



SPECIAL NIBLEY CITY COUNCIL MEETING AGENDA  
Thursday, August 24, 2017 – 6:30 p.m.  
Nibley City Hall 455 West 3200 South, Nibley, Utah

1. Selection of a Mayor Pro-Tem
2. Opening Ceremonies (Councilmember Beus)
3. Call to Order and Roll Call (Chair)
4. Approval of Minutes and Agenda (Chair)
5. Public Comment Period<sup>1</sup> (Chair)
  
6. Presentation by Utah Local Governments Trust regarding risk management
7. Discussion and consideration of a Cooperative Agreement between the Utah Division of Forestry, Fire and State Lands and Nibley City
8. Discussion and consideration regarding a final plat and development agreement for the Rigby Subdivision, Amendment 2, located at approximately at 250 W 3450 S (Applicant: Gordon Rigby)
9. A public hearing to receive comment regarding a rezone application for Parcel 03-008-0001, located at approximately at 2200 S 1200 W, from Agricultural to Residential R-2A (Applicant: Return Development LLC)
10. Discussion and Consideration of Ordinance 17-12: A Rezone of Parcel 03-008-0001, located at approximately at 2200 S 1200 W, from Agricultural to Residential R-2A (Applicant: Return Development LLC)
11. A public hearing to receive comment regarding a preliminary subdivision plat for Firefly Estates, located at approximately 2200 S 1200 W (Applicant: Return Development LLC)
12. Discussion and consideration of a preliminary subdivision plat for Firefly Estates, located at approximately 2200 S 1200 W (Applicant Return: Development LLC)
13. A public hearing to receive comment regarding Ordinance 17-11: Nibley City's Parks, Trails, Recreation and Open Space Master Plan
14. Discussion and consideration of Ordinance 17-11: Nibley City's Parks, Trails, Recreation and Open Space Master Plan (First Reading)
15. Adoption of the Canvas of the August 15, 2017 Nibley City Primary Election
16. Council and Staff Reports

### **Adjourn Meeting**

*IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, REASONABLE ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES WILL BE PROVIDED UPON REQUEST. FOR ASSISTANCE, PLEASE CALL (435) 752-0431 AS SOON AS POSSIBLE BEFORE THE MEETING.*

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<sup>1</sup> Public input is welcomed at all City Council Meetings. 15 minutes have been allotted to receive verbal public comment. Verbal comments shall be limited to 3 minutes per person. A sign-up sheet is available at the entrance to the Council Chambers starting 15 minutes prior to each council meeting and at the rostrum for the duration of the public comment period. Commenters shall identify themselves by name and address on the comment form and verbally for inclusion in the record. Comment will be taken in the order shown on the sign-up sheet. Written comment will also be accepted and entered into the record for the meeting if received prior to the conclusion of the meeting. Comments determined by the presiding officer to be in violation of Council meeting rules shall be ruled out of order.



**Nibley City Council  
Agenda Report for  
August 24, 2017**

**Agenda Item #: 6**

<b>Description</b>	Presentation by Utah Local Governments Trust regarding Risk Management
<b>Department</b>	City Council
<b>Presenter</b>	Jason Watterson of the Utah Local Governments Trust
<b>Recommendation</b>	Receive the presentation
<b>Financial Impact</b>	Improvements in risk management practices will result in lower insurance premiums for the City, as well as decreased losses related to liabilities, improved safety and better performance.
<b>Reviewed By</b>	City Manager, Public Works Director

**Background**

The Utah Local Governments Trust would like to report to the Council regarding the City's performance on risk management related functions. The Trust is the insurance provider for the City and City staff members work with the Trust to implement policies and practices that will result in improved safety and less liability for the City.

**Agenda Item # 7**

<b>Description</b>	Discussion and consideration of a Cooperative Agreement between the Utah Division of Forestry, Fire and State Lands and Nibley City
<b>Department</b>	Admin and Planning
<b>Presenter</b>	Blain Hamp, Bear River Area Manager with the Division of Forestry, Fire and State Lands.
<b>Financial Impact</b>	Total cost of \$577.
<b>Recommendation</b>	Adopt the Cooperative Agreement between the Utah Division of Forestry, Fire and States Lands
<b>Reviewed By</b>	City Planner, City Attorney, City Engineer, City Public Works Director, City Manager, and Mayor

**Background:**

Governor Herbert signed into law S.B. 122 Wildland Fire Policy which allows eligible entities, which include municipalities, with wildland responsibility and taxing authority to participate with the State of Utah in a Cooperative Agreement for wildland fire management. Once the agreement is in place, the State will pay all wildland fire suppression costs when a Delegation of Fire Management Authority and Transfer of Fiscal Responsibility has occurred for a participating entity. If we do not participate, the City will be responsible for all wildland fire suppression within our jurisdiction.

The new legislation identifies a Participation Commitment (P.C.) which establishes agreed upon prevention, preparedness and mitigation actions to be carried out by the participating entity. Nibley's P.C. will be based on historic wildland fire suppression cost and wildland fire risk. The City must participate in Wildfire Mitigation and Wildfire Preparedness Activities. We have been access that the City must commit a total of \$577 a year to these activities. The City will also need to create a Community Wildfire Preparedness Plan.

The following are some benefits of the program:

1. Local fire departments will maintain their role in fire suppression.
2. When fires are delegated to the State, the State will pay for extended attack and all aircraft costs.
3. Delegation occurs when the local fire department requests it or when State or Federal lands become involved.
4. The Division will assist with Community Wildfire Preparedness Plan.
5. Local government is empowered to reduce risk in the community.

## Agenda Item # 8

Description	Discussion and consideration regarding a final plat and development agreement for the Rigby Subdivision Amendment 2 located at approximately at 250 W 3450 S (Applicant: Gordon Rigby)
Department	Planning
Presenter	Stephen Nelson
Applicant	Gordon and Shawn Rigby
Findings	All lots meet required size, frontage, and setbacks.  The title on the plat reads Preliminary Plat, should be final plat.  The name and address of the owner and subdivider are not listed on the plat  Missing notes for groundwater and agriculture.  The Applicant was award a variance to Nibley City 11-5-5 (G) regarding access to the private road.
<b>Finical Impact</b>	There are several costs associated with new development and the higher impact that it puts on City infrastructure. However, these costs are offset by impact fees and other development fees.
Recommendation	Give final approval for the Rigby Subdivision Amendment 2.
Reviewed By	City Planner, City Manager, City Engineer, City Building Inspector, and Public Works Director.

## Background

Gordon and Shawn Rigby have applied to subdivided The Rigby Subdivision further by adding a fifth lot. The City Council approved of the preliminary plat on August 3, 2017. This has been added to the agenda at the developer's request to the Mayor. This item will be considered by the Planning Commission the day before the City Council. If the Planning Commission does not make a recommendation or the plat has not had the errors fixed as listed below, then I would recommend continuing the item to the next meeting. Staff believes it will be given a positive recommendation from the Planning Commission.

## Engineer and Staff Review

	R-1A Zone	Rigby
Min Lot Size	.75 Acres	.76 Acres
Frontage	150 ft.	All lots comply
Side Yard Setback	10/25 ft	All lots comply
Read Yard Setbacks	25 ft	All lots comply

The subdivision is in the R-1A zone which requires all lots to be a minimum size of .75 acres and have a frontage of 150 ft. The plat complies with those standards. The only items on the plat that are missing are as follows:

- The title on the plat reads Preliminary Plat, should be final plat.
- The name and address of the owner and subdivider are not listed on the plat
- Missing notes for groundwater and agriculture.

The applicant is aware of the errors and had committed to fixing the plat before the City Council meets.

The main concern with the plat is that it is proposing a fourth lot to access a private road. Nibley City Code 11-5-5 (G) limits the number of lots that access onto a private road to three lots and would require an upgrade to the road. Nibley City staff informed the developer during the pre-application meeting. The developer decided to seek a variance to this code to add the fourth lot. There was a variance hearing on June 28, 2017 where a variance was granted to allow a fifth home to access the private drive without needing to do any improvements to the road.

### Stormwater and Utilities

All the utilities are currently listed on the plat as required by Nibley City code. Stormwater is currently filtered off the road into the surrounding fields.

### Development Agreement

The development agreement contains all the basic elements of a Nibley City development agreement. Because there are no improvements to City infrastructure that is required, the City has not included any bond language.

**Agenda Item #9 and 10**

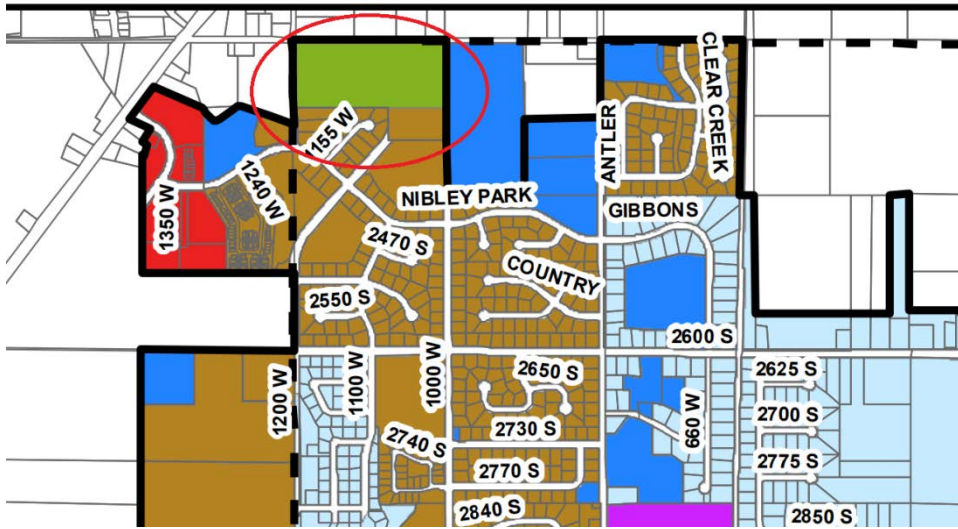
<b>Description</b>	<p>A public hearing to receive comment regarding a rezone application for Parcel 03-008-0001, located at approximately at 2200 S 1200 W, from Agricultural to Residential R-2A (Applicant: Return Development LLC)</p> <p>Discussion and Consideration Ordinance 17-12 A Rezone of Parcel 03-008-0001, located at approximately at 2200 S 1200 W, from Agricultural to Residential R-2A (Applicant: Return Development LLC)</p>
<b>Department</b>	Planning
<b>Presenter</b>	Stephen Nelson, City Planner
<b>Applicant</b>	Return Development, LLC
<b>Findings</b>	<ul style="list-style-type: none"> <li>• The North section of the property is currently zoned Agricultural and the South section is of the property is currently zoned R-2A</li> <li>• The rezone is not a spot zone since a piece of the parcel is already R-2A and the zoning along the southern border is also zone R-2A</li> <li>• This is a legislative action and the City Council has wide discretion for rezoning applications.</li> </ul>
<b>Financial Impact</b>	<p>There are several costs associated with new development and the higher impact that it brings on City infrastructure. However, these costs are offset by impact fees and other development fees, as well as property tax revenue increases.</p>
<b>Recommendation</b>	<p>The Planning and Zoning Commission unanimously recommended approval of this rezone application.</p> <p>Staff also recommends approval of the rezone because it matches the surrounding zoning and the developer has agreed to conditions tied to the construction of Meadow Lane.</p> <p>The recommendation is to adopt the ordinance and approve the rezone with the following condition:</p> <ol style="list-style-type: none"> <li>1) The developer will not be responsible for installing the asphalt on Meadow Lane or the curb gutter and sidewalk on</li> </ol>

	<p>the east side of Meadow Lane with the first phase of development of this parcel.</p> <p>2) The developer will dedicate all of the property needed for the right-of-way for the future construction of Meadow Lane.</p> <p>3) Meadow Lane shall be completely constructed at such time that the portion of this property located east of Meadow Lane is developed.</p> <p>4) If the City has a need, it may develop Meadow Lane sooner. There will be a lien placed on the remainder parcel that would obligate the developer of the east side of the property to reimburse the City for a proportional cost of construction of Meadow Lane when the remainder parcel is developed and which would not allow development of the eastern portion until such payment is made.</p> <p>A potential option for the City Council would be to rezone a portion of the property but to leave part of it in the agricultural zone. For example, if it were the intent of the Council to keep the eastern portion of this property in the agricultural zone in order to maintain a buffer for the adjacent Firefly Nature Park, the Council could do so.</p>
<b>Reviewed By</b>	City Planner, City Attorney, City Engineer, City Public Works Director, City Manager, Mayor and Planning Commission

**Background**

Return Development, LLC is seeking a rezone for the north section of their Parcel 03-008-0001. The parcel is currently divided between Agricultural and R-2A zones, and the landowner is requesting that the entire parcel be rezoned to R-2A so that they can develop the entire parcel. The applicant has submitted a preliminary plat in conjunction with the rezone application. The applicant has submitted all of the required documents. The City Attorney has reviewed the title and finds no legal issues with the rezone that is being requested.

Nibley City Code 10-1A-6 Land Use Authority for Public Hearings states that for zone changes “The city council shall hear this matter after recommendation of the planning commission.” The Planning Commission heard and voted on the item on July 26, 2017 with a recommendation of approval.



The following is the applicant statement that was included with their application.

1. *What is the need for the proposed zone change?*
  - a. *We are developing the property into residential homes. We are simply rezoning the parcel to fit the zoning of the surrounding homes (R-2A) and possibly multi-family housing after city ordinance is adopted. (Staff Note: Nibley City Code would not currently allow for multifamily housing on this parcel)*
2. *What will the public benefit be if the zone change is granted?*
  - a. *The public benefit will be a well-built neighborhood near the Firefly Park for the future residents of Nibley City that complies with all city standards and code requirements. It will also provide Nibley with affordable housing to help them comply with state regulations.*
3. *How does the proposal comply with the goals and policies of the Nibley City General Plan?*
  - a. *Our development makes life better for citizens by providing a well-built community, not only for the middle class Americans, but also lower income families that could not afford housing otherwise. We are dedicated to preserving Nibley's historical and natural environment by preserving specifically the Fireflies that inhabit Firefly Park to the east. We are committed to working with the city to follow and uphold the municipal code and city standards while seeking to enhance Nibley's general plan throughout our development.*
4. *Is there any annexation of property necessary?*
  - a. *No.*
5. *Is the anticipated use appropriate for the surrounding area?*



a. *Yes.*

6. *What public infrastructure is in place to serve the type and intensity of the proposed use? If needed, could the infrastructure be reasonably extended, at the cost of the developer?*

a. *After discussion with Justin Maughan and the city engineer, there is adequate sewer, water and power to serve the proposed development needs.*

7. *Does the proposed zone change constitute "spot zoning"?*

a. *No.*

### **General Plan and Future Land Use**

Nibley City's current General Plan does not provide a Future Land Use Map but recommends the City adopt one and add it to the General Plan. Staff has looked at the Future Land Use Map in the 2007 General Plan to see what it identifies the parcels use to be. The 2007 Future Land Use Map calls for the Parcel to be zoned Industrial, however, staff believes that is an inappropriate use of the land and that residential use would be a much more appropriate use for that land. An updated version of the map was included in the 2015 Stormwater Master Plan showing the same recommended use as industrial. The land just south of the parcel, as well as about 25% of the subject parcel, are zoned R-2A, which matches the zone the applicant is seeking.

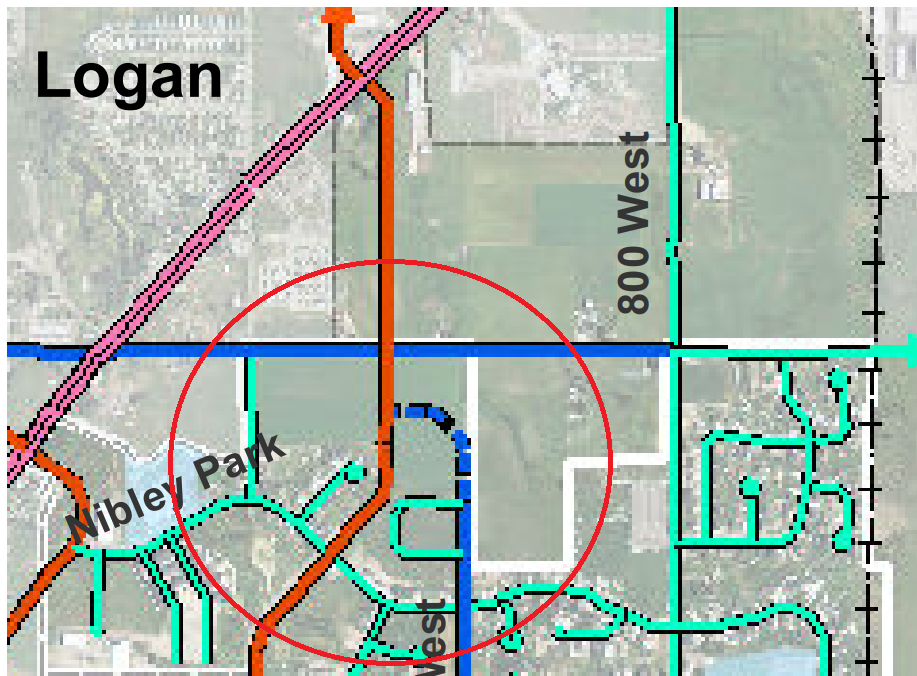
The property just north of the parcel is in Logan City and is currently in agricultural use but is zoned as Gateway, which would allow for multi-family and commercial development. A developer has discussed plans with Logan City to have multi-family and some commercial development on that site in the future.

