

Midway City Council
16 February 2021
Regular Meeting

Lower River Annexation /
Further Consideration

Memo



Midway

Date: February 16, 2021
To: Midway City Council
From: Michael Henke
Re: Lower River Annexation / Further Consideration

The City has received an annexation petition from Probst Raspberry LLC which was signed by Ken Probst for a potential annexation of 88.29 acres. There are two areas of annexation, a north area of 9.77 acres (north parcel) and a south area of 78.52 acres (south parcel). The first step in the annexation process for the City Council is to determine that the annexation petition provides the information and representations required by the City Code. If the City Council determines that the application is complete, then the petition may be accepted for further consideration.

Per the City Code, the intent of the annexation code is the following:

It is the intent of this Chapter to ensure that property annexed to the City will contribute to the attractiveness of the community and will enhance the rural, resort image which is critical to the economic viability of the community, and that the potential fiscal effect of an annexation does not impose an unreasonable burden upon City resources and tax base.

The general requirements that should be considered, as listed in the annexation code, include the following:

- Logical Extension of City Required
 - Property under consideration for annexation must be considered a logical extension of the City boundaries.
- Consistent with General Plan and the Municipal Code

- Annexation of property to the City must be consistent with the intent and purpose of the annexation code and the Midway City General Plan, in addition to the Master Plan for water, sewer, and roads.
- Efficiency of Proposal Required
 - Every annexation shall include the greatest amount of contiguous property area, which is also contiguous to the City's municipal boundaries.
- Individual Small Parcel Proposals Discouraged
 - Piecemeal annexation of individual small properties shall be discouraged if larger contiguous parcels are available for annexation within a reasonable time frame in order to avoid repetitious annexations.
- Islands, Peninsulas, and Irregular Boundaries of Annexation Areas Discouraged
 - Islands of county jurisdiction shall not be left or created as a result of the annexation and peninsulas and irregular boundaries shall be strongly discouraged.
- City Must be Able to Serve Area at Consistent Level of Service
 - In addition to services provided by existing districts, such as sewer, fire protection, and public schools, the following urban level services, consistent with those normally provided in the rest of the incorporated boundaries will be provided to annexed areas:
 - Law enforcement protection.
 - Snow removal on public streets, subject to standard City snow removal policies.
 - Maintenance of existing public streets, provided that such streets have been constructed or reconstructed to City street standards or are acceptable to the City Engineer and City Council.
 - Planning, zoning, and municipal code enforcement.
 - Access to municipal sponsored parks and recreational activities and cultural events and facilities.
 - Water and sewage waste disposal services as the area is developed. Existing facilities for water treatment, storage and delivery, and/or for sewage removal and treatment, may be inadequate to provide water and sewer services to a proposed annexation area. The City shall determine the timing of and necessary capacity for the extension of water and sewer service to a proposed annexation area. New development in an annexation area shall pay the cost of improvements necessary for the extension and connection of new developments to City water and sewer lines and systems, as well as contribute to the cost of additional capital improvements, including but not limited to, storage and distribution facilities as necessary for safe, reliable, and efficient water flows and waste removal.
- Annexations to be Scrutinized
 - Before considering requests for annexation, the City shall carefully analyze the impacts of annexation of an area, taking into consideration whether the area will create negative impacts on the City and considering whether the City can

economically provide services to the annexed area. Community issues such as location and adequacy of schools and community facilities, traffic, fire protection, particularly in wildfire/wild land interface areas, usable open space and recreation areas, protection of sensitive lands, conservation of natural resource, protection of view corridors, protection and preservation of historic resources, affordable housing, balance of housing types and ownership, adequate water and sewer capacity to serve the future needs of the proposed annexation area shall be considered.

- Annexation for Preservation Allowed
 - Situations may exist where it is in the public interest to preserve certain lands from development in flood plains, where geologic hazards exist, where slopes are severe, or where the need for preservation of community open space and/or agricultural lands is consistent with the General Plan. In such circumstances, annexations may occur as a means of retaining those lands in a natural state.

Additional items to consider with the annexation petition:

One item that the City uses to evaluate a petition for annexation is a concept plan. A concept plan has been submitted with the application. The plan includes a resort development on the south parcel and a seven-lot residential development on the north parcel. The concept plan does not include much detail, but it does state the resort area would include resort and commercial buildings along with resort cottages. Between the two annexation parcels is property that would be left in Wasatch County's jurisdiction and includes seven relatively large lots ranging from 4.9 acres to 29 acres. It appears that an unincorporated peninsula would not be created with this petition.

There are three points of access on the plan including a southern access across the Kem Gardner property and the Utah Department of Fish and Game property. There is a second access from 850 South. There is also a third access from the Midway Crest subdivision accessing from Fox Den Road. Two of the three access points do not appear to be viable options. Kem Gardner, owner of some of the property under the southern access, has stated that access will not be allowed across his property. The access from the Midway Crest subdivision also has issues that make the access, as shown on the plat, not possible. The issues with this access will be discussed in more detail later in this memo.

Potentially, if the access issues were resolved and the City were to annex the south parcel and grant the zoning designation of RZ, the area could become a beneficial tax base for the City. A hotel and commercial area would create tax revenue along with the proposed resort cottages. The City's General Plan does promote economic development of resort areas and this would be an opportunity to create a new resort. A new resort would also help the City to retain the resort tax which the City has tried to retain. Once more detail is given, the City could better analyze the potential positive impact of a resort development.

Another benefit to the City could be an expanded public trail network. The City plans to build a trailhead on the Kem Gardner property to the west of the south parcel. From that trailhead, trails will head to Deer Creek, east to Heber, north to Midway Main Street, and potentially, northeast

near the Provo River across the proposed annexation property. The possible public trails across the property could be a great benefit to the City residents.

Another issue that staff has identified is the sensitive lands map that was submitted. It clearly shows all the FEMA floodplain on the property, but it does not give any other information about sensitive lands. Wetlands have been identified on the property, but the sensitive lands map does not address them. Depending on the amount and location of wetlands, the development potential of the property would be impacted.

