

Ent 850665 Bk 967 Pg 747  
 Date: 07-AUG-2020 1:18:00PM  
 Fee: \$40.00 Check Filed By: RO  
 KARLA MEDLEY, Recorder  
 CARBON COUNTY CORPORATION  
 For: CHRISTIAN BRYNER

The Order of the Court is stated below:

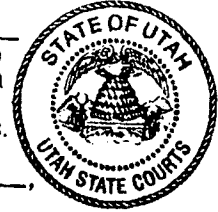
Dated: March 05, 2020  
 03:50:07 PM

/s/ DON M. TORGERSON  
 District Court Judge



Christian B. Bryner, #8730  
 Christian B. Bryner,  
 Attorney at Law  
 49 North 500 East  
 Price, UT 84501  
 Telephone: (435) 636-1111  
[bryner.christian@yahoo.com](mailto:bryner.christian@yahoo.com)  
 Attorney for Plaintiffs

STATE OF UTAH  
 COUNTY OF Carbon  
 I hereby certify that the document to  
 which this certificate is attached is a  
 full, true and correct copy of the  
 original filed in the Utah State Courts.  
 WITNESS my hand and seal  
 this 7 day of August,  
 2020  
 DISTRICT/JUVENILE COURT



K. Dechryd CLERK

<p align="center"><b>IN THE SEVENTH JUDICIAL          DISTRICT COURT IN AND FOR          CARBON COUNTY, STATE OF UTAH</b></p>	
<p>JEFFERY W. THOMAS and BARBARA THOMAS, husband and wife; TRACEY ROBINSON and MIRANDA ROBINSON, husband and wife; DENNIS CLARK and MARY ELLEN CLARK, husband and wife; JERRY L. CHRISTENSEN and SANDRA D. CHRISTENSEN, husband and wife; SONDRRA BILLS, DIXIE NICHOLS, JONI L. PARRISH, MIKI LYNN McINELLY, LESLIE DICKSON, PAULA VIGIL, and DAVID H. SUMMERS, Trustee of the Danny L. Summers Revocable Trust, u/a/d/ 01/01/14,</p> <p align="center">Plaintiffs,</p> <p>v.</p> <p>BRYAN MENA, LISA MENA, a/k/a LISA M. MENA, LINSEY LESSER, and LEVADA EF FIVE, LLC, a Delaware limited liability company.</p> <p align="center">Defendants.</p>	<p align="center"><b>ORDER GRANTING MOTION FOR          SUMMARY JUDGMENT</b></p> <p>Case No. 180700026</p> <p>Judge Don M. Torgerson</p>

THE COURT, having reviewed Plaintiffs' Motion for Summary Judgment, and finding that Defendants were provided notice of the hearing, and that Defendants have filed no memorandum in opposition to Plaintiffs' Motion within the time allowed for Defendants to file their opposition, and the Court having reviewed the Plaintiffs' motion and supporting affidavits and other evidence submitted in support of the motion, and good cause appearing, the Court makes the following FINDINGS OF FACT:

1. The boundaries of the properties owned by the respective Plaintiffs to this action and Defendants Lisa Mena and Linsey Lesser should be declared to be those fences and structures described in Plaintiffs' motion, located as set forth on the survey plat submitted by Plaintiffs as Exhibit 1 to their motion, pursuant to the doctrine of boundary by acquiescence. Specifically, the Court finds:

(a) that the fences and structures alleged by Plaintiffs to constitute the boundaries between Defendants Lisa Mena's and Linsey Lesser's property (Carbon County Tax Parcel no. 1B-0500-0001), and the respective parcels owned by Plaintiffs, have been in place continuously for a period of at least twenty years; and

(b) that Plaintiffs have occupied the property on their side of the fences and structures the entire way up to the alleged boundary line fences and structures in a manner to have put the Defendants and their predecessors on notice that Plaintiffs claim said property as their own; and

(c) that Defendants acquiesced in treating the fences and structures as the actual boundary of the property, either through consent or inaction.