### **Firefly Estates**

The developer is seeking a rezone along with the Preliminary Plat Application. Staff has discussed with the City Attorney and has found that the developer can legally seek both at the same time because it is a preliminary plat, but that conditions of preliminary approval must be based on a successful change of zone. Staff has informed the developer of the risk of seeking both at the same time, and the developer has accepted the risk.

### **Meadowview Lane**

The applicant has agreed with the City that, if the City grants the rezone, the developer will dedicate the right-of-way where the future Meadow View Lane will be, as shown below:



Some of the conditions that the applicant has agreed to regarding this right-of-way are laid out as the following:

- 1) The developer will not be responsible for installing the asphalt on Meadow Lane or the curb gutter and sidewalk on the east side of Meadow Lane with the first phase of development of this parcel.
- 2) The developer will dedicate all of the property needed for the right-of-way for the future construction of Meadow Lane.
- 3) Meadow Lane shall be completely constructed at such time that the portion of this property located east of Meadow Lane is developed.
- 4) If the City has a need, it may develop Meadow Lane sooner. There will be a lien placed on the remainder parcel that would obligate the developer of the east side of the property to reimburse the City for a proportional cost of construction of Meadow Lane when the remainder parcel is developed and which would not allow development of the eastern portion until such payment is made.

Nibley City's Attorney is currently working on a contract that would make this agreement binding. That contract would be ready before the next council meeting.

Because of the cost of the road, it is unlikely that the road could be developed by a developer in the future under the current zoning.

**Agenda Item # 11 and 12**

<b>Description</b>	<p>A public hearing to receive comment regarding a preliminary subdivision plat for Firefly Estates, located at approximately 2200 S 1200 W (Applicant Return: Development LLC)</p> <p>Discussion and consideration of a preliminary subdivision plat for Firefly Estates, located at approximately 2200 S 1200 W (Applicant Return: Development LLC)</p>
<b>Department</b>	Planning
<b>Presenter</b>	Stephen Nelson
<b>Applicant</b>	Return Development, LLC
<b>Findings</b>	<p>All setback, lot sizes, frontages, and the number of lots comply with Nibley City Code 10-11 for R-2A zone.</p> <p>The majority of property and all of the proposed development is zoned Agriculture, approval of plat must be made with the condition of the zone change, as has been requested by the developer.</p> <p>The preliminary plat addresses the requirements of Nibley City Code 11-4-1.</p>
<b>Financial Impact</b>	There are several costs associated with new development and the higher impact that it brings on City infrastructure. However, these costs are offset by impact fees and other development fees, as well as property tax revenue increases.
<b>Recommendation</b>	Recommend approval of the preliminary plat, based on approval of the rezone application.
<b>Reviewed By</b>	City Planner, City Building Inspector, City Public Works Director, City Engineer, City Manager, and Nibley City Planning Commission.

**Background**

Firefly Estates is a proposed 9.26-acre subdivision with a proposed 24 lots. The eastern side of the property is being proposed to remain undeveloped at this time.

	Zoned (R-2A if approved)	Firefly Estates
Min Lot Size	12,000	13,068
Average Lot Size	14,000	15,003
Frontage	100 ft.	All lots comply
Side Yard Setback	10 ft. (25 ft. next to roads)	All lots comply
Read Yard Setbacks	25 ft.	All lots comply

## Zoning

It is important to note that the portion of this property being proposed to be subdivided is currently not zoned as R-2A but as Agricultural. The developer is seeking a rezone along with the Preliminary Plat Application. Staff has discussed with the City Attorney and has found that the developer can legally seek both at the same time because it is a preliminary plat, but that condition of preliminary approval be based on a successful change of zone. Staff has informed the developer of the risk of seeking both at the same time, and the developer has accepted the risk. As the plat stands today, it does not comply with zoning code, but would comply if the rezone application is successful.

## Staff and Engineering Review

The plat meets the requirements listed in Nibley City Code 11-4-1 for standards for a preliminary plat. However, there are a few concerns that staff has about some aspects of the proposed infrastructure that will need to be worked out before final approval can be given, but staff has no major concerns about the preliminary plat. Those concerns are addressed below.

## Canal and Wetland

There are several irrigation conveyances on the property. The subdivider has reached out to the College Irrigation Company for their approval for piping and rerouting the canals. Staff is waiting to hear back from the canal company but does not anticipate any problems.

There are no registered wetlands on the property, however, there has been some flooding on the property this past year. Staff has informed the developer and they are taking the wet condition into consideration.





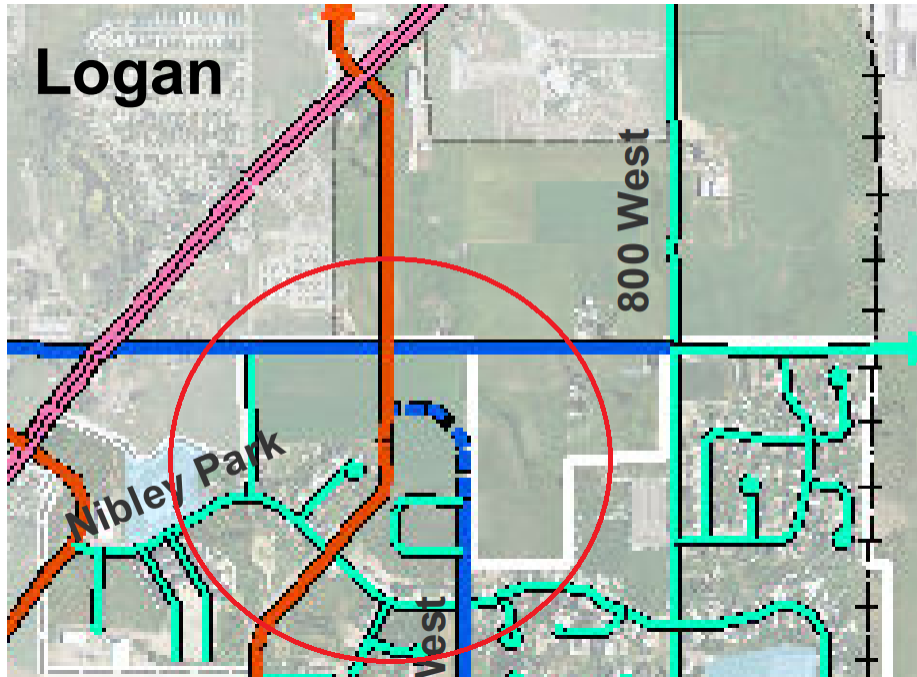
## **Trails**

The developer is proposing a 20-ft. easement on lot 9 adjacent to lot 8. This trail would normally not be needed because of direction that staff has received in interpreting Nibley City Code 11-5-6 for road segments longer than 660 ft. Because the road makes a turn to the nearest ROW before the 660 ft., the City has interpreted that as a different road segment. However, the trail easement could be valuable to the City and residents who may wish to exit the subdivision and head eastward to Nibley's Firefly Park. Staff is currently working with the developer about the best way to develop the easement.

## **Roads**

There are several key roads that will travel through and are adjacent to this property. As shown in the picture below, a minor arterial road (Meadow Lane) travels right through the property. 1000 W (a collector) is planned to "T" into Meadow Lane. There will also be improvements required on 1200 W and 2200 S. Because the developer is planning on only developing the western section of the property and no homes will have access to Meadowview Lane or 1000 W,

the developer is not proposing to complete those roads with this development. The developer has coordinated with Logan City and the future development to the North in order to ensure that the future road will align with the proposed development. Both Logan City and the future development and property owners have been sent a copy of the plat.



### **Stormwater and Utilities**

Stormwater and utility construction drawings are not required with the preliminary plat, but the developer is required to propose a plan for all of the utilities and stormwater. The developer is proposing to handle stormwater in almost the same manner as the Apple Creek Subdivision. They would like to provide larger swales (about 14 ft. wide) that will take up the width of the sidewalk and park strips in the right-of-way. The developer would then provide a 6-ft. easement adjacent to the right-of-way for the sidewalks. The developer is also proposing that the stormwater system overflow into the 1200 W stormwater system. City staff is evaluating this plan to ensure it meets Nibley City Code and any cost that would be incurred by the City for the overflow onto 1200 W.

## Agenda Item # 13 & 14

<b>Description</b>	A public hearing to receive comment regarding Ordinance 17-11: Nibley City's Parks, Trails, Recreation and Open Space Master Plan  Discussion and consideration of Ordinance 17-11: Nibley City's Parks, Trails, Recreation and Open Space Master Plan (First Reading)
<b>Department</b>	Planning, Recreation, and Parks
<b>Presenter</b>	Stephen Nelson, City Planner and Civil Solutions
<b>Applicant</b>	N/A
<b>Financel Impact</b>	Chapter 7 Outlines funding
<b>Findings</b>	N/A
<b>Recommendation</b>	Make recommendation on changes and make a recommendation the City Council.

Nibley City has been working on a Parks, Trails, Recreation and Open Space Master Plan. On April 26, 2017, the Planning Commission and City Council held a joint workshop with City staff and Civil Solution (the contractor on the project) and reviewed the plan. On July 26, 2017, the Planning Commission has reviewed and made a positive recommendation to the City Council to adopt the plan.

Each chapter in the plan provides information about what the City currently has and provides to Nibley Residents and proposals for future improvements. These improvements range from new policies, new infrastructure, possible ordinance and code changes, and funding mechanisms.

There are also several maps throughout the document detailing future plans for trails, parks, recreation facilities and open space. These maps are important and will play a key role in helping the City decided where future improvements are located and what they look like.

A breakdown of the plan goes as follows:

- Chapter 1: Introduction and Vision.
  - This chapter outlines the goals for the document and the purpose of the document.
- Chapter 2: Nibley City Citizen Input
  - Chapter 2 outlines and contains surveys conducted and public feedback from open house regarding the plan. It also contains findings and conclusions drawn from citizen input.



- Chapter 3: Nibley City Parks
  - This chapter contains an evaluation of Nibley’s current status regarding parks, total acres used as park space, location, attractions, and facilities at each park. This chapter also contains a map of possible future park locations and outline properties that City owns and could be turned into parks. It also has detail plans for future parks and list attraction and amenities that the City should place in future parks.
- Chapter 4: Nibley City Trails
  - Chapter 4 outlines the trails currently in Nibley and possible future trails. It provides two future trail maps and cross sections of future trails inside Nibley City. The chapter outlines possible future policies in order to enhance the City trail system.
- Chapter 5: Nibley Recreation
  - This is the first time the City has ever recommended adoption of a Recreation Master Plan. The plan outlines several of the programs current goals, events and programs. It then goes into detail about future programs and events that it can implement to enhance the recreation programs and lives of Nibley City residents.
- Chapter 6: Nibley City Open Space
  - This is also one of the first times that the City has proposed an Open Space Master Plan. The City’s general plan indicates that open space is important to Nibley City residents, and the Open Space Master Plan’s goal is to help maintain some of the open space in Nibley City. The chapter outlines some potential possibilities to help maintain that open space in the future.
- Chapter 7: Funding the Vision
  - The last chapter in the document provides an outline of current funding mechanisms for the City’s parks, trails, recreation and open space. The chapter then outlines future possible funding mechanisms in order to fund the improvements listed in the plan.

## Agenda Item # 15

<b>Description</b>	Adoption of the Canvas of the August 15, 2017, Nibley City Primary Election
<b>Department</b>	City Council/City Recorder
<b>Presenter</b>	Cheryl Bodily/ Deputy City Recorder
<b>Financial Impact</b>	The budget for both the Primary and General Election is \$4,000
<b>Recommendation</b>	Adopt the Canvas of the 2017 Primary Election
<b>Reviewed By</b>	City Manager/Recorder/Deputy Recorder

### Background

On Tuesday, August 15, 2017, the City conducted a Primary Election to narrow candidates for Nibley City Council down to four (4) candidates. Five candidates ran for two (2) seats. The City Council is required to adopt the canvas of the election to finalize the election results.

The regular, absentee and provisional ballots received during the election have been counted. The City Recorder and poll workers reviewed the election results. All appear to be in order.

The final count included 22 absentee ballots. No additional absentee ballots were received after Election Day. The final count also includes 3 provisional ballots that were counted. Two (2) of the original five (5) ballots were rejected by the County Clerk because the voters were not registered to vote.



# Forestry, Fire and State Lands Fire Policy Training

Catastrophic Wildland Fire Reduction Strategy

*S.B. 122 Wildland Fire Policy*

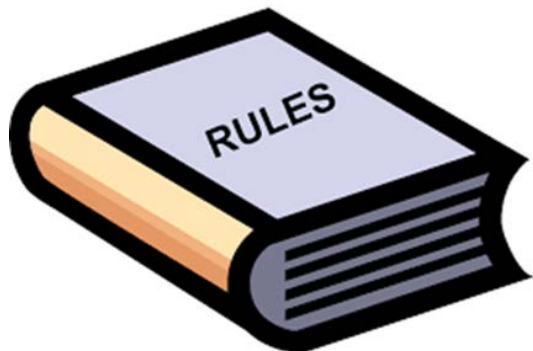
# 2016 Legislation

- S.B. 122 - Allows **Municipalities** as well as Counties to enter Cooperative Agreements with the State
- S.B. 212 – Authorizes funding for the suppression fund.



# Four Policy Issues

1. The State Assumes Cost of Large and Extended Attack Fires.
2. Local Government Obligations
3. Delegation of Fire Management Authority and Transfer of Fiscal Responsibility
4. Cost Recovery



# 1. State Assumes Cost of Large and Extended Attack Fires

- Begins Jan 1, 2017
- New Cooperative Agreement replaces current County Agreement
- Cities have until June 30, 2017 to sign



# 1. State Assumes Cost of Large and Extended Attack Fires

## New Cooperative Agreement

- **Voluntary system**
- 5 Year life span
- Cities sign by Jun. 30, 2017



## 2. Local Government Obligations

- Initial Attack is a **primary responsibility** for participating entities.
- Local fire department training, certification and equipment standards
- Community Wildfire Protection Plan (CWPP)
- Participation Commitment
- Eligible entities





## 2. Local Government Obligations

Eligible Entities are Counties, Municipalities, or Special Service Districts with Fire Suppression AND Taxing Authority



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## 2. Local Government Obligations

### *Participation Commitment*

#### **Counties**

10 year wildfire history

Risk Assessment tool

#### **Municipalities & Service Districts**

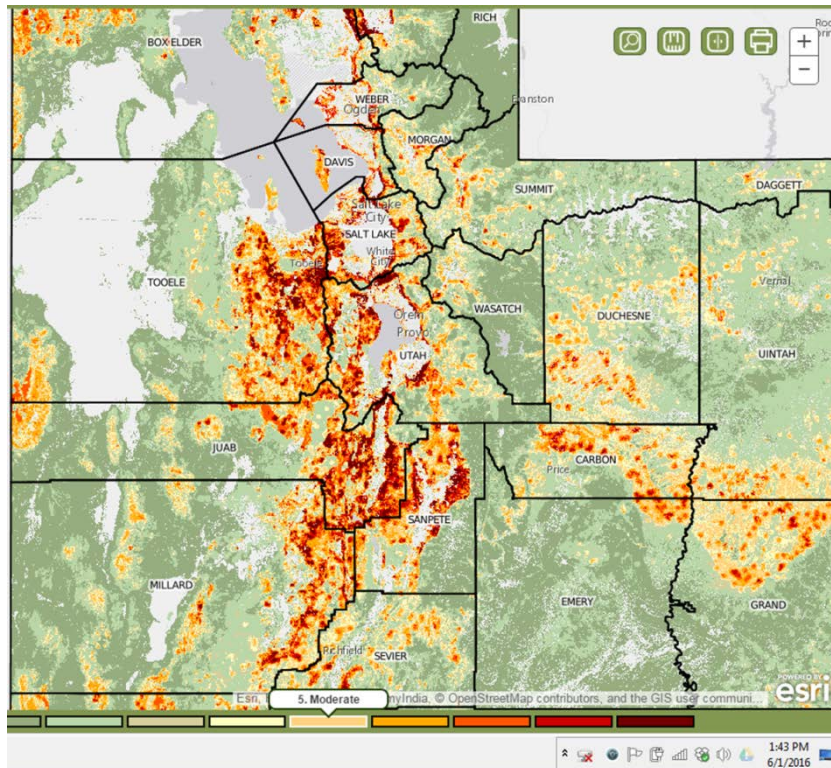
Risk Assessment tool

Fire history beginning in 2017



## 2. Local Government Obligations *Risk Assessment Tool*

<https://www.utahwildfirerisk.com/>



## 2. Local Government Obligations

### *Participation Commitment*

#### **PREVENTION**

Reduce human-caused fires.

#### **PREPAREDNESS (25% max.)**

Safe, efficient and capable wildfire suppression response.

#### **MITIGATION (50% min)**

Reduce risks to persons, property or natural resources.