The petitioner is requesting a zoning designation of RA-1-43 on the north 9.77-acre parcel. Currently, the Wasatch County zoning designation of the parcel is A-20 which allows for one dwelling for every 20 acres. One item to consider is the land use of surrounding properties. Heber Valley Special Service District (HVSSD) owns the properties east and south of the north parcel. HVSSD plans to create sewer lagoons on their property which will have an impact on the north parcel. The City has tried to limit residential development next to HVSSD properties because of potential impacts. This has been the case with the Peery property to the north, which is currently zoned industrial in Wasatch County. The owner of the property has attempted to amend Midway's General Plan to annex the property in as residential. Those petitions to amend the City's General plan have not been successful, partially because of the potential impact of allowing dwellings next to an odor nuisance. The current County zoning of A-20 would allow for greater amount of area per dwelling for property surrounding the HVSSD property which would help lessen the potential odor nuisance. Increasing the density from A-20 to RA-1-43, which would allow for seven lots, would increase the potential of the odor nuisance to a larger number of dwellings and future residences that would be built on the north parcel. The City took the approach of lowering the density on a neighboring annexation containing the Midway Crest subdivision partially because of the potential odor nuisance, to the extent that there is a note stating this potential nuisance on the Midway Crest plat. The County zoning on that parcel was RA-1 and the City annexed in the parcel as RA-1-43 but limited the density on the 24 acres to five lots. Whereas the petition of the north parcel would increase density from A-20 to RA-1-43. This could be a potential increase from zero lots (if the property is not a lot of record) to seven lots. Finally, the north parcel is not contiguous to the City boundary until the Midway Crest subdivision is annexed into the City.

Another issue regarding the development of the north parcel is access. The concept plan has a connection to the parcel from 850 South and a connection from the Midway Crest subdivision. A potential future road easement was included on the Midway Crest plat that was recorded in Wasatch County because the property has not yet been annexed. The easement that was placed on the plat is for a future possible road but there are problems with using the easement as an access to the north parcel. One issue is the placement of the road easement crosses directly over an approved storm pond and storm pond easement. Moving the pond and easement would require engineering review and approval, approval from the owner of lot 4, along with discretionary approval by the City Council for a plat amendment to relocate the storm drain pond and easement. Another issue is the City cannot approve a road on the possible future road easement because the angle of the intersection where the road would connect to Fox Den Road does not comply with engineering standards for intersection angles. It is possible that if the south parcel annexation area had two points of access to Hwy 113 then the north parcel could be developed with a cul-de-sac that would access from 850 South. A cul-de-sac access from the south would make the access from Midway Crest unnecessary.

POSSIBLE FINDINGS:

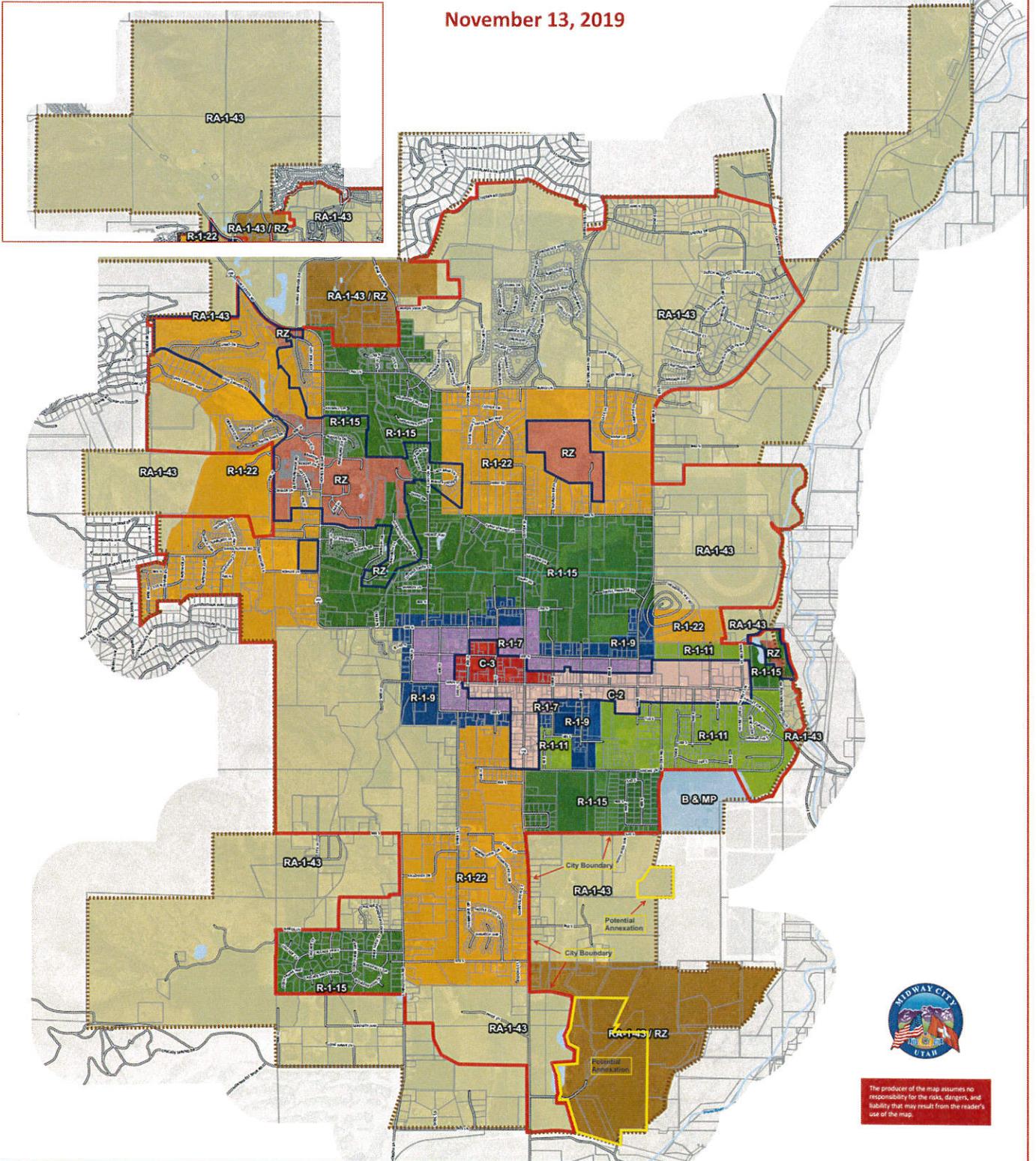
- The proposed annexation will not create an unincorporated peninsula.
- The proposal does not have two verified access points.
- A concept plan was submitted with the application.
- The petitioned zoning does match the planned zones for the annexation area on City's land use map.
- The sensitive lands map is incomplete and does not include any wetlands information.
- Increasing density near HVSSD property has the potential of being impacted by odors.
- Without more detail of the resort area, the City cannot determine the economic impact of the annexation on the City and surrounding community.
- Further consideration of the petition by the City Council does not guarantee the property will be approved for annexation by the City Council.