2. The road right-of-way traversing across Defendants Bryan Mena's, Lisa Mena's, and Linsey Lesser's properties as described in Plaintiffs' motion is subject to a prescriptive easement in favor of Plaintiffs. Specifically, the Court finds:

(a) That the use of the property for a road right-of-way by the Plaintiffs was open and notorious for a period of 20 years or more, in that Plaintiffs' use was made with knowledge of the Defendants and their predecessors in interest, or that Plaintiffs' use of the roadway upon Defendants' property could have been learned through reasonable diligence by Defendants or their predecessors in interest. The Court finds that the road right-of-way was not obscured from view and had a width of approximately 20 feet, based upon the Plaintiffs' affidavits presented in support of their motion.

(b) That the use of the property by Plaintiffs and their predecessors in interest was continuous and uninterrupted for a period of twenty years or more, in that it was used by Plaintiffs as often as they needed to in order to obtain access with their vehicles to their backyards, without restriction, including bringing their utility and camp trailers into their backyards, beginning in the 1970s through the time of filing of the Petition, as attested to in the affidavits submitted by Plaintiffs;

(c) That the use of the property was adverse in nature, in that Plaintiffs have alleged

that their use of the roadway was never made pursuant to permission from the Defendants or their predecessors or interest, that there was no express grant of permission or license to use the roadway by Defendants or their predecessors in interest, and that Defendants have failed to show that the use of the property was made subject to their or their predecessors' permission or grant of license.

3. That the Court finds that Defendants are jointly and severally responsible for damages incurred by Plaintiffs Jerry Christensen and Sandra Christensen due to Defendants' removal of their fence, and that Defendants are responsible for damages incurred by Plaintiffs Joni L. Parrish, Leslie Dickson, Paula Vigil and Miki Lynn McInelley on their property due to Defendants' removal and destruction of fences.

NOW THEREFORE, the COURT does hereby DECREE, ORDER and ADJUDGE as follows:

**Judgment pertaining to property boundary lines**

1. The boundary line between the properties known as Carbon County Tax Parcel 1C-0380-000, also known as 141 Denver Avenue, owned by Plaintiffs Tracey Robinson and Miranda Robinson, and the property known as 1B-0500-0001, owned by Defendants Lisa Mena and Linsey Lesser, is hereby decreed and adjudged to be as depicted in the survey plat submitted by Plaintiffs in support of their motion for summary judgment, said survey plat also being attached to this Judgment and Decree as **Exhibit "1"**.

2. The boundary line between the properties known as Carbon County Tax Parcel 1C-0379-0000, also known as 139 Denver Avenue, owned by Plaintiffs Tracey Robinson and Miranda Robinson, and the property known as 1B-0500-0001, owned by Defendants Lisa Mena and Linsey Lesser, is hereby decreed and adjudged to be as depicted in the survey plat submitted by Plaintiffs in support of their motion for summary judgment, said survey plat also being attached to this Decree as **Exhibit "1"**.

3. The boundary line between the properties known as Carbon County Tax Parcel 1C-0378-000, also known as 137 Denver Avenue, owned by Plaintiffs Joni L. Parrish, Leslie L. Dickson, Paula Vigil and Miki Lynn McInelly and the property known as 1B-0500-0001, owned by Defendants Lisa Mena and Linsey Lesser, is hereby decreed and adjudged to be as depicted in the survey plat submitted by Plaintiffs in support of their motion for summary judgment, said survey plat also being attached to this Decree as **Exhibit "1"**.

4. The boundary line between the properties known as Carbon County Tax Parcel 1C-0377-000, also known as 135 Denver Avenue, owned by Plaintiffs Dennis Clark and Mary Clark, husband and wife, and the property known as Carbon County Tax Parcel Number 1B-0500-0001, owned by Defendants Lisa Mena and Linsey Lesser, is hereby decreed and adjudged to be as depicted in the survey plat submitted by Plaintiffs in support of their motion for summary judgment, said survey plat also being attached to this Decree as **Exhibit "1"**.