## PARTICIPATION COMMITMENT ACTIONS

### For Local Governments

(Suggested actions, not a conclusive or final list. Other actions will be added as appropriate)



#### WILDFIRE PREVENTION

Activities directed at reducing the number of human-caused fires. **(Goal: Fire-Adapted Communities)**

- Costs of wildfire prevention campaigns
- Costs of wildfire mitigation educational materials (defensible space, firewise landscaping etc)
- Costs of implementing Ready, Set, GO! program
- Law enforcement patrols to enforce fire restrictions and/or burn permit violations
- Volunteer hours for meetings and events that promote, plan or implement CWPPs
- Costs of wildfire prevention media campaigns/PSAs
- Costs of designing, producing and installing community awareness and/or wildfire prevention boards/displays

#### WILDFIRE MITIGATION (50% min)

Actions taken to reduce or eliminate risks to persons, property or natural resources. **(Goal: Resilient Landscapes)**

- Costs of equipment and labor (including volunteer hours) used to reduce hazardous fuels in accordance with CWPP (i.e. fuel breaks, prescribed fire, timber harvests and certain activities that support grazing)
- Costs or volunteer value of equipment and labor toward ongoing maintenance of existing CWPP fuel reduction projects
- Volunteer hours toward removing hazardous fuels from community common areas identified in CWPPs
- Volunteer hours toward improving ingress/egress in community common areas identified in CWPPs
- Costs associated with community fuel reduction events (i.e. chipper days)
- Costs of vegetation management equipment

#### WILDFIRE PREPAREDNESS (25% max.)

Activities that lead to a safe, efficient and capable wildfire suppression response **(Goal: Strong Initial Attack Capability)**

- Costs of improving wildland fire apparatus, communication or support
- Costs of improving or creating additional ingress/egress into Wildland Urban Interface (WUI) areas identified in CWPPs
- Costs of improving or increasing firefighter access to secondary water systems through hydrants, tanks or drafting sites
- Actual costs for providing wildfire suppression training to fire department and/or emergency management personnel
- Volunteer hours spent in training for wildland fire suppression
- Costs of wildland-specific Personal Protective Equipment (PPE)
- Costs of producing and installing road signs and address markers (including evacuation routes) as part of a CWPP
- Costs of certifying bulldozer operators
- Costs associated with enforcement of WUI code
- Costs associated with installing/maintaining helicopter dip sites
- Costs of inspecting resident defensible space work to certify for individual tax incentives
- Costs of producing and/or updating city emergency response plans that address CWPPs
- Costs of land-use planning that support objectives of CWPPs
- Costs supporting the development of Community Wildfire Protection Plans (CWPPs)
- Costs associated with gaining "Firewise Community" recognition

#### Activities that DO NOT qualify:

- Any activity funded by other state or state-administered federal funds
- Any previously-matched prevention/preparedness
- Costs of state or federally-provided trainings
- Costs of initial attack suppression of wildfires
- Costs of improving culinary water systems
- Costs to improve individual structures
- Costs of existing county employees or programs including weed departments

## 2. Local Government Obligations

### Activities That Don't Qualify

- ▶ Any State funded activity
- ▶ Any previously matched prevention/preparedness
- ▶ Cost of State or Federally provided trainings
- ▶ Cost of initial attack
- ▶ Improving culinary water systems
- ▶ Improving individual structures
- ▶ Existing County employees or programs (weed departments)



### 3. Delegation of Fire Management Authority and Transfer of Fiscal Responsibility

The delegation of fire management authority to the Division may occur at any time during the incident and when;

- Local Incident Commander requests;
- State or Federally owned lands are involved;
- Resources ordered through an Interagency Fire Center;
- At the discretion of the State Forester.

Delegation means, Division or its designee becomes the *primary* incident commander.

The State will pay for all aircraft costs. **Aircraft must be ordered by the State.**



# TRANSITIONING FISCAL RESPONSIBILITY FROM LOCAL GOVERNMENT TO STATE



Requested by the Local Fire Official on Scene (I.C.)

Cities and Counties Empowered to Request Assistance *and* Creates Incentives for Local Mutual and Automatic Aid Agreements

When State or Federally Managed Lands are Involved

In this scenario, the Cost-Share is between State and Federal Entities

Resources are Ordered through an Interagency Fire Center

Local Capacity Reinforced through the Interagency System

At The Discretion of the State Forester

Maintaining the Language of Current Statute Requiring State Forester to "Make Certain that Appropriate Action is Taken to Control Wildland Fires on Non-Federal...Lands"

## REMEMBER!

### Unified Command:

Transfer of Fiscal Responsibility Does NOT Remove Local Government From the Command Structure or the Decision-Making Process

### All Aircraft Costs:

Become the Fiscal Responsibility of the **State** (both Initial and Extended Attack)



# Cost recovery for human-caused wildfires

- Be more proactive
- Costs recovered deposited into the Wildfire Suppression Fund.
- Helps with prevention



# Warden's Relationship

Disseminate information

Identify risk and how to mitigate it.

Advise participating entities how to become successful.

Help local government track expenses.

Sign CWPP's.



# Summary

- State assumes cost of fires in return for;
- Local efforts to reduce risk,
  - Prevention
  - Preparedness
  - Mitigation
- Community Wildfire Protection Plan
- Local Initial Attack





Blain Hamp  
Bear River Area Manager  
[blainhamp@utah.gov](mailto:blainhamp@utah.gov)  
435-752-8701



**COOPERATIVE AGREEMENT  
BETWEEN THE  
UTAH DIVISION OF FORESTRY, FIRE AND STATE LANDS  
AND**

This agreement shall become effective on July 1, 2017 and is intended to continue for five years from the date of the last authorized signature and may only be amended by mutual written agreement of the parties. In the event of disagreement between this agreement and any statute or regulation, the statute or regulation shall control. No waiver of any terms of this agreement will be valid unless in writing in accordance with R652-122-200 (2017).

**SECTION I: RECITALS AND GLOSSARY OF TERMS**

- A. Pursuant to Utah Code § 65A-8-203 (2017), this Cooperative Agreement is required for a county, municipality, or certain other eligible entity (“Participating Entity”) and the State of Utah, Division of Forestry, Fire, and State Lands (“FFSL”)(collectively “parties”) to cooperatively discharge their joint responsibilities for protecting non-federal land from wildland fire.
- B. Glossary of Terms
- a. Annual Participation Commitment Report – a report prepared by the Participating Entity detailing the expenditures and activities conducted in compliance with the Participation Commitment during the past fiscal year.
  - b. Cooperative Agreement – an agreement between FFSL and an Eligible Entity wherein the Eligible Entity agrees to meet a Participation Commitment and provide Initial Attack for wildland fire, and FFSL agrees to pay for wildland fire suppression costs following a Delegation of Fire Management Authority as found in Utah Code § 65A-8-203.1 (2017), as well as all aviation asset costs charged to the incident.
  - c. Eligible Entity – as defined in Utah Code § 65A-8-203 (2017), a county, municipality, special service district, local district, or service area with wildland fire suppression responsibility as described in Utah Code § 11-7-1 and wildland fire suppression cost responsibility and taxing authority for a specific geographic jurisdiction; or, with approval by the FFSL director, a political subdivision established by a county, municipality, special service district, local district, or service area that is responsible for providing wildland fire suppression services and paying for the cost of wildland fire suppression.
  - d. Extended Attack – actions taken in response to wildland fire after Initial Attack.
  - e. Initial Attack –actions taken by the first resources to arrive at any wildland fire incident. Initial actions may be size-up, patrolling, monitoring, holding action, or

Cooperative Agreement

- aggressive suppression action. All wildland fires that are controlled by suppression forces undergo initial attack. The kind and number of resources responding to initial attack varies depending on fire danger, fuel type, values to be protected and other factors. Generally, initial attack involves a small number of resources and the incident size is small. Regardless of fire type, location, or property/resources being threatened, firefighter and public safety is always the highest priority. (NWCG Wildland Fire Incident Management Field Guide, 2013)
- f. Participation Commitment – prevention, preparedness, and mitigation actions and expenditures undertaken by a Participating Entity to reduce the risk of wildland fire and meet the intent of Utah Code § 65-A-8-202 (2017) and Utah Code § 65-A-8-202.5(2017).
  - g. Annual Participation Commitment Statement – a statement prepared by FFSL and sent to the Participating Entity detailing the Participation Commitment for the upcoming fiscal year.
  - h. Participating Entity – an Eligible Entity with a valid Cooperative Agreement.

## **SECTION II: CERTIFICATION OF QUALIFICATIONS**

FFSL and the Participating Entity certify that the following qualifications have been met:

- A. The Participating Entity is a county, municipality, or other Eligible Entity.
- B. The Participating Entity agrees to adopt within 2 years of signing this agreement, and update within five years of signing this agreement, a Community Wildfire Preparedness Plan (“CWPP”) or an equivalent wildland fire preparedness plan with approval from FFSL.
- C. The Participating Entity’s fire department or fire service provider as defined in Utah Code § 65A-8-203 (2017) meets minimum standards for wildland fire training, certification, and equipment based on nationally accepted standards as specified by FFSL in R652-122-1400 (2017).
- D. FFSL has provided an Annual Participation Commitment Statement and the Participating Entity has reviewed, approved, and returned the signed Annual Participation Commitment Statement to FFSL before the start of the Participating Entity’s fiscal year.
- E. The Participating Entity agrees to implement prevention, preparedness, and mitigation actions, which are identified in their CWPP and lead to reduction of wildfire risk, according to their Annual Participation Commitment Statement.

Cooperative Agreement

- F. The Participating Entity is not ineligible for a Cooperative Agreement pursuant to R652-122-200 (2017), R652-121-400 (2017), or R652-121-600 (2017)
- G. If the Participating Entity is a county or has jurisdiction over unincorporated private land, the county in question has adopted a wildland fire ordinance based on minimum standards established by FFSL in R652-122-1300 (2017).
- H. If the Participating Entity is a county or has jurisdiction over unincorporated private land, the county in question has a designated fire warden as described in Utah Code § 65A-8-209.1 (2017) and has entered into a County Warden Agreement (Addendum A).

### **SECTION III: PARTICIPATION COMMITMENT**

FFSL and the Participating Entity agree to the following provisions:

#### **A. Participation Commitment**

- 1. The Participating Entity agrees to fulfill a Participation Commitment as contained in R652-122-800 (2017) and R652-122-200(6)(c) (2017).
- 2. The Participation Commitment includes prevention, preparedness, and mitigation actions identified in an FFSL-approved CWPP or equivalent wildland fire preparedness plan.

#### **B. Participation Commitment Expenditures and Activities**

- 1. The Participation Commitment may be met through either direct expenditures or in-kind activities.
  - a. Direct expenditures include funds spent by the Participating Entity to implement wildland fire prevention, preparedness or mitigation actions identified in Addendum B or with the approval of the Participating Entity's respective FFSL Area Manager.
  - b. In-kind activities include wildland fire prevention, preparedness or mitigation efforts identified in Addendum B or with the approval of the Participating Entity's respective FFSL Area Manager.
    - i. In-kind expenditures are valued at the rate calculated by the "Independent Sector" (<https://www.independentsector.org/>), the same source used for FFSL's Fire Department Assistance Grant program.
  - c. Participation Commitment cannot be met through direct payment to the State.
- 2. FFSL staff (e.g., County Warden, WUI Coordinator, FMO, or Area Manager) may assist the Participating Entity with identifying valid Participation Commitment

Cooperative Agreement

actions and activities based on the Participating Entity's FFSL-approved CWPP or equivalent wildfire preparedness plan.

#### C. Participation Commitment Accounting and Reporting

1. The Participating Entity is responsible for accounting for its respective Participation Commitment activities and expenditures.
  - a. Beginning January 1, 2016, all qualifying Participation Commitment expenditures and activities count toward the Participating Entity's first full fiscal year Participation Commitment.
  - b. The value of Participation Commitment expenditures and activities may, in certain instances, "carry-over" to the next fiscal year with the approval of the respective FFSL Area Manager.
    - i. The value of capital improvement projects--typically, large "preparedness-type" projects--can carry-over for five years, with no single project's value accounting for more than 25% of the Participating Entity's total Participation Commitment for any of those years. This is the same 25% annual maximum that applies to all preparedness activities as noted on Addendum B.
    - ii. All other non-capital improvement actions (e.g., a large fuels reduction project) can carry over for three years. No maximum value applies to mitigation actions as described in Addendum B.
    - iii. It is the responsibility of the Participating Entity to receive approval from their respective FFSL Area Manager in advance of pursuing a carry-over
    - iv. It is the responsibility of the Participating Entity to account for, track and report in their annual Participation Commitment Report the carry-over from year to year.
2. The Participating Entity agrees to provide an Annual Participation Commitment Report detailing the Participation Commitment activities and expenditures to their local FFSL Area Office at the conclusion of the Participating Entity's fiscal year (via the County Fire Warden) for annual review and approval by FFSL.
  - a. FFSL shall have the right to review and verify records related to the Participation Commitment. FFSL shall also have the right to deny unverifiable or incorrect records.

#### D. Annual Participation Commitment Statement

1. In advance of a Participating Entity's fiscal year, FFSL will send the Participating Entity an Annual Participation Commitment Statement.
2. In order to continue participation for the Participating Entity's upcoming fiscal year, the Participating Entity's executive officer must approve, sign and return the Annual

Cooperative Agreement



Participation Commitment Statement to FFSL by the due date contained in the Statement. Failure to do so will terminate this agreement at the conclusion of the Participating Entity's current fiscal year.

3. The Annual Participation Commitment Statement is based on the Participating Entity's fiscal year, and the corresponding Participation Commitment must be met throughout the Participating Entity's next fiscal year.
  - a. For counties, the first year of Participation Commitment will be FY 2017, starting January 1, 2017.
  - b. For cities and towns, the first year of Participation Commitment will be FY 2018, starting July 1, 2017.
  - c. For any other Participating Entity, the fiscal year may vary, so the first year of Participation Commitment will begin at the start of each Participating Entity's fiscal year.

#### E. Participation Commitment Calculation

1. The Participation Commitment is based on two elements, a wildfire risk assessment by acres ("Risk Assessment") conducted by FFSL, and the historic fire cost average ("Fire Cost Average") in each Participating Entity's jurisdiction.
  - a. The Risk Assessment is determined by FFSL's "Utah Wildfire Risk Assessment Portal" (UWRAP), which will be updated as data sources, technology and funding allow.
  - b. The Fire Cost Average is based on historic suppression costs accrued by a Participating Entity. Only wildland fire suppression costs accrued and paid by the State on behalf of a Participating Entity are counted toward that entity's historic fire cost average. This includes State-paid costs after a Delegation of Fire Management Authority and Transfer of Fiscal Responsibility has occurred.
    - i. The Fire Cost Average is calculated on a rolling ten-year average, dropping the highest and lowest cost years and adjusting for inflation (using the Consumer Price Index); therefore, each ten-year average will have eight data points.
    - ii. The Fire Cost Average will only include State-paid suppression costs for areas for which the Participating Entity has fire suppression responsibility and taxing authority.
2. FFSL will calculate the Participation Commitment for the Participating Entity according to the formula found in R652-122-300 (2017), R652-122-400 (2017) and R652-122-500 (2017).

F. Participation Commitment Appeals

1. Decisions related to the Participation Commitment may be informally appealed to the State Forester.

**SECTION IV: INITIAL ATTACK, DELEGATION OF FIRE MANAGEMENT AUTHORITY, TRANSFER OF FISCAL RESPONSIBILITY, and EXTENDED ATTACK**

A. Initial Attack

1. The Participating Entity agrees to primary responsibility for Initial Attack (“IA”). IA is defined as actions taken by the first resources to arrive at any wildland fire incident. Initial actions may be size-up, patrolling, monitoring, holding action, or aggressive suppression action. All wildland fires that are controlled by suppression forces undergo initial attack. The kind and number of resources responding to initial attack varies depending on fire danger, fuel type, values to be protected and other factors. Generally, initial attack involves a small number of resources and the incident size is small. Regardless of fire type, location, or property/resources being threatened, firefighter and public safety is always the highest priority (NWCG Wildland Fire Incident Management Field Guide, 2013).
2. Effective wildland fire IA will be determined by FFSL based on the definition above and pursuant to Utah Code § 65A-8-202 (2017), defined as what is reasonable for the entity.
3. The Participating Entity agrees to financial responsibility for all IA costs except aviation assets, which are the responsibility of the State.
4. FFSL agrees to financial responsibility for all costs of aviation assets, including both IA and extended incidents.
  - a. Aviation assets on initial run cards as established by the State will not:
    - a. be counted towards a Participating Entity’s historic fire cost average for purposes of annually calculating the Participating Entity’s Participation Commitment; and,
    - b. cause the Delegation of Fire Management Authority or Transfer of Fiscal Responsibility.

B. Delegation of Fire Management Authority and Transfer of Fiscal Responsibility

1. Delegation of Fire Management Authority and Transfer of Fiscal Responsibility (“Delegation”) occur simultaneously with one of the following events:
  - a. State or federally owned lands are involved in the incident; or,
  - b. firefighting resources are ordered through an Interagency Fire Center (beyond “pre-planned dispatch”); or,

Cooperative Agreement

- c. at the request of the Participating Entity having jurisdiction by the local fire official on scene; or,
  - d. by decision of the State Forester after consultation with local authorities.
2. Delegation to FFSL means FFSL or its designee becomes the primary incident commander, in a unified command environment with the agency having jurisdiction.