ALTERNATIVE ACTIONS:

1. Approval of further consideration. This action can be taken if the City Council finds that the application is complete and meets the intent of the annexation code.
 - a. Accept staff report
 - b. List accepted findings
2. Continuance. This action can be taken if the City Council would like to continue studying further consideration of the proposal.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for continuance
 - i. Unresolved issues that must be addressed
 - d. Date when the item will be heard again
3. Denial of further consideration. This action can be taken if the City Council finds that the application is not complete or does not comply with the intent of the annexation code.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for denial

MIDWAY CITY - Land Use

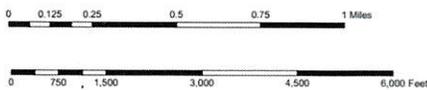
November 13, 2019



The producer of the map assumes no responsibility for the risks, dangers, and liability that may result from the reader's use of the map.

Legend

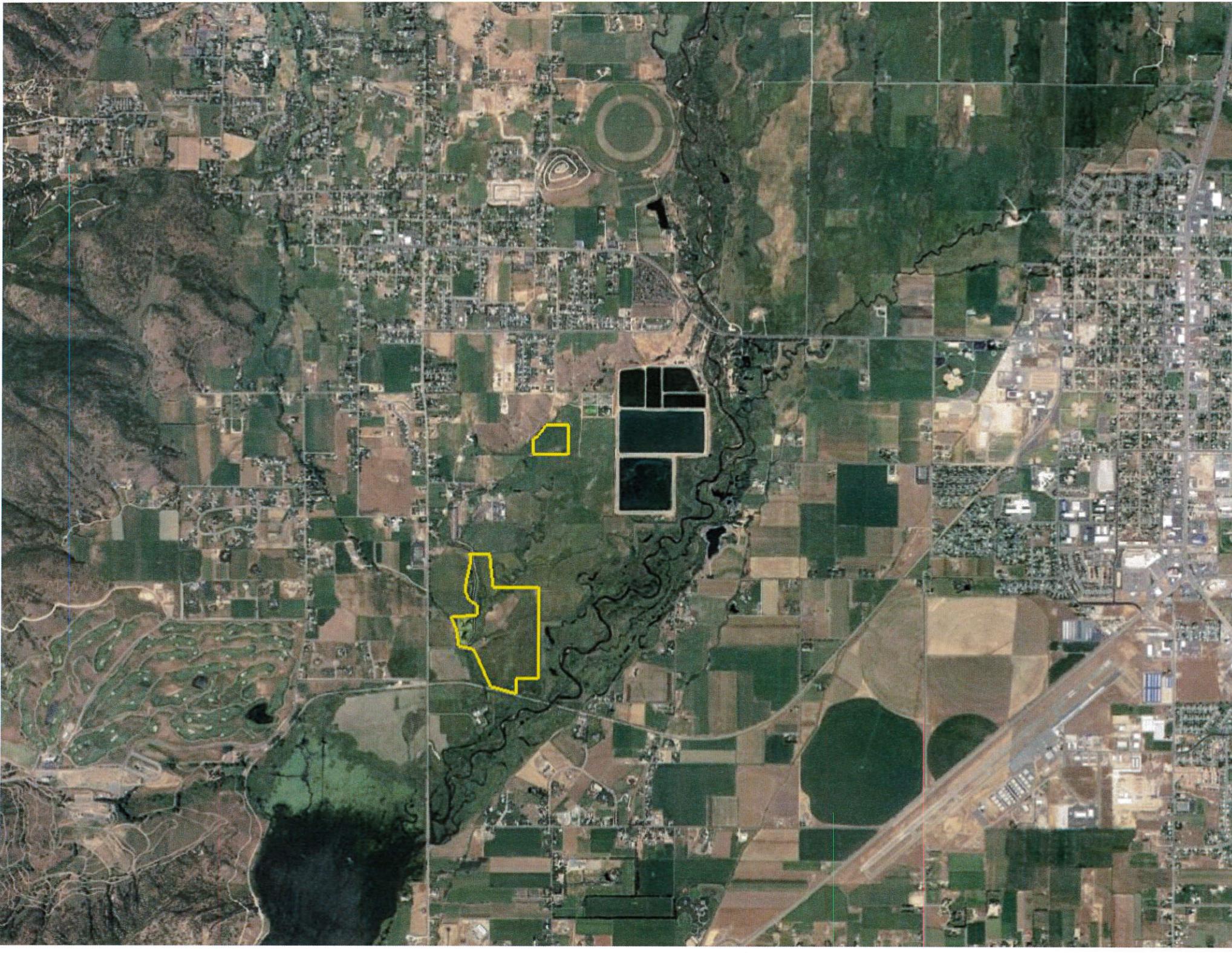
- Midway Growth Boundary Zoning
- TROD
- Midway City Boundary
- Rivers
- Roads
- Water Body
- R-1-22
- B & MP
- R-1-7
- C-2
- R-1-9
- C-3
- RA-1-43
- R-1-11
- RZ
- R-1-15
- RA-1-43 / RZ

