)(b)&(c) and R309-540-5(4)(b) regarding peak instantaneous pressure, peak day pressure and individual home booster pumps, for three (3) new residential connections adjacent to Pleasant View City's Jesse Creek water storage tank. According to these rules, public drinking water systems shall be designed to meet minimum water pressure requirements at points of connection, 30 psi during peak instantaneous demand and 40 psi during peak day demand and individual home booster pumps shall not be allowed for individual service from the public water supply mains.

The land developer is requesting that three lots that are proposed to be adjacent to the City's 800,000-gallon Jesse Creek tank (identified as ST006 in the Division's database) have drinking water service from the City. The tank has a normal low water elevation of 5,515.5 feet and the service laterals for the proposed lots would connect to the transmission line between the tank and the distribution system at an elevation of 5,468 feet. As recently modeled by the City Engineer, the proposed connections would receive water at 20.4 psi during peak instantaneous demand and 20.5 psi during peak day demand.

With this property being partially located within the water system's service area and pressure zone, an individual home booster pump is necessary to provide the required minimum pressures to this residence. It is the City's opinion that granting these exception requests will not jeopardize the public health if installed as shown in the provided design.

195 North 1950 West • Salt Lake City, UT
Mailing Address: P.O. Box 144830 • Salt Lake City, UT 84114-4830
Telephone (801) 536-4200 • Fax (801) 536-4211 • T.D.D. (801) 903-3978

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The basis for your request for an exception to *R309-540-5(4)(b)&(c)* and *R309-540-5(4)(b)* is that minimum pressures cannot be met due to the close proximity of the Jesse Creek storage tank and the proposed connections. You propose the following measures to provide equivalent protection for public health to meet the intent of the rule:

1. Number and locations of the proposed individual booster pump stations:

The three (3) proposed lots to be served under the requested Rule Exception are located in the proposed Pole Patch Phase 3 subdivision, with addresses of 5122 North (Lot 1), 5135 North (Lot 2) and 5192 North (Lot 3) Jessie Creek Drive, in unincorporated Weber County, Utah.

2. How drinking water quality and public health will be protected:

The meter setters for these services will be equipped with dual check valves to help reduce the potential for backflow into the system.

3. How cross connection hazards will be addressed:

Two (2) of the proposed lot owners (Lots 1 and 2) propose the installation of storage tanks in their homes to receive water from the City system, from which tanks the water will be boosted in their homes solely for domestic purposes. The booster pumps for the homes will be separated from the City system by the in-home storage tanks, which will prevent the potential for a vacuum in the service line due to the booster pump, and also create a pressure-break to prevent unintentional reverse flow into the system.

The third proposed lot owner (Lot 3) proposes installing a duplex booster pump immediately after the meter for its service, adjacent to the City's 10-inch transmission line and boosting into their home. It is undetermined at this time whether the booster system for Lot 3 will incorporate a bladder tank in the home or incorporate the use of variable frequency drives to maintain constant pressure. In addition to the dual check, each pump will be equipped with a non-return valve to prevent unintentional reverse flow into the City system.

4. How will Pleasant View enforce individual booster pumps meeting the requirements of the International Plumbing Code, Section 606.5:

As the plans described above are subject to change, each proposed water booster pump configuration will be reviewed for compliance with IPC 606.5 when the building plans are submitted.

5. Facilitating inspection of the individual home booster pumps by the local plumbing code official:

In conjunction with the Weber County Building Official and Inspectors, the City water department will provide inspections to verify that the booster pump systems are designed and installed per IPC 606.5.

6. Incorporation of individual home booster pumps into Pleasant View's ongoing Cross Connection Control Plan:

By means of Pleasant View City Ordinance Chapter 13.13, all water services become incorporated in Pleasant View City water system's cross connection control (CCC) plan.

7. Access by Pleasant View to inspect the individual home booster pumps:

Pleasant View City Ordinance 13.12.220 states: "The water superintendent and his agents shall at all ordinary hours have free access to any place supplied with water services from municipal system for the purpose of examining the apparatus and ascertaining the amount of water service being used and the manner of its use."

8. Pleasant View standards of operation in place to conduct and scheduled inspections of the individual booster pumps and document the inspection date and results:

Pleasant View City Ordinance 13.13.310.F describes the customer's responsibilities for inspection and testing for all backflow prevention assemblies.

City staff is proposing to amend the above ordinance to read: "It shall be the responsibility of the customer at any premises where backflow prevention assemblies *and/or individual booster pumps* are installed to have certified surveys, inspections, and operational tests made at least once per year at the customer's expense...."