#### C. Extended Attack

1. Upon Delegation a timestamp will be recorded via radio with the Interagency Fire Center servicing the incident.
2. Delegation documentation will be signed by all parties on the incident organizer and resource needs will be reevaluated in the transition from initial to extended attack.
3. This timestamp will also be reflected on the Crew Time Reports (CTR)/Shift Ticket of all resources that are not covered by a no-cost local agreement, such as an automatic aid system or other inter-local agreement.
4. At the time of the Delegation, a new CTR/Shift Ticket will be started for all resources to be used in the extended attack effort.
5. FFSL agrees to be financially responsible for the wildland fire suppression costs beyond IA if a Delegation occurs and the Participating Entity meets the terms of Code, Rule and this Agreement.

**SECTION V: WILDLAND FIRE RESPONSE TRAINING,  
CERTIFICATION AND EQUIPMENT STANDARDS**

**A. Wildland Fire Response Training and Certification**

1. FFSL prefers certification by the Utah Fire Certification Council as Wildland Firefighter I as certified by the Utah Fire and Rescue Academy (UFRA).
2. At a minimum, the Participating Entity will ensure that firefighters providing Initial Attack to wildland fire within the Participating Entity’s jurisdiction will be trained in NWCG S130 Firefighter Training and S190 Introduction to Wildland Fire Behavior. FFSL also recommends S215 Wildland Urban Interface Firefighting Operations.
  - a. This includes firefighters who are directly involved in the suppression of a wildland fire; firefighters on scene who have supervisory responsibility or decision-making authority over those involved in the suppression of a wildland fire; or individuals who have fire suppression responsibilities within close proximity of the fire perimeter.
  - b. This does not include a person used as a courier, driver of a vehicle not used for fire suppression, or a person used in a non-tactical support or other peripheral function not in close proximity to a wildland fire.
  - c. Upon the Delegation of Fire Management Authority, Firefighters not certified by the Utah Fire Certification Council as Wildland Firefighter I will be released from Initial Attack or reassigned to other firefighting duties.
  - d. FFSL reserves the right to reevaluate these requirements.
3. The Participating Entity will ensure that firefighters providing Initial Attack to wildland fire within the Participating Entity’s jurisdiction will complete RT130 Annual Fireline Safety Refresher Training prior to each statutory “closed fire season” as found in Utah Code § 65A-8-211(2017).
4. In order to be eligible for state reimbursement for wildland fire suppression response outside of its jurisdiction, a Participating Entity’s firefighters and fire departments must follow the qualifications outlined in the FFSL Memorandum of Understanding.  
OR  
the County or participating entity fire departments for qualified resources used under this agreement on federal, state or out-of-county(or out-of-entity) fires pursuant to the terms and conditions outlined in the fire department MOU and rate agreement

**B. Wildland Fire Response Equipment Standards**

1. The Participating Entity will ensure that engines, water tenders, hand tools, and water handling equipment used for response to wildland fire on non-federal land within the Participating Entity’s jurisdiction will meet the standard for the type of equipment as

Cooperative Agreement

determined by the National Wildfire Coordinating Group and/or as indicated in FFSL's annual Fire Department Manual.

## **SECTION VI: WILDLAND FIRE COST RECOVERY LEGAL ACTIONS**

- A. Pursuant to Utah Code § 65A-3-4, the Participating Entity agrees to initiate a civil action to recover suppression costs incurred by the Participating Entity and the State of Utah on non-federal land within the Participating Entity's jurisdiction for wildland fire caused negligently, recklessly, or intentionally.
- B. Counsel for FFSL will provide assistance with these actions.
- C. Any costs recovered may reduce the Participating Entity's Historic Fire Cost Average and Participation Commitment.

## **SECTION VII: BREACH OF THIS AGREEMENT**

A. If, at the end of a fiscal year, FFSL determines that the Participating Entity has not complied with the terms of this agreement, including but not limited to, failing to comply with the Participation Commitment or failing to comply with the terms stated in Utah Code § 65A-8-203(4) (2017), the entity will be placed on Probation Status by FFSL and given notice of this decision, the reasons for this decision, and actions required to remove Probation Status.

A decision to place the Participating Entity on Probation Status may be appealed to the State Forester. The State Forester may conduct an investigation, hold an informal hearing, and/or request further information from the Participating Entity and/or the Division.

During Probation Status, the Participating Entity may continue to receive assistance as provided in this Cooperative Agreement, but the Participating Entity must come into compliance with the Cooperative Agreement by the end of the fiscal year.

If the Participating Entity comes into compliance with the Cooperative Agreement by the end of the first Probation Status fiscal year, the Probation Status shall be lifted.

1. If the reason for the Probation Status is that the Participating Entity has failed to fulfill its Participation Commitment during the previous fiscal year, the Participating Entity must fulfill the Participation Commitment for the previous year, as well as the Participation Commitment for the current fiscal year by the end of the fiscal year in order to have its probation status lifted.

a. If during the first Probation Status year, the Participating Entity fulfills its Participation Commitment for the previous fiscal year, but not for the first Probation Status year, the Probation Status may be extended for a second fiscal year.

Cooperative Agreement

If during the second Probation Status year, the Participating Entity fails to fulfill the Participation Commitment for both the first and second Probation Status years, the Cooperative Agreement shall be revoked as specified in subsection VII(E) herein below.

Participation Commitment expenditures and actions shall be credited towards the outstanding obligation before being credited to the current obligation.

B. If the Participating Entity does not come into compliance with the terms of this Cooperative Agreement by the end of the first Probation Status fiscal year (or second Probation Status fiscal year if the non-compliance is failure to meet the Participation Commitment), this Cooperative Agreement shall be revoked pursuant to Utah Code § 65A-8-203(5)(b)(ii) (2017) and the entity shall not be eligible for assistance from the Wildland Fire Suppression Fund and shall be responsible for wildland fire suppression costs within its jurisdiction pursuant to Utah Code § 65A-8-203.2 (2017)

If a Participating Entity revokes this agreement or if FFSL revokes this agreement for cause, the participating entity shall only be allowed to enter into a new cooperative agreement pursuant to R652-121-600 (2017).

**UTAH DIVISION OF FORESTRY, FIRE, AND STATE LANDS:**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

:

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Assistant Attorney General

Cooperative Agreement

# Projected Utah Wildfire Risk Index Nibley

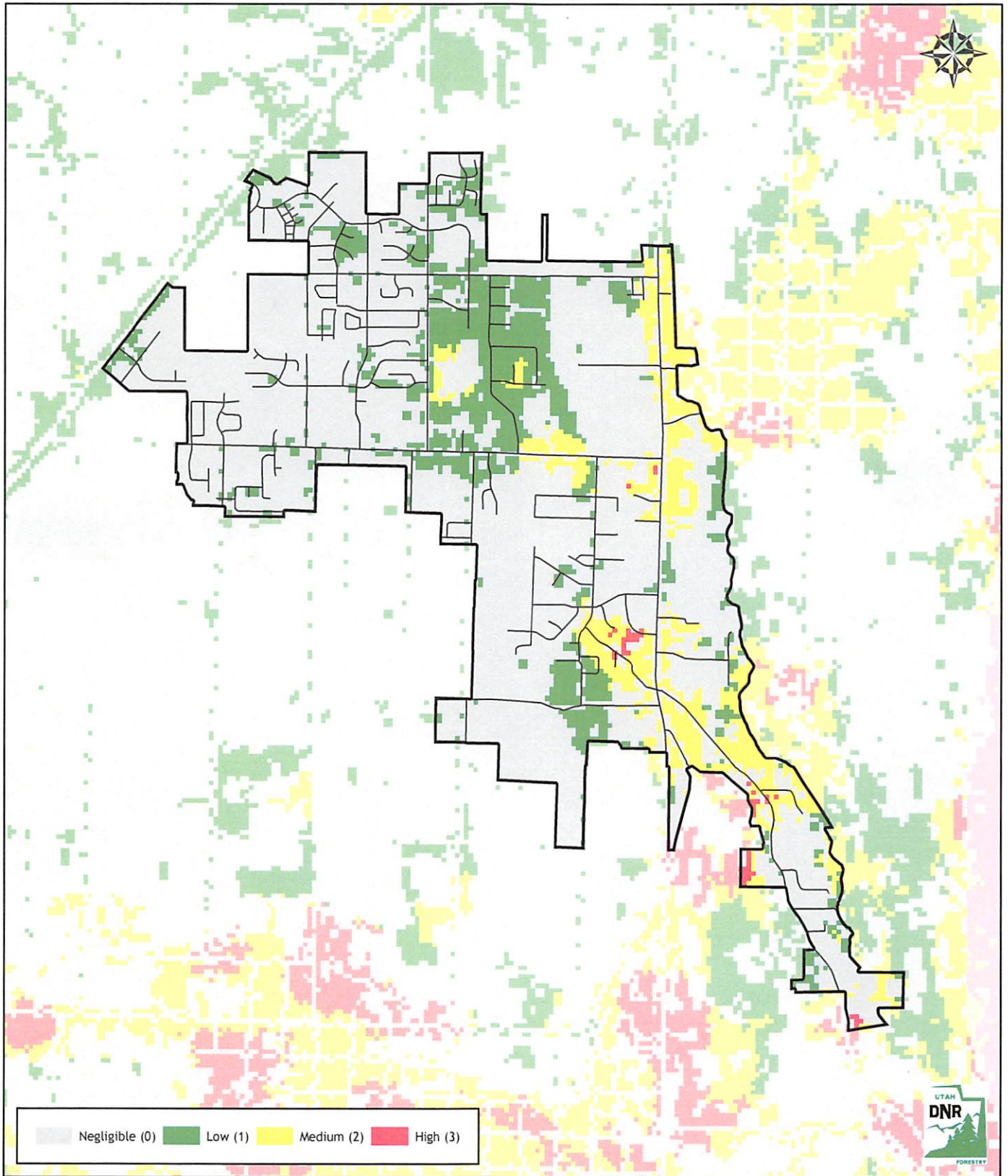
Medium: \$2.00/acre, High: \$3.50/acre

Low Risk: 2,366 Acres (89%)

Medium Risk: 265 Acres (10%) - \$531

High Risk: 13 Acres (1%) - \$47

Participation Commitment Total: \$577



0 0.5 1 2 Miles

1:35,000

ORDINANCE 17-12

AN ORDINANCE CHANGING THE ZONE OF APPROXIMATELY 21.1 ACRES FROM RESIDENTIAL R-1 TO RESIDENTIAL R-1A

BE IT ORDAINED BY THE NIBLEY CITY COUNCIL LOCATED AT NIBLEY, UTAH, THAT:

Parcel 03-008-0001, bearing the following legal description, as shown in the office of the Cache County Recorder, is hereby rezoned from Agricultural to Residential R-2A:

*A PARCEL OF LAND LOCATED IN SECTION 17, TOWNSHIP 11 NORTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, NIBLEY CITY, CACHE COUNTY, UTAH AND MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE CENTER OF SAID SECTION 17, FROM WHICH THE EAST QUARTER CORNER OF SECTION 17 BEARS NORTH 89° 46' 23" EAST 2649.62 FEET; THENCE SOUTH 00° 27' 36" EAST 589.43 FEET ALONG THE MERIDIONAL CENTERLINE OF SAID SECTION 17 TO A POINT ON THE PROPERTY LINE OF THE PARCEL SHOWN ON THE SURVEY RECORDED AS SURVEY # 2000-91 IN THE OFFICE OF THE CACHE COUNTY SURVEYOR; THENCE ALONG SAID PROPERTY LINE THE FOLLOWING 3 COURSES: THENCE NORTH 89° 36' 32" EAST 814.04 FEET; THENCE SOUTH 02° 44' 49" EAST 281.04 FEET; THENCE NORTH 88° 37' 48" EAST 500.74 FEET TO THE EAST LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 17; THENCE NORTH 00° 32' 07" WEST 857.88 FEET ALONG SAID EAST LINE TO A POINT ON THE LATITUDINAL CENTERLINE OF SAID SECTION 17; THENCE SOUTH 89° 46' 23" WEST 1324.81 FEET ALONG SAID CENTERLINE TO THE POINT OF BEGINNING. CONTAINING 21.1 ACRES OF LAND.*

Passed by the Nibley City Council this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Shaun Dustin, Mayor

ATTEST: \_\_\_\_\_  
City Recorder



**NIBLEY CITY  
DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (“Agreement”), entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between GORDON RIGBY, hereinafter referred to as “Developer” and Nibley City, here in after referred to as “City”, and

WHEREAS, RIGBY SUBDIVISION AMENDMENT 2, hereinafter referred to as “the Development” has been approved for construction; and

WHEREAS, plans for the Development are on file with Nibley City and are incorporated by reference herein; and

WHEREAS, it is necessary for the interest of the public welfare that improvements made be constructed in accordance with the specifications set forth in said plans and as provided by Nibley City ordinances and Design Standards; and

WHEREAS, Developer desires to record a final plat of the Development in order to obtain building permits and construct structures after the necessary infrastructure is installed, approved and accepted; and

WHEREAS, in accordance with said Nibley City ordinances, including Section 11-5 of the Nibley City Code, the Developer is required to furnish security for the completion of all improvements or complete all improvements prior to recording a final plat.

NOW THEREFORE, to induce Nibley City to approve said plans and allow use of city-owned utilities and access and/or other improvements, the Developer does hereby unconditionally promise and agree with Nibley City as follows:

1. Developer hereby acknowledges receipt of a copy of the Nibley City Subdivision Ordinance. Developer hereby acknowledges that Developer has read the Subdivision Ordinance (or that an agent of Developer has), and that Developer understands the provisions of the Subdivision Ordinance and that Developer will fully and completely comply with the provisions and requirements therein contained.

2. Developer shall supply the City with water rights or shares as set forth in Nibley City Code Section 11-5-2 for the Development, as follows: 3 Acre-ft. of water shares from Blacksmith Fork Irrigation Company or an equivalent amount of acre feet from another irrigation company located in Nibley City. Developer shall provide said shares to the City before the commencement of construction.

3. The Developer has provided a report to the City establishing the ordinary high groundwater and elevation and finished floor elevations as required by Nibley City Code 11-3-8 (B) attached as Exhibit "A". No finished floor elevations, including basement floor elevations, shall be permitted below the aforementioned groundwater elevation. A note has been provided on the plat outline the finish floor elevation for lot 5.

4. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto mentioned and permitted successors and assigns; provided, however that this Agreement cannot be assigned, transferred or conveyed by either party, without the express, written consent of the other party.

5. In the event that either of the parties to this Agreement shall be in default or breach of this Agreement, said party shall be liable to pay all reasonable attorney's fees, court costs and other related costs and expenses incurred by the non-defaulting or non-breaching party in pursuing its rights hereunder or under the laws of the State of Utah.

6. Developer shall comply with all applicable federal, state, county and City requirements, regulations and laws for each aspect of this Development, including payment of fees and compliance with design and construction standards. Nothing in this Agreement shall be deemed to relieve Developer from the obligation to comply with all such applicable laws, ordinances, and requirements as now existing and as enacted and/or amended.

7. Developer shall not engage in any construction or disturbance of soil in the development prior to issuance of the Notice to Proceed by the Public Works Director.

8. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto mentioned and permitted successors and assigns; provided, however, that this Agreement cannot be assigned, transferred or conveyed by either party, without the express, written consent of the other party.

9. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid for any reason, the parties consider and intend that this Agreement shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this Agreement shall remain in full force and affect.

10. Time is of the Essence. Time is of the essence to this Agreement and every right or responsibility shall be performed within the times specified.

11. Mutual Drafting. Each party has participated in negotiating and drafting this Agreement and therefore no provision of this Agreement shall be construed for or against either party based on which party drafted any particular portion of this Agreement.

12. Entire Agreement. This Agreement, and all Exhibits thereto, is the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all parties.

13. Recordation and Running with the Land. This Agreement shall be recorded in the chain of title for the Development. This Agreement shall be deemed to run with the land.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

**NIBLEY CITY**

**DEVELOPER**

\_\_\_\_\_  
By: DAVID N. ZOOK  
Its: City Manager

\_\_\_\_\_  
By: Gordon Rigby  
  
\_\_\_\_\_

STATE OF UTAH    )  
                              : ss  
County of Cache    )

On this \_\_\_\_ day of \_\_\_\_\_, 2017, personally appeared before me DAVID N. ZOOK, City Manager, the signer of the within instrument, who duly acknowledged to me that he executed the same as City Manager for Nibley City Corporation.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF UTAH    )  
                              : ss  
County of Cache    )

On the \_\_\_\_ day of \_\_\_\_\_, 2017, personally appeared before me, \_\_\_\_\_, Developer, the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.

\_\_\_\_\_

---

NOTARY PUBLIC



August 8, 2017

Mr. David Zook  
Nibley City Manager  
455 West 3200 South  
Nibley, Utah 84321

RE: Estimated Historic High Water Table – Shawn Rigby Property

Dear David:

Shawn Rigby contracted with Civil Solutions Group to complete an Estimated Historic High Water Table (EHHWT) study for a lot located at 195 West 3450 South, Nibley Utah 84321. Associated with Tax ID #: 03-172-0012. The soil pit was completed at the rear of the proposed lot building envelope and is listed in the table below.