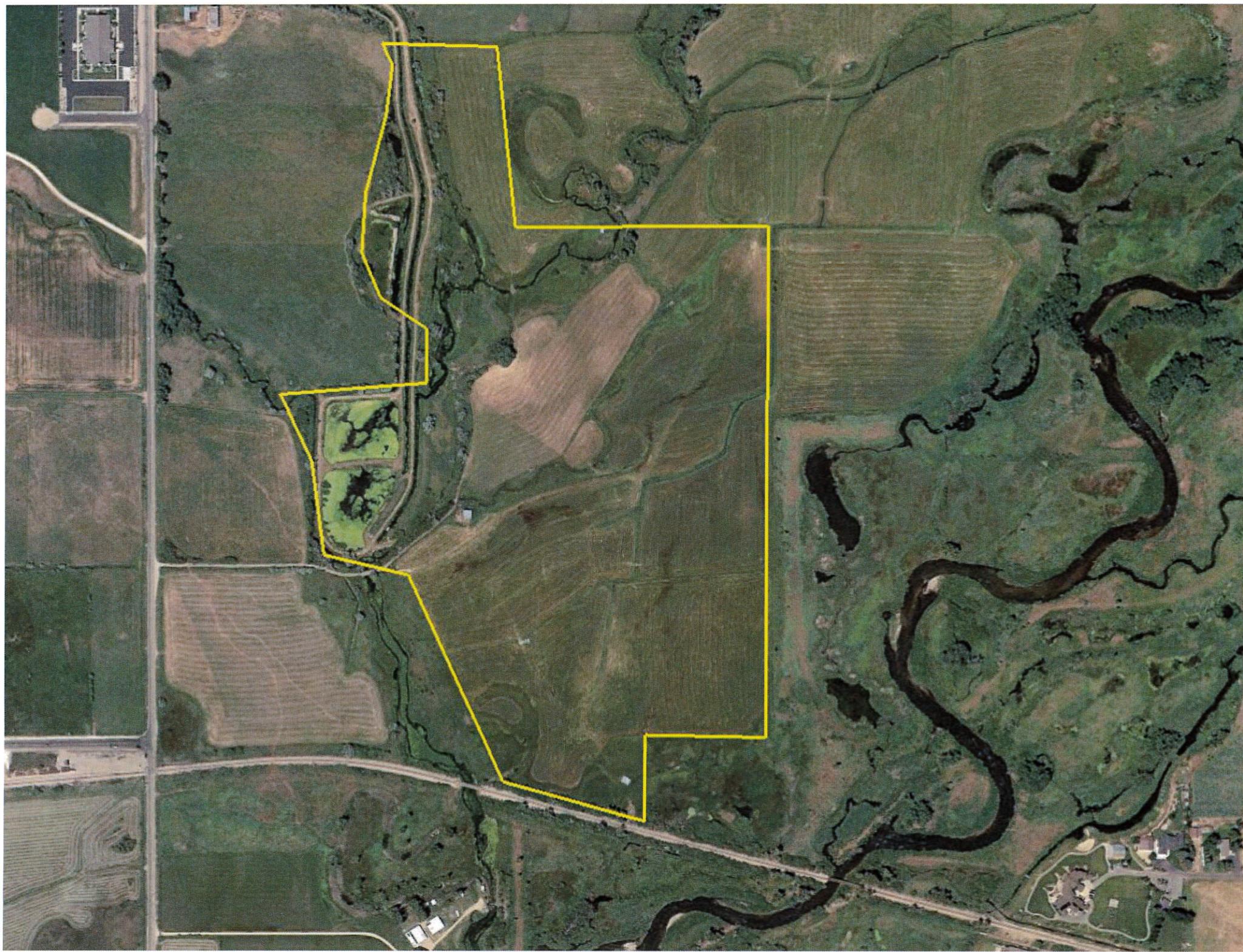


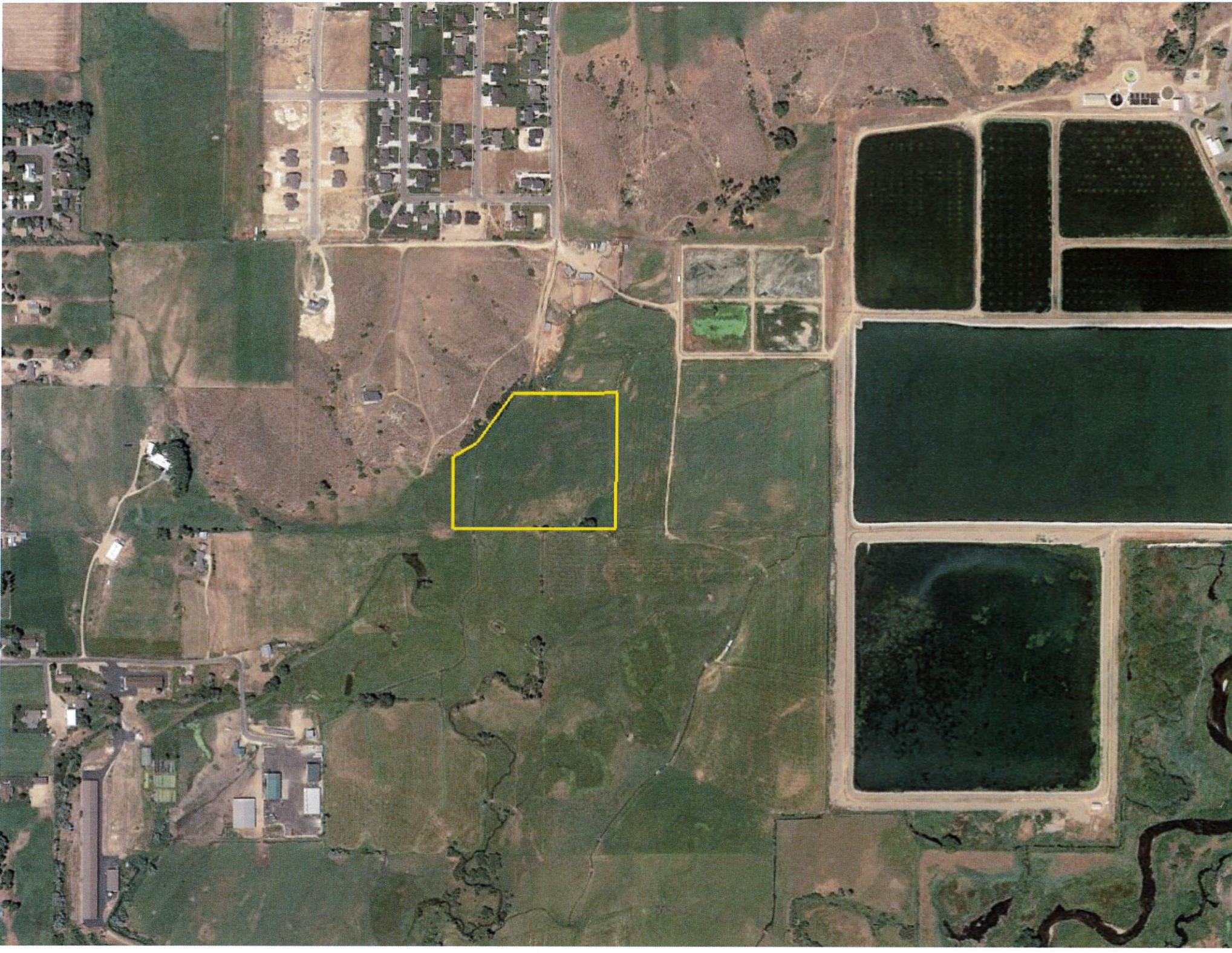
MAG
Expert Resources. Enriching Lives.