5. The boundary line between the properties known as Carbon County Tax Parcel

1C-0372-0000, also known as 125 Denver Avenue, owned by Plaintiffs Sondra Bills and Dixie Nichols, and the property known as Carbon County Tax Parcel Number 1B-0500-0001, owned by Defendants Lisa Mena and Linsey Lesser, is hereby decreed and adjudged to be as depicted in the survey plat submitted by Plaintiffs in support of their motion for summary judgment, said survey plat also being attached to this Decree as **Exhibit "1"**.

6. The boundary line between the properties known as Carbon County Tax Parcel 1C-0371-000, also known as 123 Denver Avenue, owned by Plaintiffs Jerry L. Christensen and Sandra D. Christensen, and the property known as Carbon County Tax Parcel Number 1B-0500-0001, owned by Lisa Mena and Linsey Lesser, is hereby decreed and adjudged to be as depicted in the survey plat submitted by Plaintiffs in support of their motion for summary judgment, said survey plat also being attached to this Decree as Exhibit "1".

**Judgment Pertaining to Prescriptive Right of Way along Denver Avenue**

7. The road right-of-way running through Carbon County Tax Parcel 1B-0500-0001, owned by Defendants Lisa Mena and Linsey Lesser, and through Carbon County Tax Parcel 1B-0500-0002, owned by Defendants Bryan Mena and Lisa L. Mena, running more or less parallel to Denver Avenue behind the backyards of Plaintiffs' residences, is hereby declared to be subject to a prescriptive easement in favor of Plaintiffs for vehicular traffic in and out of Plaintiffs' backyards, in a width necessary for said travel, said width to include the width necessary to bring trailers in and out of the backyards, pursuant to the historic use attested to by

Plaintiffs, as set forth in Exhibit "18" submitted by Plaintiffs in support of their motion for summary judgment, and the depiction of said roadway also being attached to this Judgment and Decree as **Exhibit "2"**.

**Judgment Pertaining to Prescriptive Right of Way to Summers Trust Property**

8. That portion of the road right-of-way running through Carbon County Tax Parcel 1B-0500-0001, owned by Defendants Lisa Mena and Linsey Lesser, and leading to the garage owned by Plaintiff Trustee of the Danny L. Summers Revocable Trust, situated on Carbon County Tax Parcel number 1C-0392, as depicted in Exhibit "18" submitted by Plaintiffs in support of their motion for summary judgment, a depiction of said plat also being attached to this Decree as **Exhibit "2"**, is hereby declared and adjudged to be subject to a prescriptive easement for vehicular traffic to and from the garage in favor of Plaintiff Trustee of the Danny L. Summers Revocable Trust.

**Additional Orders**

9. In the event that the Carbon County Recorder requires the filing of an amended Plat or requires additional information in order to effect title as set forth in this Order, or in the event that Plaintiffs obtain more particular legal descriptions that set forth the metes and bounds of each of the lots described on the plat, or the metes and bounds of the prescriptive easement road right-of-way granted herein, Plaintiffs may move this Court, upon giving proper notice to Defendants, to amend the Judgment and Decree to include such legal descriptions, provided such