The EHHWT was observed in the soil pit based upon the soil characteristics of reduction/oxidation cycles that occur in soil over many years, possibly even centuries. The accepted methodology for determining the EHHWT is observing the soil layer where mottling occurs. Mottling can be described as contrasting or blotchy color patterns within a dominant soil horizon. Mottling is formed when the seasonal water table rises into soil with aerobic conditions changing the conditions in the soil from aerobic (oxygen rich) to anoxic (lacking oxygen).

Another indicator of anoxic soil conditions is the presence of ferrous iron in the soil. The prolonged soil-saturation results in anaerobiosis leading to the formation of ferrous iron. As the groundwater migrates from the historic high water mark and below the ferrous iron is distributed throughout the soil profile. This type of occurrence is referred to as redoximorphic features. The soil pit was excavated using a back hoe to a depth equal to the EHHWT. Michael Talyor, P.E. completed the observation of the soil pit characteristics based upon the above described science.

The subsequent data sheets illustrate the soil profile of the test pit showing the different soil layers, location of mottling and redox concentrations, and the location of the water table. Each test hole was surveyed utilizing GPS survey grade equipment tied to local survey control. The data sheets list the existing ground elevation at the soil pit, the elevation at the southeast water meter between the lot lines, the depth to the EHHWT, the elevation of the EHHWT, and the vertical elevation difference from the water meter to the EHHWT. It is proposed that during construction the reference elevation from the water meter to the EHHWT be used to locate the precise depth of the EHHWT.



The table below summarizes the information on the data sheet for easy reference:

Parcel #	Elevation Difference from South West Water Meter to Historic Water Table
03-172-0012	7.58'

Please refer to the data sheet for all detailed information pertaining to this study. Please call me any time with questions pertaining to this study.

Sincerely,

A handwritten signature in black ink that reads 'Michael Taylor'.

Michael Taylor, P.E.  
Civil Solutions Group, Inc.  
[www.civilsolutionsgroup.net](http://www.civilsolutionsgroup.net)



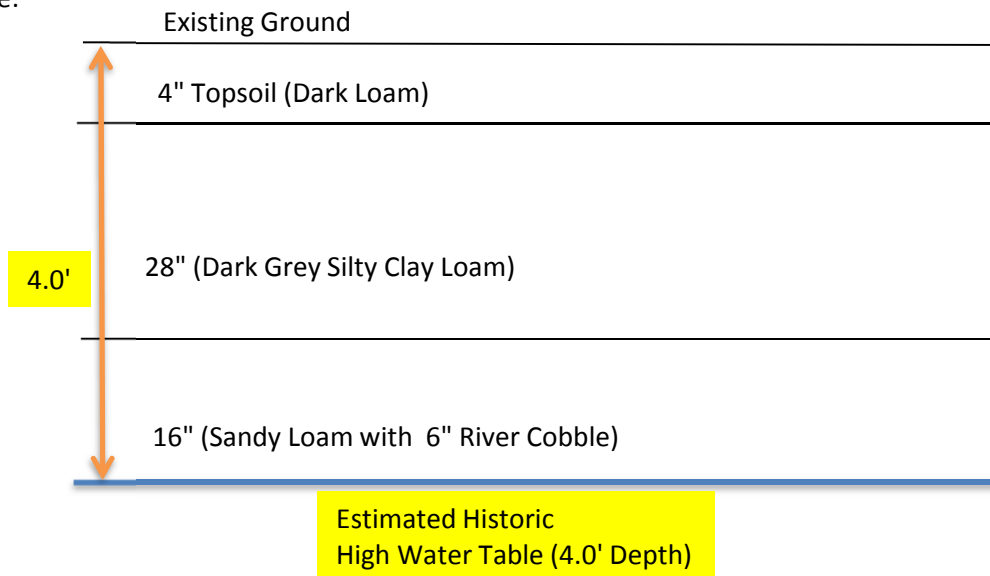
## Estimated Historic High Water Table (EHHWT) Study

Study Date	4-Aug-15
Location	Shawn Rigby Property, 195 W 3450 S, Nibley Utah
Soil Pit Location	Middle of Property

GPS Reference Points	Existing water meter near southwest corner of property	
Reference Point Elevation	4564.70	ft
Ground Elevation at Pit	4561.12	ft
Depth to EHHWT	4.00	ft
Elevation of EHHWT	4557.12	ft
Vertical Difference from Control Point to EHHWT	-7.58	ft

General Notes:	At 4' the water table was encountered and the soil transitioned from a dark grey to a sandy loam with 6" River Cobble.
----------------	--

Soil Profile:



SHAWN RIGBY  
 EHHWT STUDY MAP  
 SCALE: 1"=40'



GENERAL NOTES:

1. THE PROPERTY BOUNDARY LINE AS SHOWN ON THIS PLAN IS FOR REFERENCE ONLY. IT DOES NOT REPRESENT THE OFFICIAL PROPERTY BOUNDARY AS RECORDED BY FRANKLIN COUNTY. IT IS FOR REFERENCE ONLY.

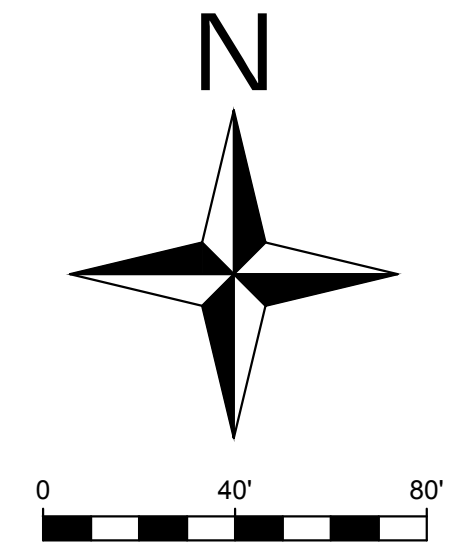
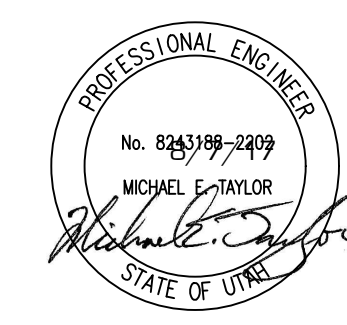
civilsolutionsgroup inc.

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 SALT LAKE | P: 801.216.3192  
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 info@civilsolutionsgroup.net  
 www.civilsolutionsgroup.net

SHAWN RIGBY  
 EHHWT STUDY MAP  
 195 WEST 3450 SOUTH  
 NIBLEY, UTAH 84321

MARK:	DATE:	DESCRIPTION:

PROJECT #: 17091  
 DRAWN BY: C. BOWN  
 PROJECT MANAGER: M. TAYLOR  
 REVIEWED BY: M. TAYLOR  
 ISSUED: 8/7/17



EHHWT  
 STUDY MAP

THESE PLANS AND SPECIFICATIONS ARE THE PROPERTY OF CIVIL SOLUTIONS GROUP, INC. AND SHALL NOT BE PHOTOCOPIED, REDRAWN, OR USED ON ANY OTHER PROJECT OTHER THAN THE PROJECT SPECIFICALLY DESIGNED FOR, WITHOUT WRITTEN PERMISSION. THE OWNERS AND ENGINEERS OF CIVIL SOLUTIONS GROUP, INC. DISCLAIM ANY LIABILITY FOR ANY CHANGES OR MODIFICATIONS MADE TO THESE PLANS OR THE DESIGN THEREON WITHOUT THEIR CONSENT. THESE PLANS ARE DRAWN TO SCALE WHEN PLOTTED ON A 24" X 36" SHEET OF PAPER.



KARLENE CONGER  
03-028-0011  
**PRELIMINARY PLAT  
FOR THE  
RIGBY SUBDIVISION AMENDMENT 2**  
A PART OF THE N.E. 1/4 OF SECT. 28  
T. 11 N., R. 1 E. S.L.B.&M.  
NIBLEY CITY, CACHE COUNTY, UTAH  
AUGUST 2017

TUDDENHAM  
03-176-0005

LOWELL W. YEATES  
03-028-0016

CURVE	LENGTH	RADIUS	DELTA	CHORD	BEARING
C1	14.98'	15.00'	57°12'10"	14.36'	N 60°23'42" W
C2	40.55'	45.00'	51°38'08"	39.20'	S 57°36'41" E
C3	62.87'	45.00'	80°02'41"	57.88'	N 56°32'54" E
C4	87.25'	45.00'	111°05'23"	74.21'	N 39°01'08" W
C5	40.55'	45.00'	51°38'08"	39.20'	S 57°36'41" E
C6	14.98'	15.00'	57°12'10"	14.36'	N 62°24'08" E

BRUCE RIGBY  
03-176-0006  
(709.5' BR)  
738.55'

LOWELL W. YEATES 03-046-0025

THIS IS A REDUCED DRAWING  
ACTUAL SCALE IS 1" = 110'



SCALE: 1" = 50'  
JOSHUA V &  
AUDREY FRAZIER  
03-046-0026

MARY JANE BLAYLOCK  
03-046-0010

MILDRED S. JENSON  
03-046-0012

**LEGEND**

- T — FENCE POST
- x — T-BAR FENCE POST
- — — FENCE LINE
- REBAR
- SET 5/8" REBAR WITH RLS 325023 CAP
- + SECTION CORNER
- PUE — PUBLIC UTILITY EASEMENT
- SETBACK — SETBACK LINES

MILDRED S. JENSON  
03-046-0012  
SECTION CORNERS TIED TO IN PREVIOUS (2000) SURVEY  
REBAR W/ALUMINUM CAP

3400 SOUTH STREET

TLG PROPERTIES LLC  
03-046-0022

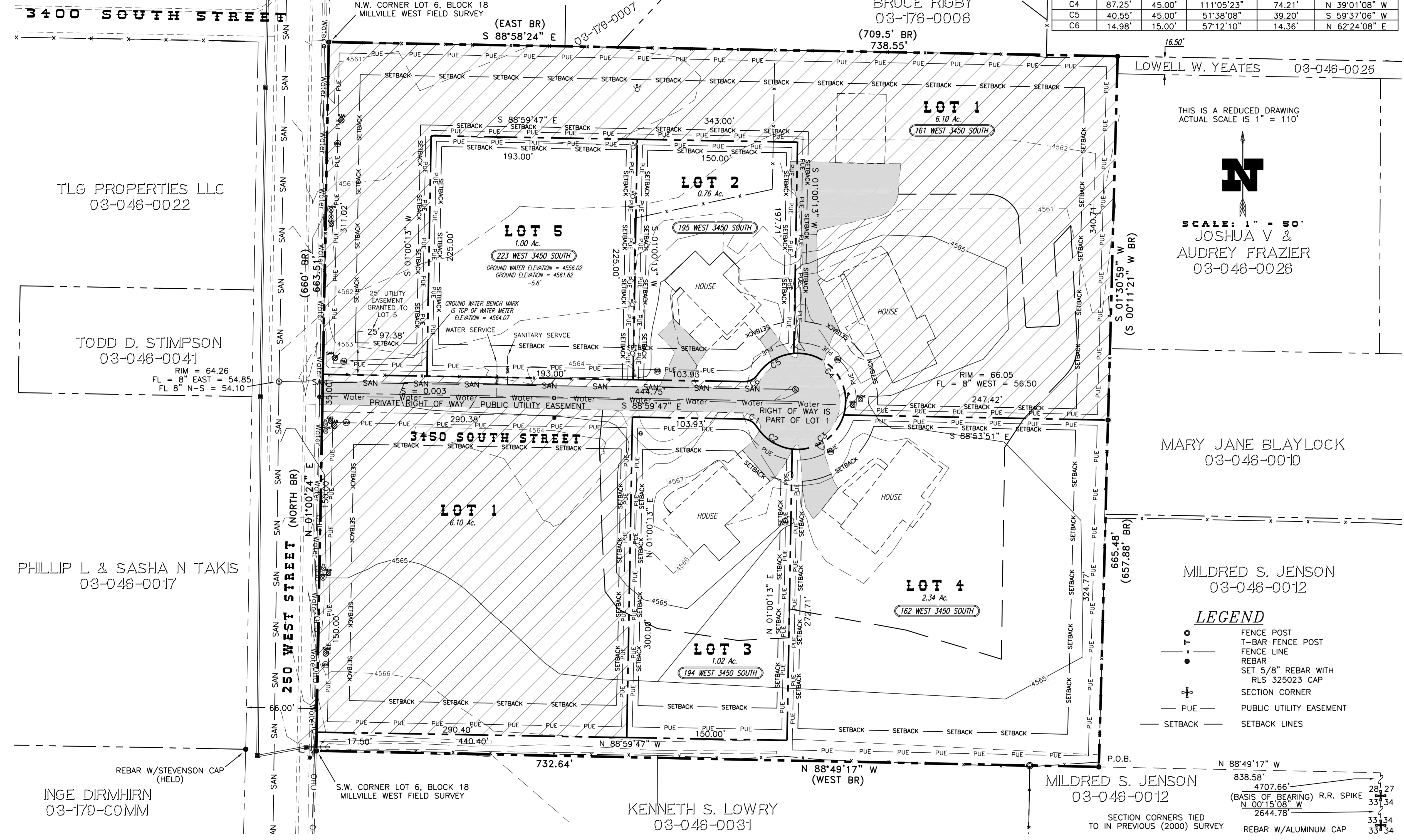
TODD D. STIMPSON  
03-046-0041

PHILLIP L & SASHA N TAKIS  
03-046-0017

INGE DIRMHJRN  
03-179-COMM

N.W. CORNER LOT 6, BLOCK 18  
MILLVILLE WEST FIELD SURVEY

S.W. CORNER LOT 6, BLOCK 18  
MILLVILLE WEST FIELD SURVEY



**SURVEYOR'S CERTIFICATE**

I, JEFF S. HANSEN, DO HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR, AND THAT I HOLD LICENSE NO. 325023, IN ACCORDANCE WITH TITLE 58, CHAPTER 22, OF THE PROFESSIONAL ENGINEERS AND LAND SURVEYORS LICENSING ACT. I FURTHER CERTIFY THAT BY THE AUTHORITY OF THE OWNERS, I HAVE COMPLETED A SURVEY OF THE PROPERTY DESCRIBED ON THIS PLAT IN ACCORDANCE WITH SECTION 17-23-17 AND HAVE VERIFIED ALL MEASUREMENTS; AND HAVE PLACED OR WILL PLACE MONUMENTS AS REPRESENTED ON THIS PLAT.

Jeff S. Hansen R.L.S. No. 325023 Date

ELECTRONIC COPY 8-11-17

**BOUNDARY DESCRIPTION**

A PART OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 11 NORTH, RANGE 1 EAST OF THE SALT LAKE BASE AND MERIDIAN. DESCRIBED AS FOLLOWS:

COMMENCING AT THE RAILROAD SPIKE MONUMENT FOUND AT THE SOUTHEAST CORNER OF SECTION 28, TOWNSHIP 11 NORTH, RANGE 1 EAST OF THE SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE NORTH 00°15'08" WEST ALONG THE PROJECTION OF THE EAST LINE OF THE NORTHEAST QUARTER OF SECTION 33 OF SAID TOWNSHIP 4707.66 FEET; THENCE NORTH 88°49'17" WEST 838.58 TO THE TRUE POINT OF BEGINNING; AND RUNNING THENCE NORTH 88°49'17" WEST (WEST BY RECORD) 732.64 FEET TO THE SOUTHWEST CORNER OF LOT 6, BLOCK 18 OF THE MILLVILLE WEST FIELD SURVEY; THENCE NORTH 01°00'24" EAST 663.51 FEET (NORTH 660 FEET BY RECORD) TO THE NORTHWEST CORNER OF SAID LOT 6; THENCE SOUTH 88°58'24" EAST 738.55 FEET (EAST 709.5 FEET BY RECORD); THENCE SOUTH 01°30'59" WEST 665.48 FEET (SOUTH 00°11'21" WEST 657.88 FEET BY RECORD) TO THE POINT OF BEGINNING. CONTAINING 11.22 ACRES AND 4 LOTS.

**NOTES**

- 3450 SOUTH STREET IS PART OF LOT #1 WITH ACCESS RIGHTS GRANTED TO LOTS 2, 3, 4 & 5.
- 3450 SOUTH STREET IS A PRIVATE ROAD FOR LOTS 1, 2, 3, 4, & 5. 3450 SOUTH WILL BE MAINTAINED BY THE OWNERS OF LOTS 1, 2, 3, 4 & 5.
- CROSS HATCHED AREA INDICATES LOT #1.

**OWNER'S DEDICATION**

KNOW ALL MEN BY THESE PRESENTS THAT WE, THE UNDERSIGNED OWNERS OF THE ABOVE DESCRIBED TRACT OF LAND, HAVING CAUSED THE SAME TO BE SUBDIVIDED INTO LOTS AND STREETS TO BE HERINAFTER KNOWN AS: "RIGBY SUBDIVISION AMENDMENT 2" DO HEREBY DEDICATE, GRANT AND CONVEY TO NIBLEY CITY, UTAH THOSE CERTAIN STRIPS AS EASEMENTS FOR PUBLIC UTILITY AND DRAINAGE PURPOSES AS SHOWN HEREON. THE SAME TO BE USED FOR THE INSTALLATION, MAINTENANCE AND OPERATION OF PUBLIC UTILITY SERVICE LINES AND DRAINAGE AS INTENDED FOR PUBLIC USE.