9. Legal notice attached to a title or deed of a property with an individual home booster pump stating that an individual home booster pump is present and Pleasant View City shall have access to inspect it:

A note will be required on the plat for approval of this subdivision. Such a note will satisfy the intent of this requirement, because the plat is the "safest" place to keep such a note.

Additionally, the City will file a notice on each lot upon recordation alerting to the presence of individual home booster pump with reference to the Pleasant View City Ordinances.

On this basis, ***R309-540-5(4)(b)&(c), and R309-540-5(4)(b), Peak Instantaneous and Peak Day Pressures and Individual Home Booster Pumps, is hereby granted for Lots 1, 2 and 3 near Jesse Creak storage tank (ST006).***

Please maintain a copy of this letter with your permanent records for future reference.

Robert Tyson Jackson
Page 4 of 4
December 13, 2019

If you have any questions regarding this letter, please contact Camron Harry, of this office, at (385) 270-7272, or Nathan Lunstad, Engineering Manager, at (385) 239-5974.

Sincerely,

A handwritten signature in blue ink, reading "Ying-Ying Macauley". The signature is fluid and cursive, with the first name "Ying-Ying" and the last name "Macauley" clearly distinguishable.

Ying-Ying Macauley, M.S., P.E.
Assistant Director

CH/nl/mdb

cc: Michelle Cooke, Weber-Morgan Health Department, mcooke@co.weber.ut.us
Tyson Jackson, Pleasant View City, tjackson@pleasantviewcity.com
Dana Shuler, Jones & Associates, dana@jonescivil.com
Camron Harry, Division of Drinking Water, caharry@gmail.com
Nagendra Dev, Division of Drinking Water, ndev@utah.gov

DDW-2018-007464.docx

WHEN RECORDED RETURN TO:

Pleasant View City Administrator
Attn: Bill Cobabe
520 W. Elberta Dr.
Pleasant View, Utah 84414



W3012850

EN 3012850 PG 1 OF 9
LEANN H KILTS, WEBER COUNTY RECORDER
29-OCT-19 902 AM FEE \$1.00 DEP ZG
REC FOR: PLEASANT VIEW CITY

DB

BST

DEVELOPMENT AGREEMENT AND WATER USE RESTRICTIONS

(Weber County Parcel 16-004-0005) **kl**

THIS DEVELOPMENT AGREEMENT AND WATER USE RESTRICTIONS (this "Agreement") is made and entered into on Oct. 24, 2019, by and between Pleasant View City, a Utah municipal corporation and political subdivision of the State of Utah (the "City"), and Wadman Investments, a Utah limited partnership ("Owner").

RECITALS:

WHEREAS, Owner holds title to approximately 29 acres of land located in Weber County, Utah, which land is more fully described and depicted in the materials attached hereto as Exhibit A (the "Property"). Owner intends to develop the Property into a three (3)-lot subdivision in accordance with the applicable provisions of the Weber County Code of Ordinances and this Agreement (the "Project").

WHEREAS, in order to obtain the necessary subdivision and development approvals for the Project from Weber County, Owner needs to obtain "will-serve" letters from the City for culinary water service/connections to each of the proposed three (3) residential lots in the Project.

WHEREAS, Owner and the City previously entered into that certain Agreement dated December 20, 2005, recorded in the Weber County Recorder's Office on January 3, 2006, as Entry No. 2152362 (the "2005 Agreement"), addressing residential culinary water connections to be provided to the Property.

WHEREAS, to honor the terms of the 2005 Agreement while also providing the City with the assurances it desires concerning culinary water use at the Project, Owner and the City desire to enter into this Agreement.

AGREEMENT:

Now, therefore, in consideration of the recitals above and the terms and conditions set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and the City hereby agree as follows:

1. Recitals. The above Recitals are incorporated herein as part of this Agreement.
2. Effective Date. This Agreement shall become effective on the date it is executed by Owner and the City (the "Effective Date"). The Effective Date shall be inserted in the introductory paragraph preceding the above Recitals.
3. Culinary Water Service. Subject to the conditions and restrictions set forth in this Agreement, the City agrees to provide residential culinary water service for each of the three (3) proposed lots in the Project. The City shall charge, and Owner agrees to pay, the standard water service fees for such culinary water service for the three (3) lots consistent with the City's standard rate schedule applicable for culinary water service in the City. Following the full execution and recordation of this Agreement against the Property, the City will promptly issue "will-serve" letters, as requested by Owner, confirming the City's agreement to provide culinary water service to the three (3) lots in the Project as well as connection to one or more fire hydrants subject to the terms of this Agreement. For clarification, each lot will require a booster-pump for culinary water service to each residence. Owner shall install the booster pumps at Owner's expense. All improvements required by the City shall be constructed to current City standards.
4. No Use of Culinary Water for Secondary Water Purposes. As a material inducement to the City's agreement to provide culinary water service to the 3-lot Project, Owner covenants and agrees that it will not use any culinary water obtained from the City for secondary water purposes. Without limiting the general scope of the preceding sentence, this water use restriction means that culinary water shall not be used for irrigation, landscaping, outdoor water features, lawns, or other outdoor use. Owner acknowledges and agrees that this restriction means no landscaping or landscaping features shall be allowed on the Project unless they are designed, installed, and maintained in xeriscape fashion without any need for water. Culinary water from the City shall be used solely for culinary, household purposes. If and when the Project is connected to and receives secondary water from an approved secondary water system, then Owner (and future Owners of the lots in the Project) shall use such secondary water for outdoor, secondary water purposes, but the restriction set forth herein for use of culinary water from the City shall remain in full force and effect.
 - a. Swimming Pools. Notwithstanding the restrictions in Section 4 above, Owner and the City agree to work together in good faith to allow no more than one (1) outdoor swimming pool per lot in the 3-lot Project, with the pools to be filled and maintained with culinary water, so long as Owner (or the successor owner of the subject lot) pays all reasonable and necessary costs to cover the expenses of such use of culinary water. Owner shall give the City prior written notice when they fill a swimming pool. With the prior written notice, the City shall waive the monthly penalty for exceeding the water restriction amount for that month.
 - b. Rainwater Harvesting/Storage. Nothing in this Agreement shall be construed to prohibit Owner from using a rainwater harvesting/storage system to water trees on

the 3 lots in the Project.

5. Sewer Service; Will-Serve Letters. When this Agreement is approved and signed by both Parties, the City shall issue "will-serve" letters for water and sewer service in favor of the Project.
6. Covenant Against Further Subdivision. As a material inducement to the City's agreement to provide culinary water service to the 3-lot Project, Owner covenants and agrees that it shall not subdivide the Project into more than three (3) lots now or in the future. If Owner or any successor owner of the Property attempts to subdivide the Project now or in the future into more than three (3) lots, then in addition to any and all other remedies available to the City, the City shall have no obligation of any kind, express or implied, to provide culinary water service or sewer service to any such additional lots.
7. Remnant Parcel. As additional consideration to the City, Owner hereby agrees that the City may retain ownership of, and shall not be required to convey to Owner, the parcel of property referenced in Paragraph 4 of the 2005 Agreement.
8. Culinary Water Connections. As additional consideration to the City, Owner hereby relinquishes and waives all claims to thirty (30) culinary water connections on the Property under the 2005 Agreement because, as set forth in this Agreement, there shall only be three (3) lots on the Property.
9. Reserved Legislative Powers. Nothing in this Agreement shall limit the future exercise of the police powers of the City in enacting zoning, subdivision, development, growth management, platting, environmental, open space, transportation, and other land use plans, policies, ordinances, and regulations after the date of this Agreement. Notwithstanding the retained power of City to enact such legislation under its police power, such legislation shall not modify Owner's rights as set forth herein unless facts and circumstances are present that meet the compelling, countervailing public interest exception to the vested rights doctrine as set forth in *Western Land Equities, Inc. v. City of Logan*, 617 P.2d 388 (Utah 1988), or successor case law or statute. Any such proposed change affecting Owner's rights shall be of general applicability to all development activity in City. Unless City declares an emergency, Owner shall be entitled to prior written notice and an opportunity to be heard with respect to the proposed change and its applicability to the Project.
10. Successors and Assigns.
 - a. Change in Owner. This Agreement shall be binding on the successors and assigns of Owner. If the Property is transferred ("Transfer") to a third party ("Transferee"), Owner and the Transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Agreement unless, prior to such Transfer, Owner provides to City a letter from Transferee acknowledging the existence of this Agreement and agreeing to be bound thereby.

Said letter shall be signed by the Transferee, notarized, and delivered to City prior to the Transfer. Upon execution of the letter described above, the Transferee shall be substituted as a new "Owner" under this Agreement and the persons and/or entities executing this Agreement as a prior Owner shall be released from any further obligations under this Agreement as to the transferred Property.