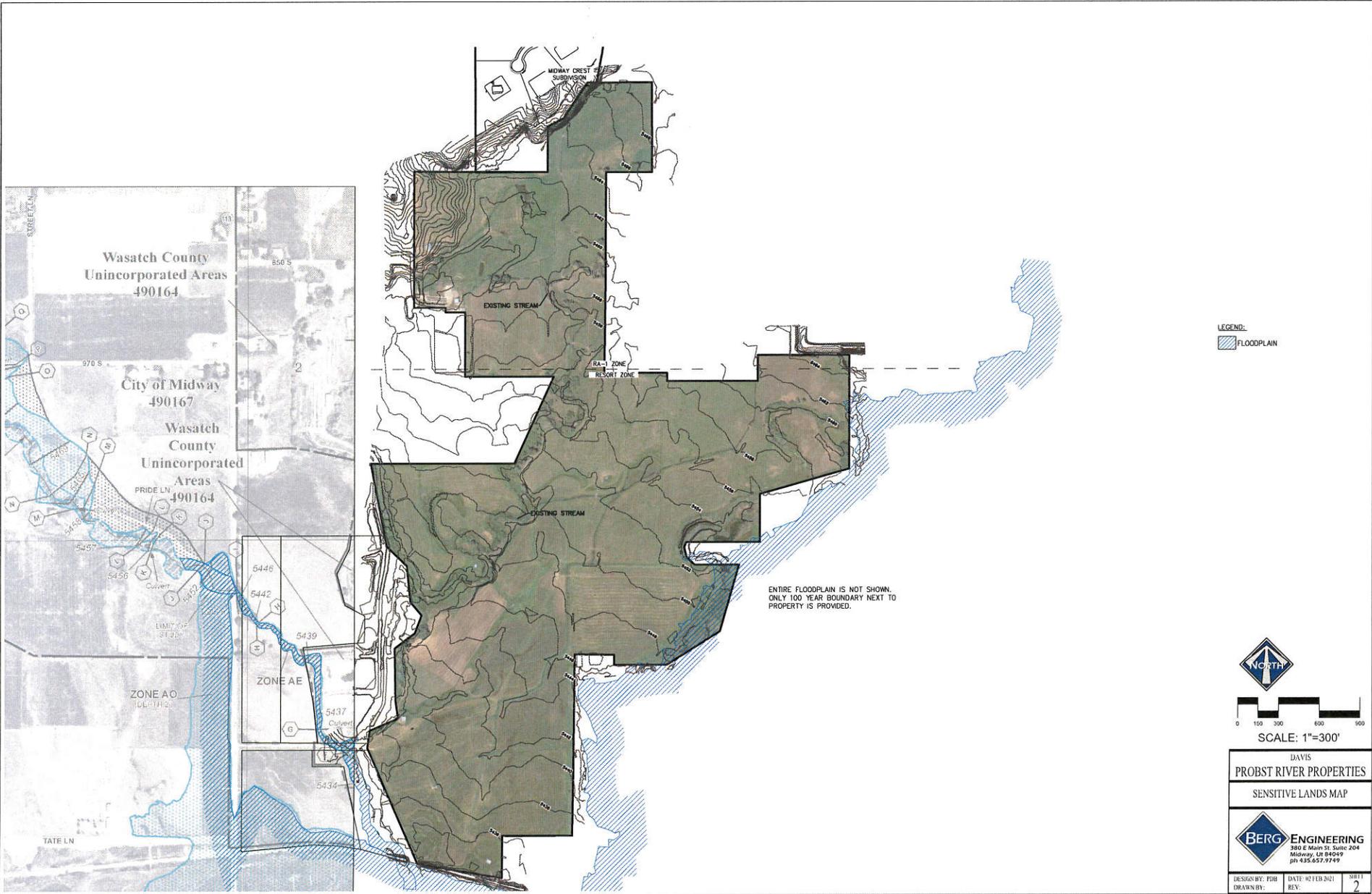
Map Produced by GIS/Imagery, GIS/Chart Cartographer
Mountainland Association of Governments
Map Production Date: Nov. 13, 2019
Map Projections: State Plane Utah Central (NAD83), Feet
Data Source: Midway City & Utah County











Wasatch County
Unincorporated Areas
490164

City of Midway
490167

Wasatch County
Unincorporated Areas
490164

ZONE AO
(UPLAND)

ZONE AE

RA-1 ZONE
RESORT ZONE

EXISTING STREAM

EXISTING STREAM

ENTIRE FLOODPLAIN IS NOT SHOWN.
ONLY 100 YEAR BOUNDARY NEXT TO
PROPERTY IS PROVIDED.