IN WITNESS WE HAVE HEREUNTO SET OUR SIGNATURES THIS DAY OF \_\_\_\_\_ A.D. 20\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF UTAH  
COUNTY OF \_\_\_\_\_

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC IN AND FOR SAID COUNTY OF \_\_\_\_\_ IN SAID STATE OF UTAH, THE SIGNERS OF THE ABOVE OWNERS DEDICATION, WHO DULY ACKNOWLEDGED TO ME THAT THEY SIGNED IT FREELY AND VOLUNTARILY AND FOR THE PURPOSES THEREIN MENTIONED.

NOTARY PUBLIC \_\_\_\_\_  
MY COMMISSION EXPIRES \_\_\_\_\_

**COUNTY SURVEYOR'S CERTIFICATE**

I CERTIFY THAT I HAVE EXAMINED THIS PLAT AND FIND IT TO BE CORRECT AND IN ACCORDANCE WITH THE INFORMATION ON FILE IN THIS OFFICE.

DATE \_\_\_\_\_ COUNTY SURVEYOR \_\_\_\_\_

**PLANNING COMMISSION APPROVAL**

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ A.D. 20\_\_\_\_ BY THE NIBLEY CITY PLANNING AND ZONING COMMISSION.

CHAIRPERSON \_\_\_\_\_

**COUNCIL APPROVAL AND ACCEPTANCE**

PRESENTED TO THE NIBLEY CITY COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ A.D. 20\_\_\_\_ AT WHICH TIME THIS SUBDIVISION WAS APPROVED AND ACCEPTED.

COUNCIL CHAIRPERSON \_\_\_\_\_ ATTEST \_\_\_\_\_

**COUNTY RECORDER'S NO.**

STATE OF UTAH, COUNTY OF \_\_\_\_\_, RECORDED AND FILED AT THE REQUEST OF \_\_\_\_\_ DATE \_\_\_\_\_ TIME \_\_\_\_\_ FEE \_\_\_\_\_ ABSTRACTED \_\_\_\_\_

INDEX FILED IN: FILE OF PLATS \_\_\_\_\_ COUNTY RECORDER \_\_\_\_\_

**APPROVAL AS TO FORM**

APPROVED AS TO FORM THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ A.D. 20\_\_\_\_

ATTORNEY \_\_\_\_\_

**ENGINEER'S CERTIFICATE**

I CERTIFY THAT I HAVE EXAMINED THIS PLAT AND FIND IT TO BE CORRECT AND IN ACCORDANCE WITH THE INFORMATION ON FILE IN THIS OFFICE.

DATE \_\_\_\_\_ ENGINEER \_\_\_\_\_

**SUBDIVISIONS**

PROPERTY SURVEYS  
TOPOGRAPHIC SURVEYS  
CONSTRUCTION STAKING

**JSH** SURVEYING & DRAFTING INC.  
P.O. BOX 300 • WELLSVILLE, UTAH 84339  
(435) 245-9090 • TOLL FREE 1-888-420-0268

**NIBLEY CITY  
DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (“Agreement”), entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between GORDON RIGBY, hereinafter referred to as “Developer” and Nibley City, here in after referred to as “City”, and

WHEREAS, RIGBY SUBDIVISION AMENDMENT 2, hereinafter referred to as “the Development” has been approved for construction; and

WHEREAS, plans for the Development are on file with Nibley City and are incorporated by reference herein; and

WHEREAS, it is necessary for the interest of the public welfare that improvements made be constructed in accordance with the specifications set forth in said plans and as provided by Nibley City ordinances and Design Standards; and

WHEREAS, Developer desires to record a final plat of the Development in order to obtain building permits and construct structures after the necessary infrastructure is installed, approved and accepted; and

WHEREAS, in accordance with said Nibley City ordinances, including Section 11-5 of the Nibley City Code, the Developer is required to furnish security for the completion of all improvements or complete all improvements prior to recording a final plat.

NOW THEREFORE, to induce Nibley City to approve said plans and allow use of city-owned utilities and access and/or other improvements, the Developer does hereby unconditionally promise and agree with Nibley City as follows:

1. Developer hereby acknowledges receipt of a copy of the Nibley City Subdivision Ordinance. Developer hereby acknowledges that Developer has read the Subdivision Ordinance (or that an agent of Developer has), and that Developer understands the provisions of the Subdivision Ordinance and that Developer will fully and completely comply with the provisions and requirements therein contained.

2. Developer shall supply the City with water rights or shares as set forth in Nibley City Code Section 11-5-2 for the Development, as follows: 3 Acre-ft. of water shares from Blacksmith Fork Irrigation Company or an equivalent amount of acre feet from another irrigation company located in Nibley City. Developer shall provide said shares to the City before the commencement of construction.

3. The Developer has provided a report to the City establishing the ordinary high groundwater and elevation and finished floor elevations as required by Nibley City Code 11-3-8 (B) attached as Exhibit "A". No finished floor elevations, including basement floor elevations, shall be permitted below the aforementioned groundwater elevation. A note has been provided on the plat outline the finish floor elevation for lot 5.

4. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto mentioned and permitted successors and assigns; provided, however that this Agreement cannot be assigned, transferred or conveyed by either party, without the express, written consent of the other party.

5. In the event that either of the parties to this Agreement shall be in default or breach of this Agreement, said party shall be liable to pay all reasonable attorney's fees, court costs and other related costs and expenses incurred by the non-defaulting or non-breaching party in pursuing its rights hereunder or under the laws of the State of Utah.

6. The Developer shall insure trees are planted every 50 ft. in the public right-of-way according to Nibley City code 7-6-2.

7. Developer shall comply with all applicable federal, state, county and City requirements, regulations and laws for each aspect of this Development, including payment of fees and compliance with design and construction standards. Nothing in this Agreement shall be deemed to relieve Developer from the obligation to comply with all such applicable laws, ordinances, and requirements as now existing and as enacted and/or amended.

8. Developer shall not engage in any construction or disturbance of soil in the development prior to issuance of the Notice to Proceed by the Public Works Director.

9. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto mentioned and permitted successors and assigns; provided, however, that this Agreement cannot be assigned, transferred or conveyed by either party, without the express, written consent of the other party.

10. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid for any reason, the parties consider and intend that this Agreement shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this Agreement shall remain in full force and affect.

11. Time is of the Essence. Time is of the essence to this Agreement and every right or responsibility shall be performed within the times specified.

12. Mutual Drafting. Each party has participated in negotiating and drafting this Agreement and therefore no provision of this Agreement shall be construed for or against either party based on which party drafted any particular portion of this Agreement.

13. Entire Agreement. This Agreement, and all Exhibits thereto, is the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all parties.

14. Recordation and Running with the Land. This Agreement shall be recorded in the chain of title for the Development. This Agreement shall be deemed to run with the land.

**NIBLEY CITY**

**DEVELOPER**

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

\_\_\_\_\_  
By: DAVID N. ZOOK  
Its: City Manager

\_\_\_\_\_  
By: Gordon Rigby

STATE OF UTAH     )  
                              : ss  
County of Cache     )

On this \_\_\_\_ day of \_\_\_\_\_, 2017, personally appeared before me DAVID N. ZOOK, City Manager, the signer of the within instrument, who duly acknowledged to me that he executed the same as City Manager for Nibley City Corporation.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF UTAH     )  
                              : ss  
County of Cache     )

On the \_\_\_\_ day of \_\_\_\_\_, 2017, personally appeared before me, \_\_\_\_\_, Developer, the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.

---

NOTARY PUBLIC



August 8, 2017

Mr. David Zook  
Nibley City Manager  
455 West 3200 South  
Nibley, Utah 84321

RE: Estimated Historic High Water Table – Shawn Rigby Property

Dear David:

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The table below summarizes the information on the data sheet for easy reference:

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Sincerely,

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Michael Taylor, P.E.  
Civil Solutions Group, Inc.  
[www.civilsolutionsgroup.net](http://www.civilsolutionsgroup.net)



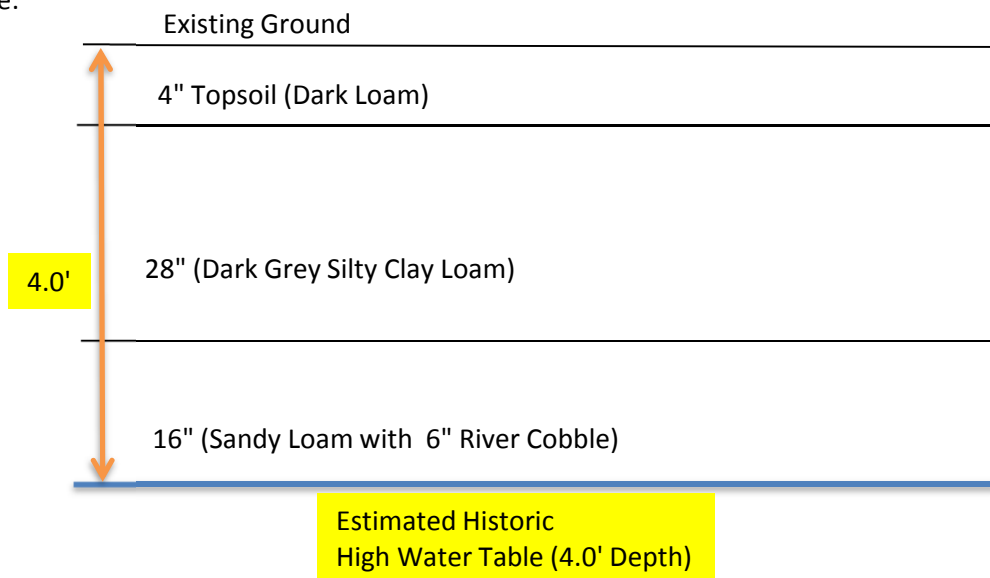
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Study Date	4-Aug-15
Location	Shawn Rigby Property, 195 W 3450 S, Nibley Utah
Soil Pit Location	Middle of Property

GPS Reference Points	Existing water meter near southwest corner of property	
Reference Point Elevation	4564.70	ft
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General Notes:	At 4' the water table was encountered and the soil transitioned from a dark grey to a sandy loam with 6" River Cobble.
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Soil Profile:





# SHAWN RIGBY EHHWT STUDY MAP

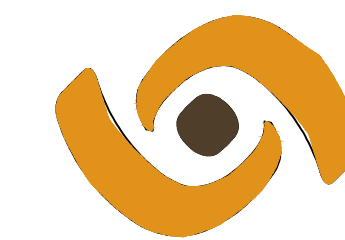
SCALE: 1"=40'



### GENERAL NOTES:

1. THE PROPERTY BOUNDARY LINE AS SHOWN ON THIS PLAN IS FOR REFERENCE ONLY. IT DOES NOT REPRESENT THE OFFICIAL PROPERTY BOUNDARY AS RECORDED BY FRANKLIN COUNTY. IT IS FOR REFERENCE ONLY.

**civilsolutionsgroup**inc.

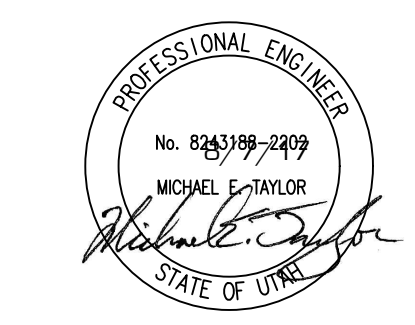
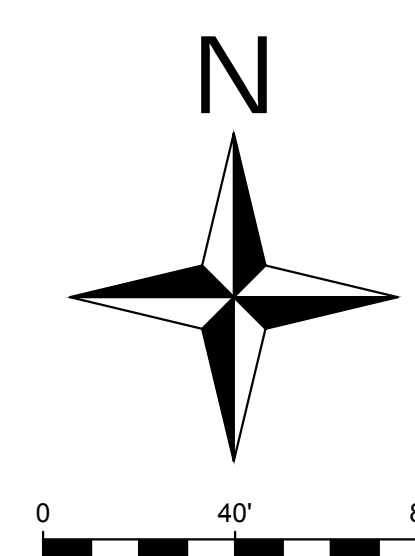


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SHAWN RIGBY  
EHHWT STUDY MAP  
195 WEST 3450 SOUTH  
NIBLEY, UTAH 84321

MARK:	DATE:	DESCRIPTION:

PROJECT #: 17091  
DRAWN BY: C. BOWN  
PROJECT MANAGER: M. TAYLOR  
REVIEWED BY: M. TAYLOR  
ISSUED: 8/7/17



EHHWT  
STUDY MAP

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# REZONE APPLICATION

<b>Office Use Only</b>	
Date Received	<u>06/28/2017</u>
Fee Paid	_____
Rec'd By	_____

### Property Owner Information

Name Return Development, LLC  
 Address 465 North 565 West #100, Providence, UT 84332  
 Phone (801) 557-3170 Cell (435) 760-6934 Fax \_\_\_\_\_  
 Email Christopher@returnndev.com Ethan@returnndev.com

### Property Owner Representative (If Applicable)

Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 Phone \_\_\_\_\_ Cell \_\_\_\_\_ Fax \_\_\_\_\_  
 Email \_\_\_\_\_

### PROJECT INFORMATION

Project Address 1200-800 West 2200-2350 South, Nibley, UT 84321  
 Tax I.D. Number (s) 03-008-0001  
 Project Size (Acres) 19.03  
 Current Zoning Agricultural (AGR) Proposed Zoning R-2A

### SUPPORTING MATERIALS

The following materials **must** be submitted with this Rezone Application, or the application will not be accepted by Nibley City:

Done **Survey.** The applicant shall submit a certified survey of land area to be rezoned. The applicant may submit a copy of the Cache County Recorder's plat map identifying the property proposed for rezone. The survey shall show the following:

1. Total acreage of land proposed for rezone
2. Adjacent land uses
3. Existing zoning of property
4. Vicinity map
5. Proposed project conceptual plan (if applicable)

✓  
 ✓  
 ✓  
 ✓  
 ✓

Done **Applicant Statement.** A statement by the Applicant, explaining the rationale for the rezone request, shall accompany the application (attach additional sheets). The statement shall answer the following questions (please list each question and its answer underneath):

1. What is the need for the proposed zone change?
2. What will the public benefit be if the zone change is granted?
3. How does the proposal comply with the goals and policies of the Nibley City General Plan?
4. Is there any annexation of property necessary?
5. Is the anticipated use appropriate for the surrounding area?
6. What public infrastructure is in place to serve the type and intensity of the proposed use? If needed, could the infrastructure be reasonably extended, at the cost of the developer?
7. Does the proposed zone change constitute "spot zoning"?

\_\_\_\_\_

Done **Title Report.** Applicant shall provide a certified, preliminary title report listing the name of the property owner(s) and all liens, easements and judgments of record affecting the subject property. \_\_\_\_\_

Done **Taxes.** A statement from the County treasurer showing the current tax status of the property. \_\_\_\_\_

Done **Surrounding Property Owners.** Applicant shall provide the City with mailing labels showing the name and mailing address of all property owners of record within three-hundred (300') feet of the subject property. \_\_\_\_\_

Done **Posting.** Not less than ten (10) days prior to the public hearing, Applicant is responsible for posting a sign in a prominent place on the property containing, in lettering that maybe reasonably read by passersby, the time, date and location of the public hearing. The posting shall not be required prior to the application being accepted. However, the City shall require that, not less than ten (10) days prior to the public hearing, Applicant provides the City with evidence of compliance with this requirement. \_\_\_\_\_

Done **Application Fee.** All fees related to the rezone application shall be paid as part of the application submittal. Should be a \$30 fee \_\_\_\_\_

Please see staff for public hearing and notification requirements.

**File the completed application at:**

Nibley City  
455 West 3200 South  
Nibley, UT 84321  
(435) 752-0431

**Applicant Certification**

I certify under penalty of perjury that this application and all information submitted as a part of this application are true, complete and accurate to the best of my knowledge. I also certify that I am the owner of the subject property and that the authorized agent noted in this application has my consent to represent me with respect to this application. Should any of the information or representations submitted in connection with this application be incorrect or untrue, I understand that Grand County may rescind any approval, or take any other legal or appropriate action. I also acknowledge that I have reviewed the applicable sections of the Nibley City Code and that items and checklists contained in this application are basic and minimum requirements only and that other requirements may be imposed that are unique to individual projects or uses. Additionally, I have reviewed and understand the section from the Consolidated Fee Schedule and hereby agree to comply with this resolution. I also agree to allow the Staff, Planning Commission, or City Council or appointed agent(s) of the City to enter the subject property to make any necessary inspections thereof.