- b. Deeds. All future conveyances of lots in the Project shall be made subject to the terms and restrictions of this Agreement regardless of whether the deed(s) or other instrument(s) of conveyance makes reference to this Agreement. The terms of this Agreement shall have priority over all such deeds and conveyances.

11. Default.

- a. Events of Default. Upon the happening of one or more of the following events or conditions the defaulting Owner or City, as applicable, shall be in default ("Default") under this Agreement:
 - i. a determination by City made upon the basis of a preponderance of the evidence that Owner has not complied in good faith with one or more of the material terms or conditions of this Agreement;
 - ii. Owner (or a successor owner of a lot) violates the water use restrictions set forth in this Agreement;
 - iii. any other event, condition, act, or omission, either by City or Owner that violates the terms of, or materially interferes with the intent and objectives of this Agreement.

For clarification, no Owner of one lot shall be held responsible for the default or breach by a different Owner under this Agreement regarding that Owner's lot. Each Owner shall be responsible only for the performance of the obligations under this Agreement relating to that Owner's lot(s).

b. Procedure Upon Default.

- i. For each lot, Owner has the right to use up to (but not more than) 15,000 gallons of culinary water in the home per month. Subject to the inspection and confirmation provisions in subsection (b)(ii) below, if Owner exceeds this amount, except according to paragraph 4(a), Owner shall pay a penalty of \$5,000.00 for exceeding the use for that month. The penalty/fine is due and payable to the City within ten (10) days of the billing.
- ii. If a lot Owner (or a successor owner of any lot) violates the use restrictions set forth above regarding use of no more than 15,000 gallons of culinary water from the City in any given month, before any fine is imposed or paid, a City inspector shall inspect the Property to confirm that

the excess water usage was the result of Owner improperly using culinary water for outside purposes (landscaping or other outdoor use). The fine/penalty set forth in subsection (b)(i) above shall only be imposed on Owner if the City inspector reasonably concludes that the excess water usage was caused by Owner's improper use of culinary water for outdoor purposes.

12. Entire Agreement. This Agreement shall supersede all prior agreements with respect to the subject matter hereof, not incorporated herein, and all prior agreements and understandings are merged, integrated, and superseded by this Agreement.
13. General Terms and Conditions.
 - a. Incorporation of Recitals. The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.
 - b. Recording of Agreement. This Agreement shall be recorded at Owner's expense to put prospective lot purchasers or other interested parties on notice as to the terms and provisions hereof.
 - c. Severability. Each and every provision of this Agreement shall be separate, several, and distinct from each other provision hereof, and the invalidity, unenforceability, or illegality of any such provision shall not affect the enforceability of any other provision hereof.
 - d. Construction of Agreement. This Agreement shall be construed so as to effectuate its public purpose of ensuring the Property is developed as set forth herein to protect health, safety, and welfare of the citizens of City.
 - e. Enforcement. The parties to this Agreement recognize that City shall enforce its rules, policies, regulations, ordinances, and the terms of this Agreement by seeking an injunction to compel compliance.
 - f. No Waiver. Failure of a party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future time said right or any other right it may have hereunder. Unless this Agreement is amended by vote of the City Council taken with the same formality as the vote approving this Agreement, no officer, official, or agent of City has the power to amend, modify, or alter this Agreement or waive any of its conditions as to bind City by making any promise or representation not contained herein.
 - g. Amendment of Agreement. This Agreement shall not be modified or amended except in written form mutually agreed to and signed by each of the parties. No

change shall be made to any provision of this Agreement unless this Agreement is amended pursuant to a vote of the City Council taken with the same formality as the vote approving this Agreement.

- h. Attorney Fees. Should any party hereto employ an attorney for the purpose of enforcing this Agreement or any judgment based on this Agreement, for any reason or in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, including appeals or rehearings, and whether or not an action has actually commenced, the prevailing party shall be entitled to receive from the other party thereto reimbursement for all attorneys' fees and all costs and expenses. Should any judgment or final order be issued in any proceeding, said reimbursement shall be specified therein.
- i. Notices. Any notices required or permitted to be given pursuant to this Agreement shall be deemed to have been sufficiently given or served for all purposes when presented personally, or four days after being sent by registered or certified mail, properly addressed to the parties as follows (or to such other address as the receiving party shall have notified the sending party in accordance with the provisions hereof):