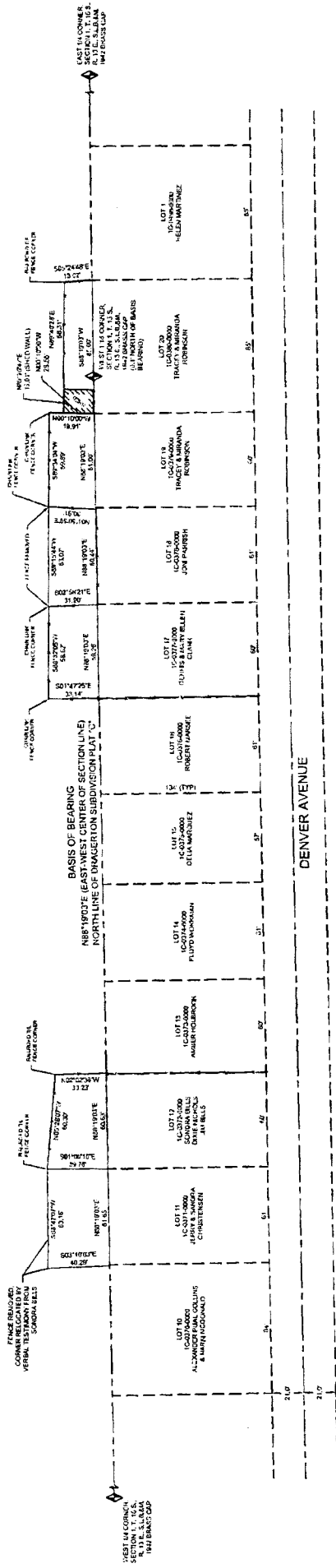
descriptions do not contradict the award and boundaries of property as depicted in **Exhibit “1”** of this Order, or with respect to the prescriptive easement, said description shall not exceed the width necessary for vehicular ingress and egress along the easement right-of-way, including the use of trailers coming in and out of Plaintiffs’ respective backyards.

10. Plaintiffs may, upon giving proper notice to Defendants, move this Court to amend this Judgment and Decree to include an amount for damages to be awarded to Plaintiffs due to Defendants’ removal and destruction of fences at 123 Denver Ave. (Carbon County Tax Parcel No. 1C-0371-000) and at 137 Denver Ave. (Carbon County Tax Parcel No. 1C-0378-0000).

**THE SIGNATURE AND SEAL OF THIS COURT  
IS SET FORTH ON THE FIRST PAGE OF THIS DOCUMENT**



# Exhibit “1”



### CERTIFICATE OF SURVEY

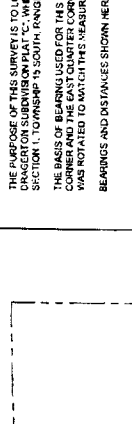
I, M. CODY WARE DO HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR, CERTIFICATE NO. 448688 AS AUTHORIZED BY THE BOARD OF EXAMINERS OF THE STATE OF UTAH. I FURTHER CERTIFY THAT I HAVE MADE A SURVEY OF THE TRACT OF LAND SHOWN ON THIS MAP AND TO THE BEST OF MY KNOWLEDGE, IT DOES NOT PURPORT TO SHOW ALL EASEMENTS OF RECORD NOR IS IT PROOF OF OWNERSHIP.

DATE: JUNE 23, 2019

### NARRATIVE

THE PURPOSE OF THIS SURVEY IS TO LOCATE THE PINNACLES OF LOTS 11, 12, 17, 18, 19, 24, 29 OF THE DRAGONETON SUBDIVISION PLAT 1, TOWNSHIP 16 SOUTH, RANGE 13 EAST, SALT LAKE BASE AND MERIDIAN. THE BASIS OF BEARING USED FOR THIS SURVEY IS NORTH 89° 04' 00" EAST BEARING THE WEST QUARTER CORNER AND THE EAST QUARTER CORNER OF SAID SECTION 1, SAID DRAGONETON SUBDIVISION PLAT 1. BEARINGS AND DISTANCES SHOWN HEREON ARE AS MEASURED IN THE FIELD.

### VICINITY MAP



### LEGEND



**CHRISTIAN B. BRYNER**  
REGISTERED LAND SURVEYOR  
No. 41284-03-02  
Phone: 435-280-4342  
Email: cbryner@ware-surveys.com