LEGEND:
FLOODPLAIN

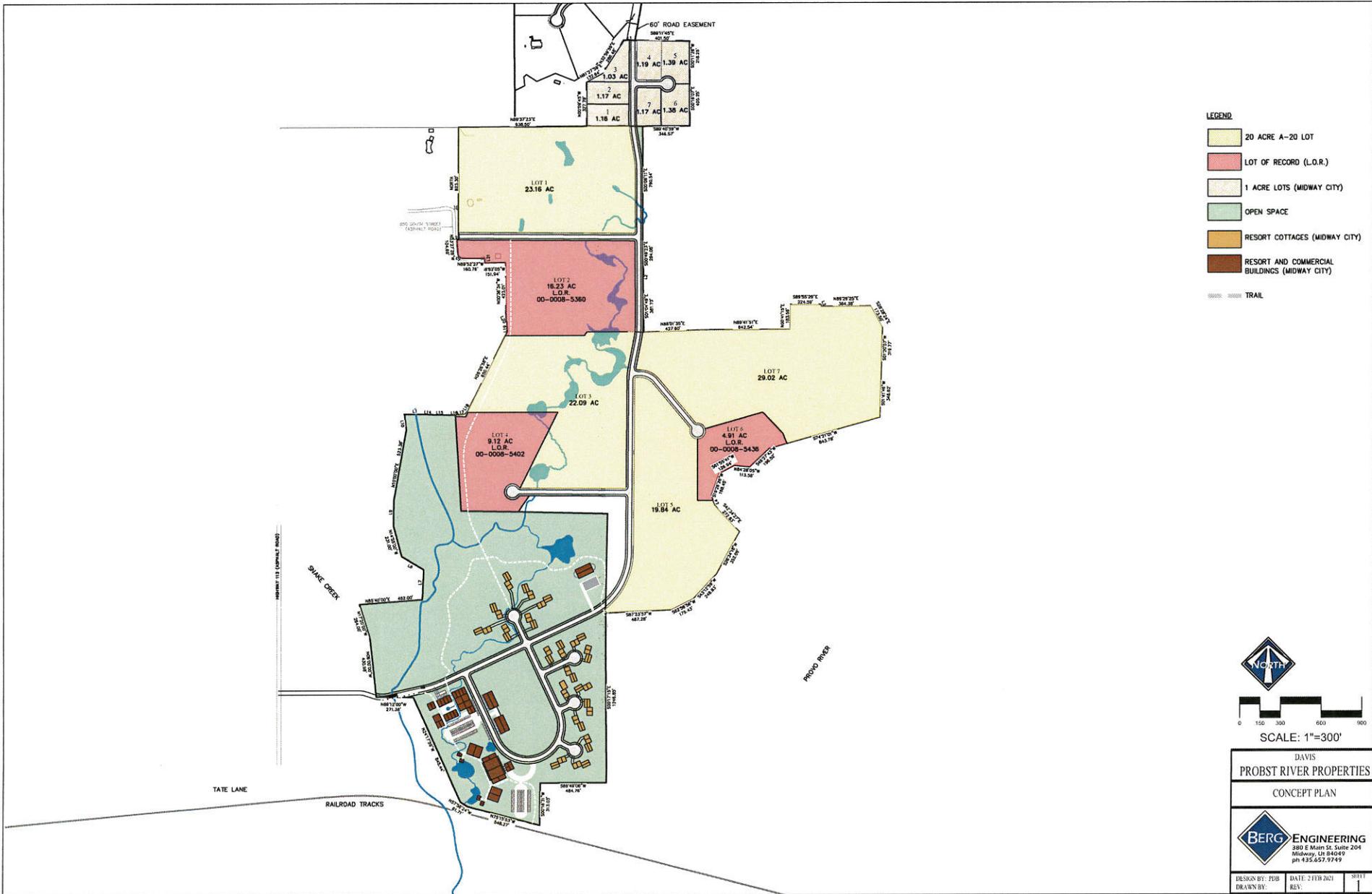


SCALE: 1"=300'

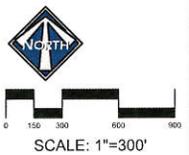
DAVIS
PROBST RIVER PROPERTIES
SENSITIVE LANDS MAP



DESIGNER: FDB	DATE: 02/18/2011	SHEET
DRAWN BY:	REV:	2



- LEGEND**
- 20 ACRE A-20 LOT
 - LOT OF RECORD (L.O.R.)
 - 1 ACRE LOTS (MIDWAY CITY)
 - OPEN SPACE
 - RESORT COTTAGES (MIDWAY CITY)
 - RESORT AND COMMERCIAL BUILDINGS (MIDWAY CITY)
 - TRAIL



SCALE: 1"=300'

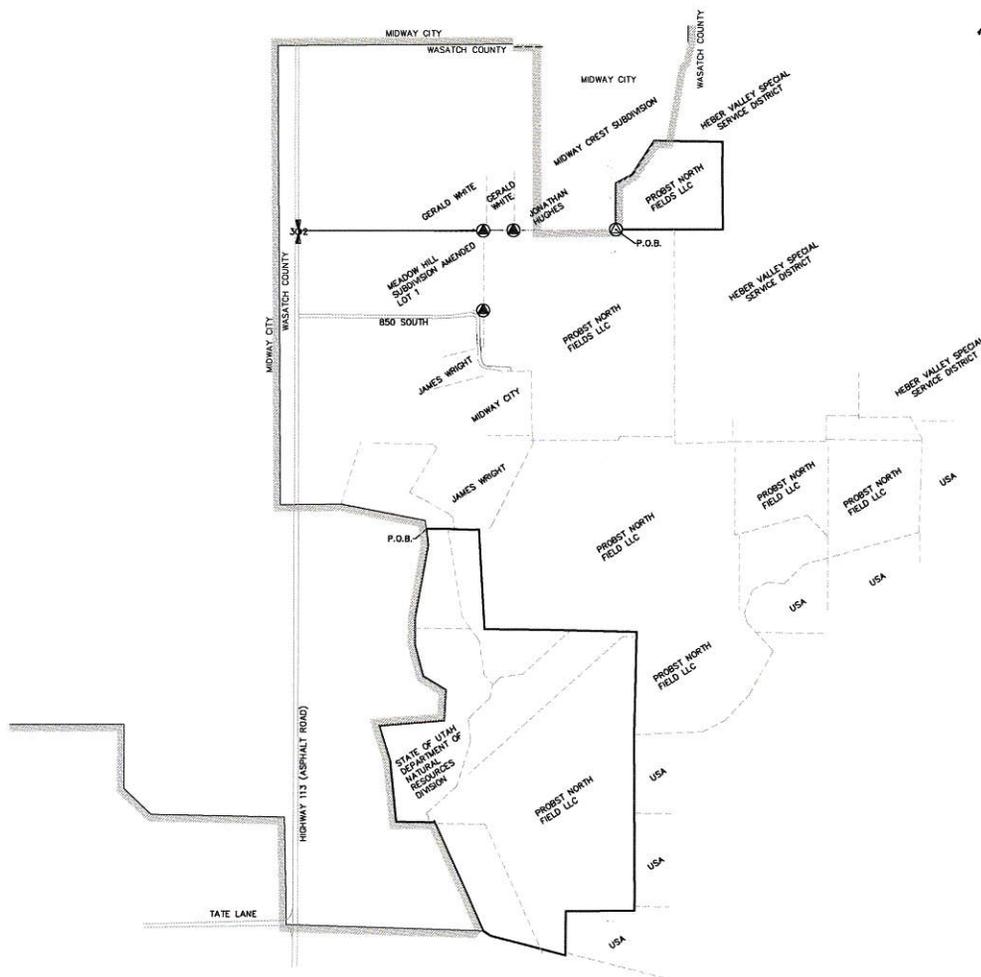
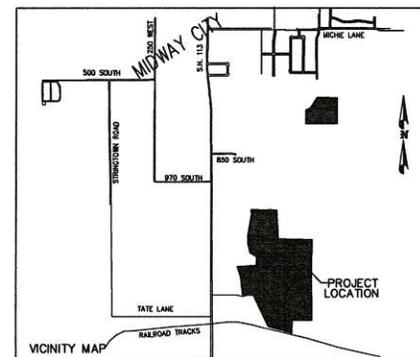
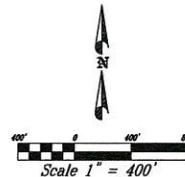
DAVIS
PROBST RIVER PROPERTIES
 CONCEPT PLAN



DESIGN BY: JPB DATE: 2 FEB 2021 3111
 DRAWN BY: REV: 1

LOWER RIVER ANNEXATION

LOCATED IN SECTION 2 TOWNSHIP 4 SOUTH, RANGE 4 EAST, SALT LAKE BASE & MERIDIAN.