\_\_\_\_\_  
Property Owner Signature

\_\_\_\_\_  
June 22nd, 2017

Date

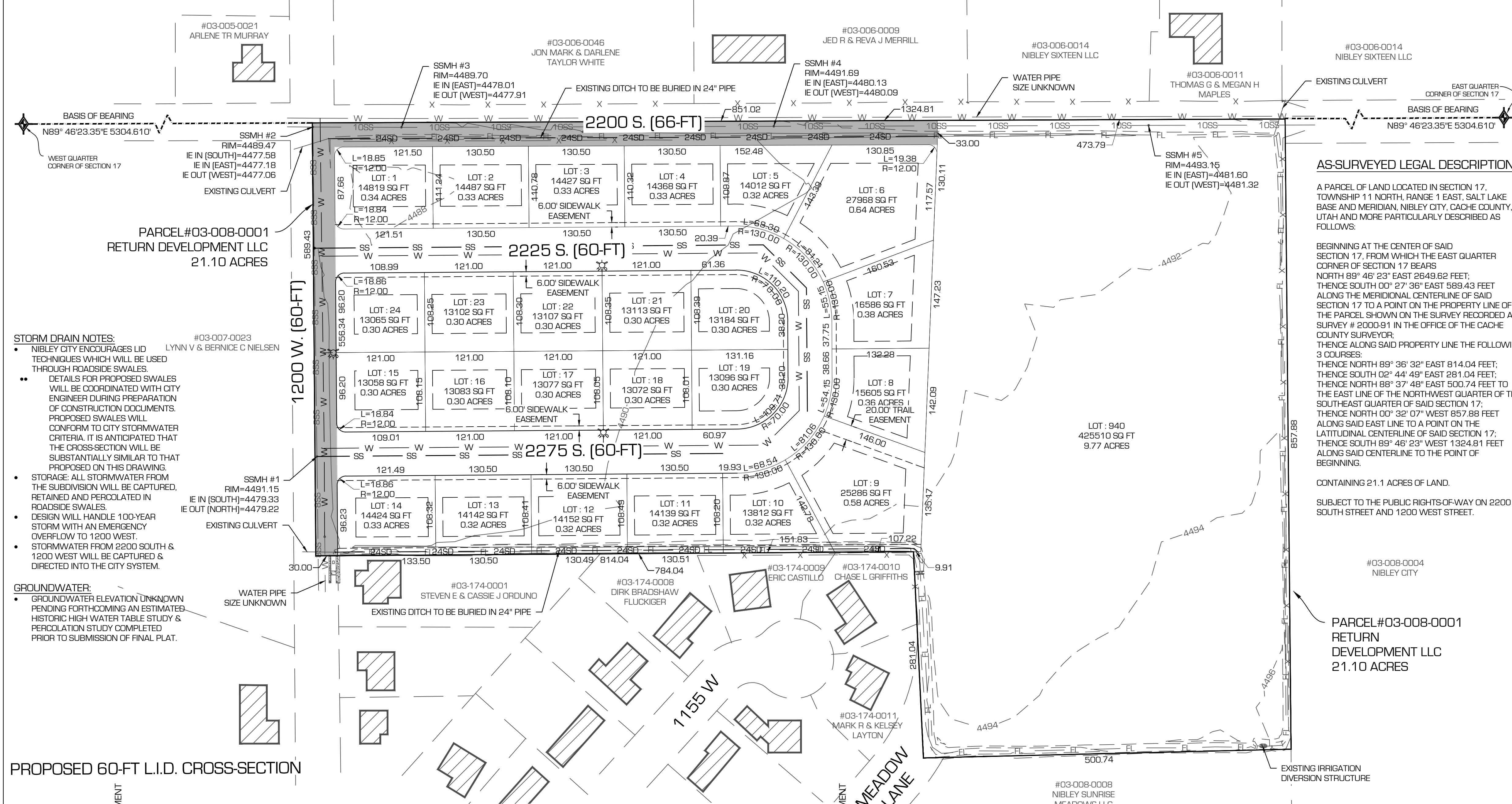
- Application Statement -

The following questions are in regards to our rezone application:

- 1. What is the need for the proposed zone change?**
  - a. We are developing the property into residential homes. We are simply rezoning the parcel to fit the zoning of the surrounding homes (R-2A) and possibly multi-family housing after city ordinance is adopted.
- 2. What will the public benefit be if the zone change is granted?**
  - a. The public benefit will be a well-built neighborhood near the Firefly Park for the future residents of Nibley City that complies with all city standards and code requirements. It will also provide Nibley with affordable housing to help them comply with state regulations.
- 3. How does the proposal comply with the goals and policies of the Nibley City's General Plan?**
  - a. Our development makes life better for citizens by providing a well-built community, not only for the middle class Americans, but also lower income families that could not afford housing otherwise. We are dedicated to preserving Nibley's historical and natural environment by preserving specifically the Fireflies that inhabit Firefly Park to the east. We are committed to working with the city to follow and uphold the municipal code and city standards while seeking to enhance Nibley's general plan throughout our development.
- 4. Is there any annexation of property necessary?**
  - a. No.
- 5. Is the anticipated use appropriate for the surrounding area?**
  - a. Yes.
- 6. What public infrastructure is in place to serve the type and intensity of the proposed use? If needed, could the infrastructure be reasonably extended, at the cost of the developer?**
  - a. After discussion with Justin Maughan and the city engineer, there is adequate sewer, water and power to serve the proposed development needs.
- 7. Does the proposed zone change constitute "spot zoning"?**
  - a. No.

# FIREFLY ESTATES SUBDIVISION PRELIMINARY PLAT

LOCATED IN SECTION 17, TOWNSHIP 11 NORTH, RANGE 1 EAST  
OF THE SALT LAKE BASE AND MERIDIAN, NIBLEY CITY, COUNTY OF CACHE, STATE OF UTAH  
SCALE: 1"=80'

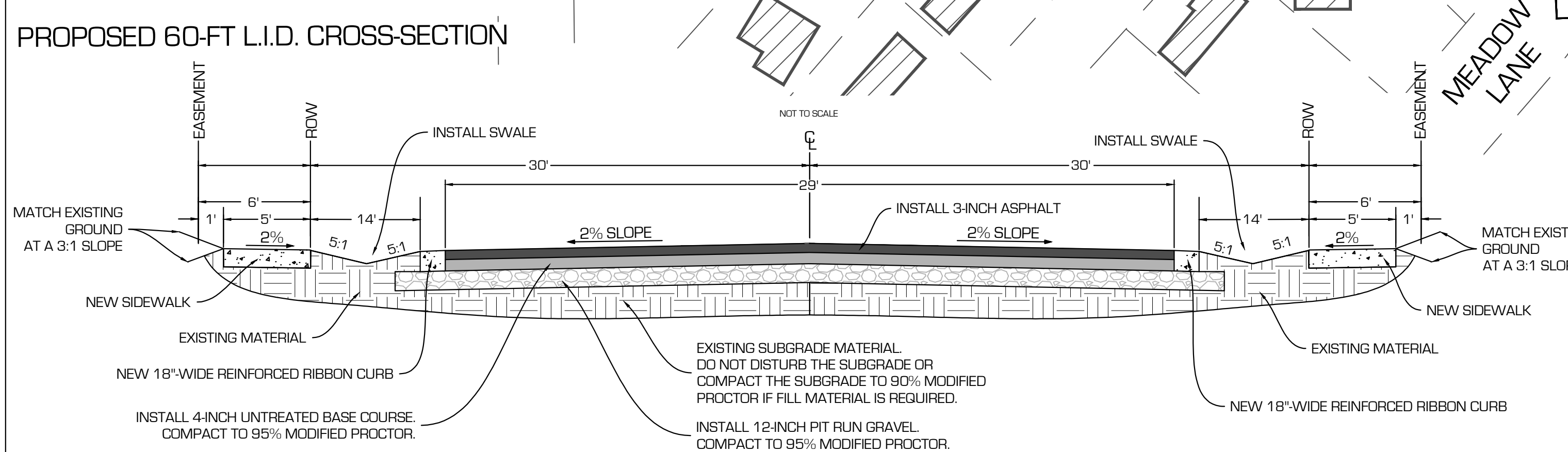


### STORM DRAIN NOTES:

- NIBLEY CITY ENCOURAGES LID TECHNIQUES WHICH WILL BE USED THROUGH ROADSIDE SWALES.
- DETAILS FOR PROPOSED SWALES WILL BE COORDINATED WITH CITY ENGINEER DURING PREPARATION OF CONSTRUCTION DOCUMENTS. PROPOSED SWALES WILL CONFORM TO CITY STORMWATER CRITERIA. IT IS ANTICIPATED THAT THE CROSS-SECTION WILL BE SUBSTANTIALLY SIMILAR TO THAT PROPOSED ON THIS DRAWING.
- STORAGE: ALL STORMWATER FROM THE SUBDIVISION WILL BE CAPTURED, RETAINED AND PERCOLATED IN ROADSIDE SWALES.
- DESIGN WILL HANDLE 100-YEAR STORM WITH AN EMERGENCY OVERFLOW TO 1200 WEST.
- STORMWATER FROM 2200 SOUTH & 1200 WEST WILL BE CAPTURED & DIRECTED INTO THE CITY SYSTEM.

### GROUNDWATER:

- GROUNDWATER ELEVATION UNKNOWN PENDING FORTH-COMING AN ESTIMATED HISTORIC HIGH WATER TABLE STUDY & PERCOLATION STUDY COMPLETED PRIOR TO SUBMISSION OF FINAL PLAT.



### AS-SURVEYED LEGAL DESCRIPTION:

A PARCEL OF LAND LOCATED IN SECTION 17, TOWNSHIP 11 NORTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, NIBLEY CITY, CACHE COUNTY, UTAH AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTER OF SAID SECTION 17, FROM WHICH THE EAST QUARTER CORNER OF SECTION 17 BEARS NORTH 89° 46' 23" EAST 2649.62 FEET; THENCE SOUTH 00° 27' 36" EAST 589.43 FEET ALONG THE MERIDIONAL CENTERLINE OF SAID SECTION 17 TO A POINT ON THE PROPERTY LINE OF THE PARCEL SHOWN ON THE SURVEY RECORDED AS SURVEY # 2000-91 IN THE OFFICE OF THE CACHE COUNTY SURVEYOR; THENCE ALONG SAID PROPERTY LINE THE FOLLOWING 3 COURSES: THENCE NORTH 89° 36' 32" EAST 814.04 FEET; THENCE SOUTH 02° 44' 49" EAST 281.04 FEET; THENCE NORTH 88° 37' 48" EAST 500.74 FEET TO THE EAST LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 17; THENCE NORTH 03° 32' 07" WEST 857.88 FEET ALONG SAID EAST LINE TO A POINT ON THE LATTITUDINAL CENTERLINE OF SAID SECTION 17; THENCE SOUTH 89° 46' 23" WEST 1324.81 FEET ALONG SAID CENTERLINE TO THE POINT OF BEGINNING.

CONTAINING 21.1 ACRES OF LAND.

SUBJECT TO THE PUBLIC RIGHTS-OF-WAY ON 2200 SOUTH STREET AND 1200 WEST STREET.

- ### PROJECT CONTACTS & GENERAL NOTES:
- PROJECT SURVEYOR:  
AA HUDSON & ASSOCIATES  
TIM CHRISTENSEN, PLS. UTAH LICENSE #375041-2201  
132 SOUTH STATE STREET  
PRESTON, ID 83263  
P: 208.852.1155  
E: TIM@AAHUDSON.COM
  - PROJECT ENGINEER:  
CIVIL SOLUTIONS GROUP, INC.  
MICHAEL E. TAYLOR, P.E. UTAH LICENSE #8243188-2202  
540 W GOLF COURSE RD, SUITE B1  
PROVIDENCE, UT 84332  
P: 435.213.3762  
E: MTAYLOR@CIVILSOLUTIONSGROUP.NET
  - PROPERTY SUBDIVIDER / OWNER:  
RETURN DEVELOPMENT, LLC  
REPRESENTATIVE: ETHAN POPPLETON  
485 N 565 W  
PROVIDENCE, UT 84332  
P: 435-763-8934  
E: ETHAN@RETURNDEV.COM
  - RESIDENTIAL (R-2A) ZONE:  
MIN FRONTAGE: 100'  
FRONT SETBACK: 30'  
REAR SETBACK: 25'  
SIDE SETBACK: 10'  
SIDE SETBACK (ADJACENT ROW): 25'
  - ALL LOTS HAVE ADEQUATE BUILDABLE ENVELOPE WITH REGARDS TO HAZARDOUS SLOPE, BUILDING, WATER, ZONING SETBACKS, ETC.  
ZONE: RESIDENTIAL (R-2A)  
TOTAL LOTS: 24  
MIN. LOT SIZE: 13,058 SF  
AVERAGE LOT SIZE: 14,959 SF
  - PROJECT WILL BE BUILT IN ONE PHASE
  - PUBLIC UTILITY EASEMENTS SHALL BE PROVIDED AT 10-FT WIDE ALONG THE FRONT & BACK OF LOTS AND 5-FT ON THE SIDES
  - 2200 SOUTH AND 1200 WEST WILL BE IMPROVED TO CITY STANDARDS ALONG SUBDIVISION FRONTAGES.

### LEGEND

— SS —	SS	EXISTING SEWER SERVICE
— W —	W	EXISTING WATER SERVICE
— FL —	FL	EXISTING CANAL FLOWLINE
— IRRX —	IRRX	EXISTING IRRIGATION CULVERT
— X —	X	EXISTING FENCE
—	—	ADJACENT PROPERTY BOUNDARY
—	—	PROPERTY BOUNDARY
—	—	PARCEL
—	—	SIDEWALK EASEMENT
—	—	PUBLIC UTILITY EASEMENT
—	—	RIGHT OF WAY DEDICATION AREA
—	—	SETBACK LINE
— SS —	SS	PROPOSED SEWER LINE
— W —	W	PROPOSED WATER LINE
— 24SD —	24SD	PROPOSED STORMDRAIN LINE

### DESIGN ENGINEER'S CERTIFICATE

I CERTIFY THAT ALL LOTS HAVE AN ADEQUATE BUILDABLE ENVELOPE WITH REGARDS TO HAZARDOUS SLOPE, BUILDING, WATER, ZONING SETBACKS.  
6.26.2017  
DATE

Michael E. Taylor  
DESIGN ENGINEER

### ENGINEER'S CERTIFICATE

I CERTIFY THAT I HAVE EXAMINED THIS PLAT AND FIND IT TO BE CORRECT AND IN ACCORDANCE WITH THE INFORMATION ON FILE IN THIS OFFICE AND THE CITY ORDINANCE.

DATE \_\_\_\_\_ CITY ENGINEER \_\_\_\_\_

### APPROVAL AS TO FORM

APPROVED AS TO FORM THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ A.D. 2017.

\_\_\_\_\_ CITY ATTORNEY \_\_\_\_\_

### OWNER'S CERTIFICATE

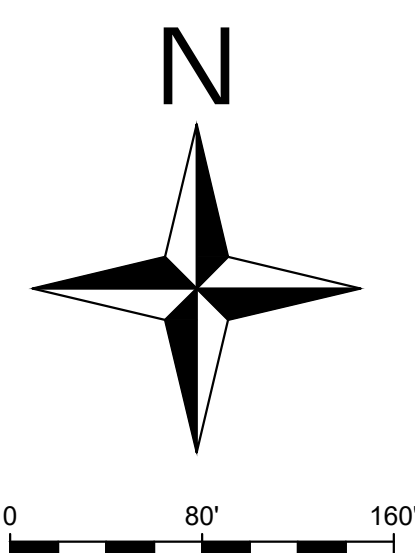
I THE APPLICANT AM THE OWNER, OR AM AUTHORIZED IN WRITING FOR THE LAND PROPOSED TO BE SUBDIVIDED.

DATE \_\_\_\_\_ OWNER \_\_\_\_\_

### CULINARY WATER AND SANITARY SEWER AUTHORITY APPROVALS

PLAT APPROVED BY NIBLEY CULINARY WATER AUTHORITY AND SANITARY SEWER AUTHORITY.

DATE \_\_\_\_\_ CULINARY WATER AND SANITARY SEWER AUTHORITY \_\_\_\_\_



- ### NOTES:
1. INSTALL 4" ROAD BASE OR GRAVEL UNDER THE CURB AND EXTEND ROAD BASE AND PIT RUN GRAVEL 1-FOOT BEHIND CURB.
  2. THE CONTRACTOR SHALL COMPACT ALL IMPORTED MATERIAL TO 95% MODIFIED PROCTOR.
  3. THE CONTRACTOR SHALL BUILD THE ROAD ACCORDING TO THE CONSTRUCTION PLAN ELEVATIONS AS PROVIDED BY CONSTRUCTION STAKING METHODS.
  4. 8.25 CU FT OF STORMWATER STORAGE REQUIRED IN EACH SWALE TO RETAIN THE 100-YR 48-HR STORM. 9.8 CU FT PROVIDED. THIS ASSUMES A PERCOLATION RATE LIMITED TO 0.2 CFS/ACRE.

### COUNTY RECORDER'S NO.

STATE OF UTAH, COUNTY OF CACHE, RECORDED AND FILED AT THE REQUEST

DATE \_\_\_\_\_ TIME \_\_\_\_\_ FEE \_\_\_\_\_

INDEX FILED IN FILE OF PLATS \_\_\_\_\_ COUNTY RECORDER \_\_\_\_\_

### COUNTY SURVEYOR'S CERTIFICATE

I CERTIFY THAT I HAVE EXAMINED THIS PLAT AND FIND IT TO BE CORRECT AND IN ACCORDANCE WITH THE INFORMATION ON FILE IN THIS OFFICE AND FURTHER CERTIFY THAT IT MEETS THE MINIMUM STANDARDS FOR PLATS REQUIRED BY COUNTY ORDINANCE AND STATE LAW.