To the Owner:	Spencer Bradley 2920 S 925 W Ogden, UT 84401
To the City:	Bill Cobabe 520 W Elberta Drive Pleasant View, UT 84414
- j. Applicable Law. This Agreement and the construction thereof, and the rights, remedies, duties, and obligations of the parties which arise hereunder are to be construed and enforced in accordance with the laws of the State of Utah.
- k. Execution of Agreement. This Agreement may be executed in multiple parts as originals or by facsimile copies of executed originals, and all such counterparts together shall constitute one and the same agreement.
- l. Hold Harmless and Indemnification. Owner agrees to defend, indemnify, and hold harmless City and its elected officials, officers, agents, employees, consultants, special counsel, and representatives from liability for claims, damages, just compensation restitution, inverse condemnation, or any judicial or equitable relief which may arise from or are related to any activity connected with the Project, including approval of the Project, the direct or indirect operations of Owner or its contractors, subcontractors, agents, employees, or other persons acting on its behalf which relates to the Project, or which arises out of claims for personal injury, including health, and claims for property damage. This includes any claims

or suits related to the existence of hazardous, toxic, and/or contaminating materials on the Project and geological hazards.

- i. Nothing in this Agreement shall be construed to mean that Owner shall defend, indemnify, or hold the City or its elected and appointed representatives, officers, agents and employees harmless from any claims of personal injury, death or property damage or other liabilities arising from: (i) the willful misconduct or negligent acts or omissions of the City, or its boards, officers, agents, or employees; and/or (ii) the negligent maintenance or repair by the City of improvements that have been offered for dedication and accepted by the City for maintenance
 - ii. City shall give written notice of any claim, demand, action or proceeding which is the subject of Owner' hold harmless agreement as soon as practicable but not later than thirty (30) days after the assertion or commencement of the claim, demand, action or proceeding. If any such notice is given, Owner shall be entitled to participate in the defense of such claim. Each party agrees to cooperate with the other in the defense of any claim and to minimize duplicative costs and expenses.
- m. Relationship of Parties. The contractual relationship between City and Owner arising out of this Agreement is one of independent contractor and not agency. This Agreement does not create any third-party beneficiary rights. It is specifically understood by the parties that: (i) all rights of action and enforcement of the terms and conditions of this Agreement shall be reserved to City and Owner, (ii) the Project is a private development; (iii) City has no interest in or responsibilities for or duty to third parties concerning any improvements to the Property; and (iv) Owner shall have the full power and exclusive control of the Property subject to the obligations of Owner set forth in this Agreement.
- n. Title and Authority. Owner expressly warrants and represents to City that Owner (i) owns all right, title and interest in and to the Property, or (ii) has the exclusive right to acquire such interest, and (iii) that prior to the execution of this Agreement no right, title or interest in the Property has been sold, assigned or otherwise transferred to any entity or individual other than to Owner. Owner warrants that the undersigned individuals have full power and authority to enter into this Agreement on behalf of Owner. Owner understands that City is relying on these representations and warranties in executing this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by City and by a duly authorized representative of Owner as of the date first written above.

THE CITY:

Attest:

Pleasant View City, a municipal corporation and political subdivision of the State of Utah

Janie Helstrom
City Recorder

By: *Donna Helstrom*
Mayor

OWNER:

Wadman Investments, a Utah limited partnership

By: *David Wadman*
Its: *Managing Member*

State of Utah)
 :SS
County of *Utah*)
 Weber

The foregoing instrument was acknowledged before me this *24* day of *October* 2019 by *David Wadman* in his capacity as *Managing Member* of Wadman Investments.

SEAL:

Jerilyn Martin
Notary Public

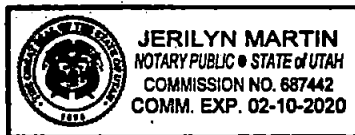


Exhibit "A"

Property Ownership Map and Legal Description

(Weber County Parcel 16-004-0005)

PART OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 7 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER; RUNNING THENCE ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER NORTH 89°47'17" WEST 1332.39 FEET; THENCE NORTH 586.95 FEET TO A POINT OF THE WEBER/BOX ELDER COUNTY LINE; THENCE SOUTH 72°02'01" EAST 414.69 FEET; THENCE NORTH 7°20'28" WEST 372.80 FEET; THENCE NORTH 55°06'51" EAST 777.75 FEET ALONG SAID COUNTY LINE; THENCE SOUTH 62°04'20" EAST 393.37 FEET; THENCE ALONG SAID EAST LINE SOUTH 1094.30 FEET TO THE POINT OF BEGINNING. CONTAINING 28.92 ACRES