- LEGEND**
- MIDWAY CITY LIMITS
 - FOUND REBAR WITH CAP MARKED CIVIL SOLUTIONS
 - SET REBAR CAP MARKED ELEMENT
 - DEED LINES FOR ADJACENT PROPERTY

COUNTY SURVEYOR

APPROVED AS TO FORM ON THIS _____ DAY OF _____, 20____
 ROS # _____
 COUNTY SURVEYOR _____

SURVEYOR'S CERTIFICATE

I, TROY L. TAYLOR, DO HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR, AND THAT I HOLD CERTIFICATE NO. 6854112 AS PRESCRIBED BY THE LAWS OF THE STATE OF UTAH, AND THAT THIS IS A TRUE AND ACCURATE MAP OF THE TRACT OF LAND TO BE ANNEXED TO MIDWAY CITY, WASATCH COUNTY, UTAH.

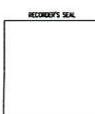


ACCEPTANCE BY LEGISLATIVE BODY

THIS IS TO CERTIFY THAT WE, THE UNDERSIGNED, HAVE ADOPTED A RESOLUTION OF ITS INTENT TO ANNEX THE TRACT OF LAND SHOWN HEREON AND HAVE SUBSEQUENTLY ADOPTED AN ORDINANCE ANNEXING SAID TRACT INTO MIDWAY CITY, UTAH; AND THAT A COPY OF THE ORDINANCE HAS BEEN PREPARED FOR FILING HERewith ALL IN ACCORDANCE WITH UTAH CODE SECTION 10-2-416 AS REVISED AND THAT WE HAVE EXAMINED AND DO HEREBY APPROVE AND ACCEPT THE ANNEXATION OF THE TRACT AS SHOWN AS A PART OF SAID MIDWAY CITY, AND THAT SAID TRACT OF LAND IS TO BE KNOWN AS THE LOWER RIVER ANNEXATION.

DATED THIS ____ DAY OF _____, _____

MAYOR _____ DATE _____
 CITY ATTORNEY _____ DATE _____
 CITY ENGINEER _____ DATE _____
 ATTEST: _____
 CITY RECORDER _____ DATE _____



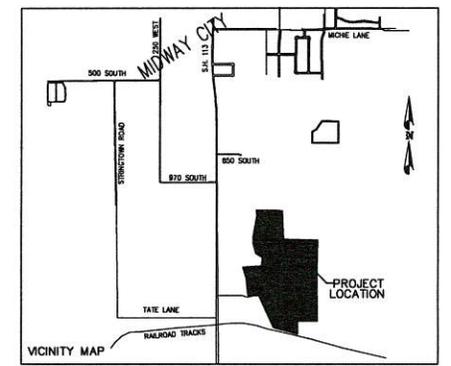
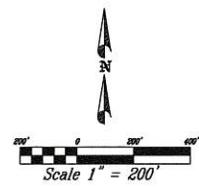
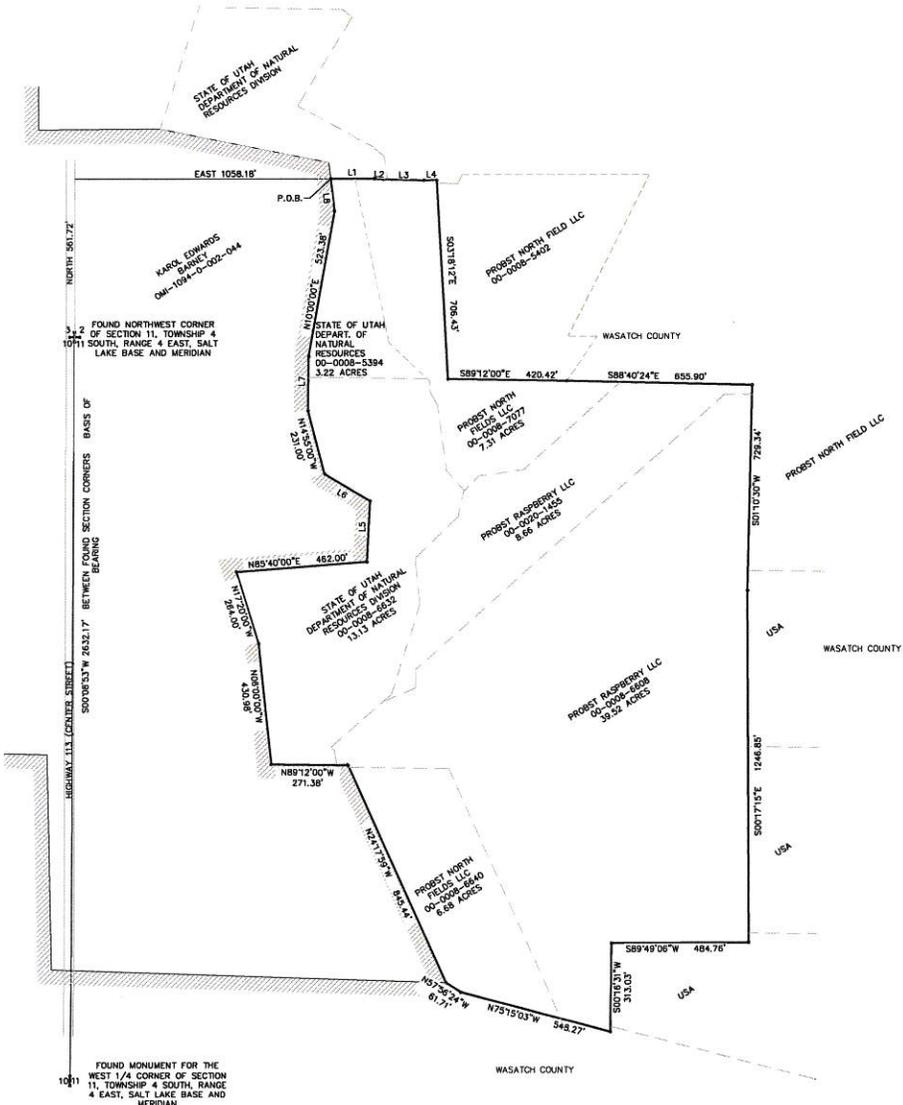
COUNTY RECORDER

LOWER RIVER ANNEXATION PLAT

DATE: 19 JANUARY 2021 DRAWING NO. 01_ANNEX_PLAT SHEET NO. 1 OF 3

LOWER RIVER ANNEXATION

LOCATED IN SECTION 2 TOWNSHIP 4 SOUTH, RANGE 4 EAST,
SALT LAKE BASE & MERIDIAN.