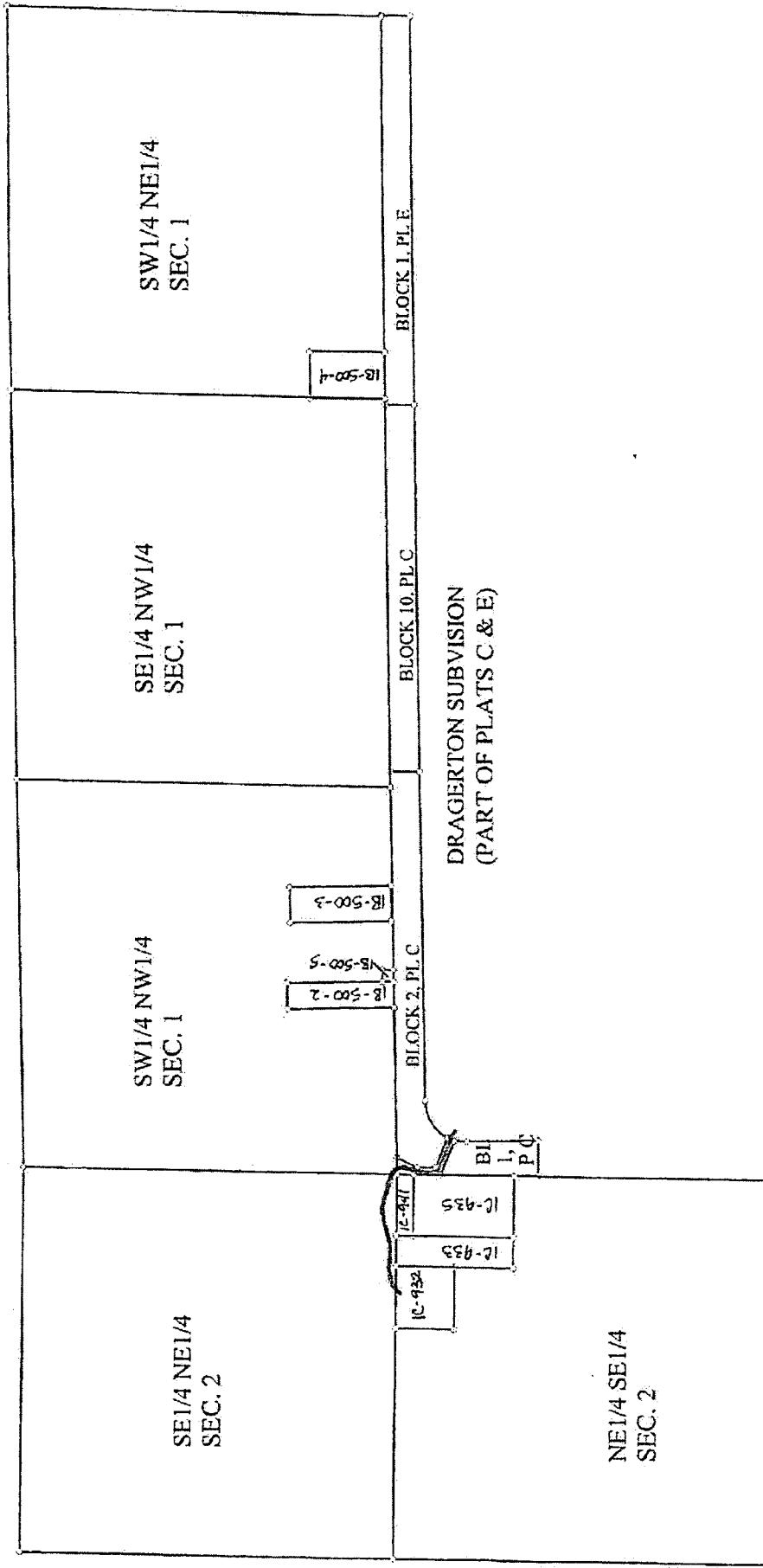
**WARE SURVEYING, L.L.C.**  
194 West 2000 West  
Park, Utah 84041