DATE \_\_\_\_\_ COUNTY SURVEYOR \_\_\_\_\_

LEADERS IN SUSTAINABLE ENGINEERING AND PLANNING

### PLANNING COMMISSION CHAIRMAN APPROVAL AND ACCEPTANCE

PRESENTED TO THE NIBLEY CITY PLANNING COMMISSION CHAIRMAN THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ A.D. 2017, AT WHICH TIME THIS SUBDIVISION WAS RECOMMENDED TO THE CITY COUNCIL FOR APPROVAL.

DATE \_\_\_\_\_ PLANNING COMMISSION CHAIRMAN \_\_\_\_\_

### MAYOR'S APPROVAL AND ACCEPTANCE

PRESENTED TO THE NIBLEY CITY MAYOR THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ A.D. 2017, AT WHICH TIME THIS SUBDIVISION WAS APPROVED AND ACCEPTED.

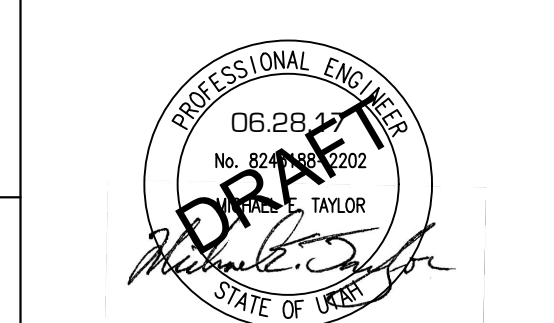
DATE \_\_\_\_\_ MAYOR \_\_\_\_\_

540 W GOLF COURSE RD SUITE B1  
PROVIDENCE, UT 84332  
P: 435.213.3762  
F: 435.213.3762  
www.civilsolutionsgroup.net

**FIREFLY ESTATES SUBDIVISION  
PRELIMINARY PLAT**  
 2200 SOUTH 1200 WEST  
 NIBLEY, UTAH 84321

MARK	DATE:	DESCRIPTION:

PROJECT #: 17050  
DRAWN BY: K. ALTHOUSE  
REVIEWED BY: M. TAYLOR  
ISSUED: 6.26.2017



**NIBLEY CITY  
DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (“Agreement”), entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, between RETURN DEVELOPMENT, LLC, hereinafter referred to as “Developer” and Nibley City, hereinafter referred to as “City”, and

WHEREAS, Firefly Estates Subdivision, hereinafter referred to as “the Development” has been submitted for approval for rezoning and subdivision; and

WHEREAS, plans for the Development are on file with Nibley City and are incorporated by reference herein; and

WHEREAS, it is necessary for the interest of the public welfare that improvements made be constructed in accordance with the specifications set forth in said plans and as provided by Nibley City Ordinances and Design Standards; and

WHEREAS, Developer desires to obtain a rezone and to record a final plat of the Development in order to obtain building permits and construct structures after the necessary infrastructure is installed, approved and accepted; and

WHEREAS, in accordance with said Nibley City ordinances, including Section 11-5 of the Nibley City Code, the Developer is required to furnish security for the completion of all improvements or complete all improvements prior to recording a final plat; and

WHEREAS, the parties have reviewed and evaluated the impact of a rezone of Developer’s property and subsequent subdivision of the same; and

WHEREAS, the parties have agreed that an essential nexus exists between Nibley City’s interests and each exaction contained in this Agreement; and

WHEREAS, each exaction is roughly proportionate, both in nature and extent, to the impact of the rezone and proposed subdivision and development; and

WHEREAS, the parties have reached this Agreement based on the facts and information available to each and have determined those facts and that information to be sufficient to make an informed decision that the exaction is appropriate and necessary, and does not constitute a taking by Nibley City.

NOW THEREFORE, to induce Nibley City to approve said plans and allow use of city-owned utilities and access and/or other improvements, the Developer does hereby unconditionally promise and agree with Nibley City as follows:

1. Developer hereby acknowledges receipt of a copy of the Nibley City Subdivision Ordinance.

Developer hereby acknowledges that Developer has read the Subdivision Ordinance (or that an agent of Developer has), and that Developer understands the provisions of the Subdivision Ordinance and that Developer will fully and completely comply with the provisions and requirements therein contained.

2. In accordance with Nibley City Code Section 11-6-6, Developer shall tender to Nibley City an Improvement Bond in the amount reasonably designated by Nibley City. In the event that Developer shall fail or neglect to fulfill the obligations under this Agreement, Nibley City shall have the right to construct or cause to be constructed said streets and other improvements as shown on said plans as required by Nibley City Ordinances and Design Standards, and upon completion of said improvements Developer, as secured, shall be liable to pay to, and indemnify Nibley City for, the final total cost incurred by Nibley City, including but not limited to, engineering, legal and contingent costs, together with any damages which Nibley City may sustain on account of the failure of Developer to carry out and execute all of the provisions of this Agreement which said sums are secured by the Improvement Bond.

3. Developer shall supply the City with water rights or shares as set forth in Nibley City Code Section 11-5-2 for the Development, as follows: \_\_\_\_\_ water shares from \_\_\_\_\_ Irrigation Company or an equivalent amount of acre feet from another irrigation company located in Nibley City. Developer shall provide said shares to the City before the commencement of construction.

4. The Developer has agreed to dedicate to the City and provide all improvements shown on the Preliminary Plat of the Firefly Estates Subdivision attached and incorporated by reference, including but not limited to:

- a. One-half (1/2) (30') of 1200 West contiguous to the subdivision;
- b. One-half (1/2) (33') of 2200 South contiguous to the subdivision;
- c. All of 2225 South;
- d. All of 2275 South;

5. The Developer has agreed to dedicate 80' of Meadow Lane from the Southwest corner of the remainder parcel of Tax Identification No. 03-008-0001 which is not part of the Firefly Estates Subdivision to the North line of Tax Identification No. 03-008-0001 concurrent with the dedications in Section 4 above, and which is legally described as follows:

[Legal Description]

6. Timing of Construction. Either party may construct Meadow Lane within Tax Identification No. 03-008-0001 at any time at its discretion.

a. Construction by Developer. Developer shall construct 66' of Meadow Lane as and when such portion is required by Nibley City for development of Parcel No. 03-008-0001, including but not limited to street lights, fire hydrants, curb and gutter, sidewalk (all of the foregoing on both sides of Meadow Lane), asphalt, sewer and water lines. Nibley City shall be responsible to pay for the development of 14' asphalt/parkway of Meadow Lane. Developer shall provide to Nibley City documentation establishing the reasonable and actual cost of constructing the City's portion of Meadow Lane as constructed by Developer.

b. Nibley City Construction. If Nibley City desires to construct Meadow Lane before it is required to be constructed and constructed by Developer, then Nibley City shall give notice of such intent to construct Meadow Lane to Developer on a reasonable basis to allow Owner and Developer to make comments to the design. Nibley City shall reasonably consider any comments of Developer. Nibley City shall provide to Developer documentation establishing the reasonable and actual cost of constructing any portion of Meadow Lane constructed by Nibley City. The only cost chargeable to Nibley City shall be a 14' width of asphalt/parkway.

c. Sewer and Waterline. Sewer and water lines shall be installed as part of the Meadow Lane construction and will be paid for by Developer.

d. Sidewalks, and Curb and Gutter. Developer shall be solely responsible for payment of the cost of sidewalks, and curbs and gutter along both sides of Meadow Lane.

7. Payment Responsibility and Payment Method.

a. Invoicing. Whichever Party constructs any portion of Meadow Lane for which cost is due from the other Party shall provide the non-constructing Party with an invoice of the reasonable and actual costs of the construction with customary and adequate supporting documentation.

b. Nibley City Payment. Nibley City at its discretion, shall pay its share of the costs of constructing Meadow Lane within ninety (90) days of invoicing or ninety (90) days after acceptance of the improvements by Nibley City, whichever last occurs.

c. Developer Payment. If Nibley City constructs the Meadow Lane improvements then Developer shall reimburse the City for any such construction within ninety (90) days of invoice or within ninety (90) days after the City Council approval of any subdivision on Tax Identification No. 03-008-0001 adjacent to and on the east side of Meadow Lane, whichever last occurs.



d. If Developer does not reimburse the City upon the City's completion of the Meadow Lane improvements, then City shall have a lien on Tax Identification No. 03-008-001 for the Developer's share of the improvements. The City may unilaterally file an Affidavit of Lien or the Developer shall sign and deliver for recording a Trust Deed for the amount of the reimbursement against Tax Identification No. 03-008-0001 until the City is reimbursed.

8. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto mentioned and permitted successors and assigns; provided, however that this Agreement cannot be assigned, transferred or conveyed by either party, without the express, written consent of the other party, which cannot be unreasonably withheld.

9. In the event that either of the parties to this Agreement shall be in default or breach of this Agreement, said party shall be liable to pay all reasonable attorney's fees, court costs and other related costs and expenses incurred by the non-defaulting or non-breaching party in pursuing its rights hereunder or under the laws of the State of Utah.

10. Developer shall comply with all applicable federal, state, county and City requirements, regulations and laws for each aspect of this Development, including payment of fees and compliance with design and construction standards. Nothing in this Agreement shall be deemed to relieve Developer from the obligation to comply with all such applicable laws, ordinances and requirements as now existing and as enacted and/or amended.

11. Developer shall provide a Bond in the sum reasonably determined by the City as a percentage of the estimated costs of all improvements installed in the Development as estimated by the City Engineer for the period of Developer's warranty on the improvements in the Development. Security in amounts more than 10% may be required by the City Manager if it is deemed appropriate and necessary. The Bond shall meet all the criteria outlined in Nibley City Code Chapter 11-6.

12. Developer shall not engage in any construction or disturbance of soil in the development prior to issuance of the Notice to Proceed by the Public Works Director.

13. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid for any reason, the parties consider and intend that this Agreement shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this Agreement shall remain in full force and affect.

14. Time is of the Essence. Time is of the essence to this Agreement and every right or responsibility shall be performed within the times specified.

15. Mutual Drafting. Each party has participated in negotiating and drafting this Agreement and therefore no provision of this Agreement shall be construed for or against either party based on which party drafted any particular portion of this Agreement.

16. Entire Agreement. This Agreement, and all Exhibits thereto, is the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all parties. The foregoing Recitals are incorporated by reference.

17. Recordation and Running with the Land. This Agreement shall be recorded in the chain of title for the Development and Parcel No. 03-008-0001. This Agreement shall be deemed to run with the land as a covenant, condition and restriction and binds all successors, assigns and owners of said Development and Parcel.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

**NIBLEY CITY:**

**DEVELOPER:**

**RETURN DEVELOPMENT, LLC**

\_\_\_\_\_  
By: DAVID N. ZOOK  
Its: City Manager

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: Member/Manager

STATE OF UTAH    )  
                              :SS  
County of Cache    )

On this \_\_\_\_ day of \_\_\_\_\_, 2017, personally appeared before me DAVID N. ZOOK, City Manager, the signer of the within instrument, who duly acknowledged to me that he executed the same as City Manager for Nibley City Corporation.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF UTAH    )

County of Cache ) : ss

On the \_\_\_\_ day of \_\_\_\_\_, 2017, personally appeared before me, \_\_\_\_\_, Developer, the signer of the foregoing instrument, who duly acknowledged to me that he executed the same as the Manager/Member of Return Development, LLC and that said Company executed the same.

---

NOTARY PUBLIC

J:\MPJ\Cities\Nibley\01 - Subdivisions\Firefly Estates\Development Agreement.draft.docx  
N-6512.64

## CANVAS OF AUGUST 15, 2017 NIBLEY CITY PRIMARY ELECTION

On Tuesday, August 15, 2017, Nibley City held a Primary Election to determine four (4) candidates to appear on the Tuesday, November 7, 2017, General Election ballot, for two (2) Nibley City Council seats. Nibley City had five (5) total candidates for City Council. One (1) candidate was eliminated based on the results of the Primary Election.

The regular, absentee and provisional ballots received during the election have been counted and election results were reviewed by the City Recorder and poll workers. All appeared to be in order.

The final count includes 22 absentee ballots. No additional absentee ballots were received after Election Day. The final count also includes 3 provisional ballots that were counted. Two (2) of the original five (5) ballots were rejected by the County Clerk because the voters were not registered.

<b>Candidates for City Council</b>	<b>Votes</b>	<b>Percentage</b>	<b>Nominated/ Eliminated</b>
<u>Kathryn A. Beus</u>	139	29.57%	Nominated
Ryan Olsen	53	11.28%	Eliminated
<u>Allen V. Cook</u>	56	11.91%	Nominated
<u>Garrett Mansell</u>	111	23.62%	Nominated
<u>Norman L. Larsen</u>	111	23.62%	Nominated
<b>Total</b>	<b>470</b>	<b>100%</b>	

Total regular ballots counted: 251

Total provisional ballots counted: 3

The above report lists the official and accurate results of the Canvas of the Primary Municipal Election held August 15, 2017 in Nibley City.

By \_\_\_\_\_  
Shaun Dustin, Mayor

By \_\_\_\_\_  
David Zook, Recorder/Election Official

Election Nibley City Primary Date 8.15.17  
 Precinct NIB 1:1, 1:3, 1:17, 1:25

### Statement of Disposition of Ballots

- |   |                               |
|---|-------------------------------|
| 1. Number of Official ballots received .....  | <u>1,000</u>                  |
| 2. Number of Absent-Voter ballots received .....  | <u>22</u>                     |
| 3. Number of Early Vote Ballots received .....  | <u>0</u>                      |
| <hr/>   |                               |
| 4. Number of people voting in the regular section of the Poll Book .....  | <u>229</u>                    |
| <small>(Do NOT include Provisional Ballots)</small>   |                               |
| 5. Number of Valid Absent-Voter Ballots from the Poll Book .....  | <u>22</u>                     |
| 6. Add lines 3, 4 and 5 for the <b>Total number of regular ballots voted</b> .....  | <u>251</u>                    |
| <hr/>   |                               |
| 7. Count the number of Regular Ballots in the Ballot Box .....  | <u>251</u>                    |
| <small>(Do NOT include Provisional Ballots)</small>   |                               |
| a) If line 7 is greater than line 6, locate Envelope No. 2, Follow instructions.<br>Enter the number of Excess Ballots placed in Envelope No. 2 ..... |                               |
| 8. Subtract line 7 (a) from line 7 for <b>total ballots to be tallied</b> .....   | <input type="text" value=""/> |
| <small>(Do NOT include Provisional Ballots)</small>   |                               |
| 9. If line 7 is less than line 6, enter the number of ballots you are short .....   | <u>5</u>                      |
| 10. Count the number of Provisional Ballots in the Ballot Box .....   | <u>0</u>                      |
| <small>(This should equal the number of Provisional Voters listed in the Poll Book)</small>   |                               |
| 11. Number of Rejected Absent-Voter Ballots from the Poll Book .....  | <u>0</u>                      |
| 12. Number of Early Vote Ballots that were not processed .....  | <u>0</u>                      |
| 13. Number of Spoiled Ballots placed in Package No. 3 .....   | <u>2</u>                      |
| 14. Number of unused Official Ballots .....   | <u>720</u>                    |
| 15. Number of Active Registered Voters as shown in the Official Register .....  | <u>2,847</u>                  |

#### JUDGES' CERTIFICATION

We, the undersigned Election Judges of Voting Precinct Nibley City 1:1, 1:3, 1:17, 1:25 in  
Cache County, State of Utah, having first been severally sworn according to law,  
 HEREBY CERTIFY that the above is a true statement of the number of persons voting in said precinct  
 on this election day.

Stephen Nelson  
 PRINTED NAME  
Nancee Jabbs  
 PRINTED NAME  
Cheryl Bodily  
 PRINTED NAME

Stephen Nelson  
 SIGNATURE  
Nancee Jabbs  
 SIGNATURE  
Cheryl Bodily  
 SIGNATURE

# TOTAL VOTES CAST

ELECTION PRECINCT (name and/or number) Nibley City 1:1, 1:3, 1:17, 1:25

Name of entity holding election Nibley City, State of Utah  
(county, city, town, school district or special district)

Total number of registered persons listed in the Official Register book 2,847

Total number of persons voting as listed in the Poll book 251

OFFICE	PARTY	CANDIDATE'S NAME and/or PROPOSITION <i>(list in ballot order)</i>	TOTAL VOTES CAST
City Council		Kathryn A. Beus	139
City Council		Ryan Olsen	53
City Council		Allen V. Cook	50
City Council		Garrett Mansell	111
City Council		Norman L. Larson	111


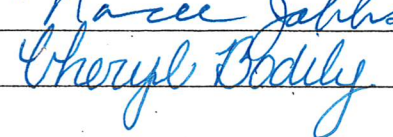
**INSTRUCTIONS TO POLL WORKERS**

Candidate names and/or propositions should be listed in the order in which they are shown on the ballot.

Fill in the Total Votes Cast for each candidate and/or proposition. Use the totals arrived at from the Tally List form. **Proof-read or check** for possible errors.

Complete and sign the Certificate at the right.

At an election held at (building) Nibley City Hall  
 in 1:1, 1:3, 1:17, 1:25 voting precinct in (name of entity holding the election) Nibley City  
 and State of Utah, on the 15 day of August, 20 17, the named persons received the number of votes listed by their respective names for the described offices and/or propositions: Total number of votes cast were as listed:

  
 \_\_\_\_\_  
 Nancee Jahhs  
 \_\_\_\_\_  
  
 \_\_\_\_\_  
 Cheryl Bodily  
 \_\_\_\_\_  
 Poll Workers