LINE TABLE		
LINE	LENGTH	DIRECTION
L1	153.99'	EAST
L2	31.31'	N85°01'42"W
L3	144.30'	N88°37'28"W
L4	44.49'	S89°30'44"W
L5	217.80'	N02°45'00"E
L6	188.10'	N58°50'00"W
L7	192.08'	N00°27'30"E
L8	115.67'	N08°40'00"W

- LEGEND**
- MIDWAY CITY LIMITS
 - FOUND REBAR WITH CAP MARKED CIVIL SOLUTIONS
 - SET REBAR CAP MARKED ELEMENT
 - DEED LINE

PROPOSED ZONING FOR PROPERTY ON THIS SHEET: RESORT ZONE

BASIS OF BEARING

BASIS OF BEARING FOR THIS ALTA SURVEY IS SOUTH 00°08'53" WEST BETWEEN THE FOUND MONUMENT MARKING THE NORTHWEST CORNER OF SECTION 1, T4S, R4E, AND THE FOUND MONUMENT MARKING THE WEST 1/4 CORNER OF SECTION 11, T4S, R4E, SL&BM.

BOUNDARY DESCRIPTION

BEGINNING AT A POINT NORTH 561.72 FEET AND EAST 1058.18 FEET FROM THE NORTHWEST QUARTER CORNER OF SECTION 2, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SALT LAKE BASE MERIDIAN;

THENCE EAST 153.99 FEET;
 THENCE NORTH 85°01'42" WEST 31.31 FEET;
 THENCE NORTH 88°37'28" WEST 144.30 FEET;
 THENCE SOUTH 89°30'44" WEST 44.49 FEET;
 THENCE SOUTH 03°16'12" EAST 706.43 FEET;
 THENCE SOUTH 89°12'00" EAST 420.42 FEET;
 THENCE SOUTH 88°40'24" EAST 655.90 FEET;
 THENCE SOUTH 01°10'30" WEST 729.34 FEET;
 THENCE SOUTH 00°17'15" EAST 1246.85 FEET;
 THENCE SOUTH 89°49'00" EAST 484.76 FEET;
 THENCE SOUTH 00°16'31" WEST 313.03 FEET;
 THENCE NORTH 75°15'03" EAST 548.27 FEET;
 THENCE NORTH 57°56'24" EAST 61.71 FEET;
 THENCE NORTH 24°17'59" WEST 845.44 FEET;
 THENCE NORTH 89°12'00" W 271.38 FEET;
 THENCE NORTH 06°00'00" WEST 430.88 FEET;
 THENCE NORTH 17°20'00" WEST 264.00 FEET;
 THENCE NORTH 85°40'00" EAST 462.00 FEET;
 THENCE NORTH 02°45'00" EAST 217.80 FEET;
 THENCE NORTH 58°50'00" WEST 188.10 FEET;
 THENCE NORTH 14°55'00" WEST 231.00 FEET;
 THENCE NORTH 00°27'30" EAST 192.08 FEET;
 THENCE NORTH 10°00'00" EAST 523.38 FEET;
 THENCE NORTH 08°40'00" WEST 115.67 FEET TO THE POINT OF BEGINNING.

AREA = 78.52 ACRES

LOWER RIVER ANNEXATION PLAT

DATE: 19 JANUARY 2021	DRAWING NO. 03_ANNEX_PLAT	SHEET NO. 3 OF 3
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February 2, 2021

Attachment B
Annexation Analysis

A petition for annexation must be signed by property owners representing a minimum of 1/2 of the area being annexed and at least 1/3 of the market value of the properties being annexed. The analysis in Table 1 demonstrates that the annexation petition complies with these standards.

Table 1 - Annexation Analysis for Area and Market Value

Property Owner	Serial #	Parcel #	Acres	Market Value	Petitioner
Probst North Fields LLC	OWC-1108-2-002-044	00-0012-4698	9.77	\$190,348	Yes
Probst North Fields LLC	OWC-1263-0-011-044	00-0008-7077	7.31	\$472,120	Yes
Probst North Fields LLC	OWC-1232-0-011-044	00-0008-6640	6.68	\$163,250	Yes
Probst Raspberry LLC	OWC-1263-1-011-044	00-0020-1455	8.66	\$410,640	Yes
Probst Raspberry LLC	OWC-1228-0-011-044	00-0008-6608	39.52	\$978,500	Yes
Utah Department of Natural Resources	OWC-1231-0-011-044	00-0008-6632	13.13	\$0	No
Utah Department of Natural Resources	OWC-1126-0-002-044	00-0008-5394	3.22	\$0	No

Total 88.29 \$2,214,858

Annexation Petitioners 71.94 \$2,214,858
 % of Annexation Represented by Petitioners 81.5% 100.0%

Davis Annexation - 600' Notices

Number	Name	Address	City	State	Zip Code
1	BARNEY KAROL EDWARDS TR	3270 W 3000 S	HEBER CITY	UT	840323958
2	BUREAU OF RECLAMATION	PO BOX 51338	PROVO	UT	846050000
3	COOPER STEVEN CARL TR	1097 N EXPLORER PEAK DR	HEBER CITY	UT	840321273
4	DURTSCHI OREN S TR	1641 STRINGTOWN RD	MIDWAY	UT	840496226
5	HEBER VALLEY SPECIAL SERVICE DISTRICT	PO BOX 427	MIDWAY	UT	840490427
6	HUGHES JONATHAN S & CONSTANCE	927 MOUNTAIN SIDE DR	FARMINGTON	UT	840253202
7	IVERSON DARIN B TR	6858 SAINT ALBANS RD	MCLEAN	VA	221012809
8	KC GARDNER MIDWAY RIVER LC	201 S MAIN ST STE 2000	SALT LAKE CITY	UT	841112298
9	MIDWAY CREST SUBDIVISION	PO BOX 1165	MIDWAY	UT	840491165
10	PROBST NORTH FIELDS LLC	3290 W 3500 S	HEBER CITY	UT	840323681
11	PROBST RASPBERRY LLC	3290 W 3500 S	HEBER CITY	UT	840323681
12	STATE OF UTAH DEPT OF NATURAL RESOURCES	90TH S 400 W	SALT LAKE CITY	UT	841011365
13	TRUMAN MARK E TR	8026 MERLEWOOD AVE	LAS VEGAS	NV	891177646
14	UTAH DEPARTMENT FISH & GAME	1596 W NORTH TEMPLE	SALT LAKE CITY	UT	841163154
15	WINTERTON JEFFREY M TR	160 E 200 S	HEBER CITY	UT	840320000
16	WRIGHT BRENDA J TR	PO BOX 1053	MIDWAY	UT	840491053



Planned Future
Pond Area