**GRAPHIC SCALE**  
1 in. = 50 ft.

**DATE:** JUNE 23, 2019

# Exhibit “2”

EXHIBIT A



Title:	Date: 05-07-2018
Scale: 1 inch = 550 feet	File: ECroad1.des

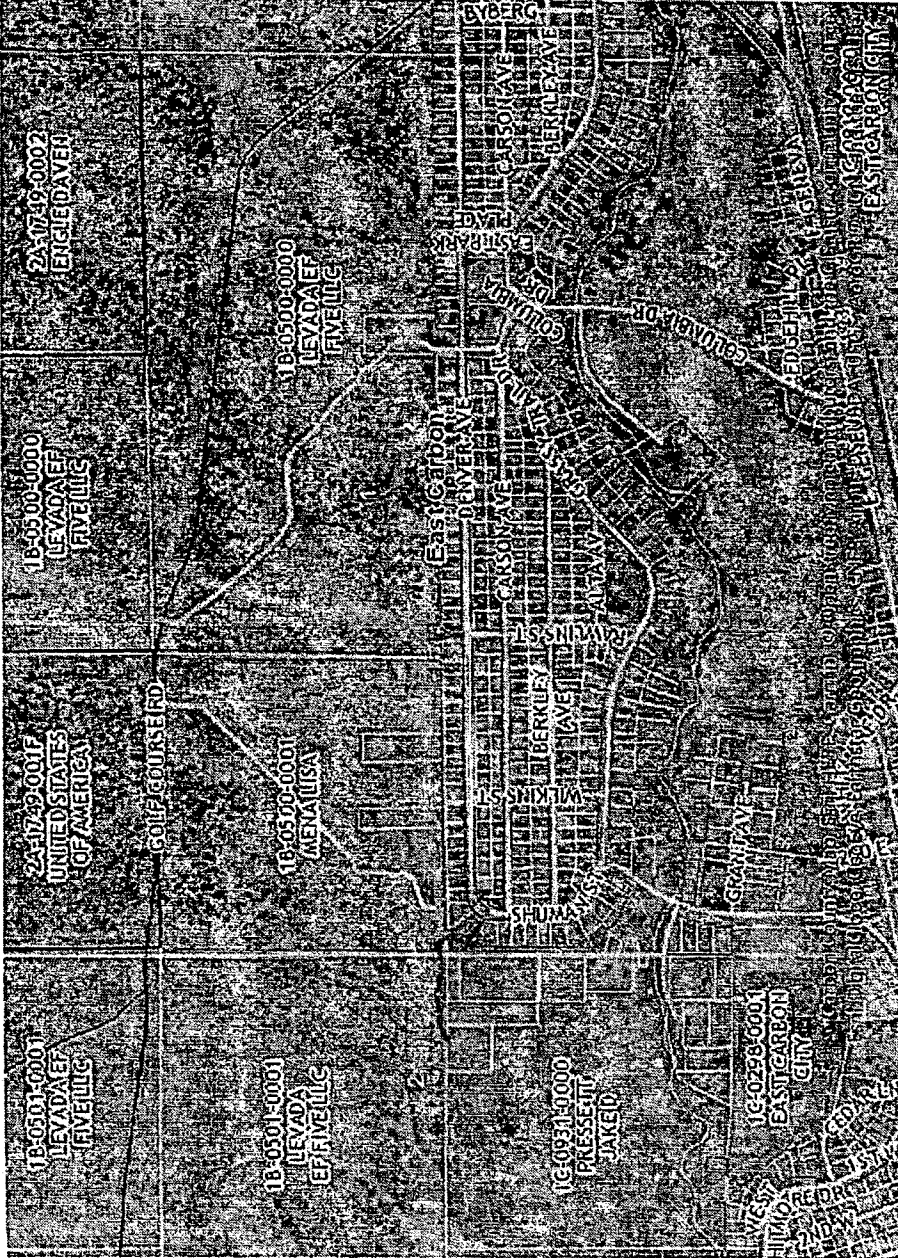


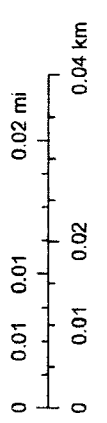
EXHIBIT B

# Road to Summers Parcel



12/24/2019, 10:42:54 AM

1:1,128



- Parcels
- Watercourses
  - Perennial
  - Canal
  - Creek
  - River
- County Boundary
- Waterbodies
- Pipeline
- Townrange Roads
- Cities
- Sections
- Subdivisions
- County Road (B)

Carbon County Map

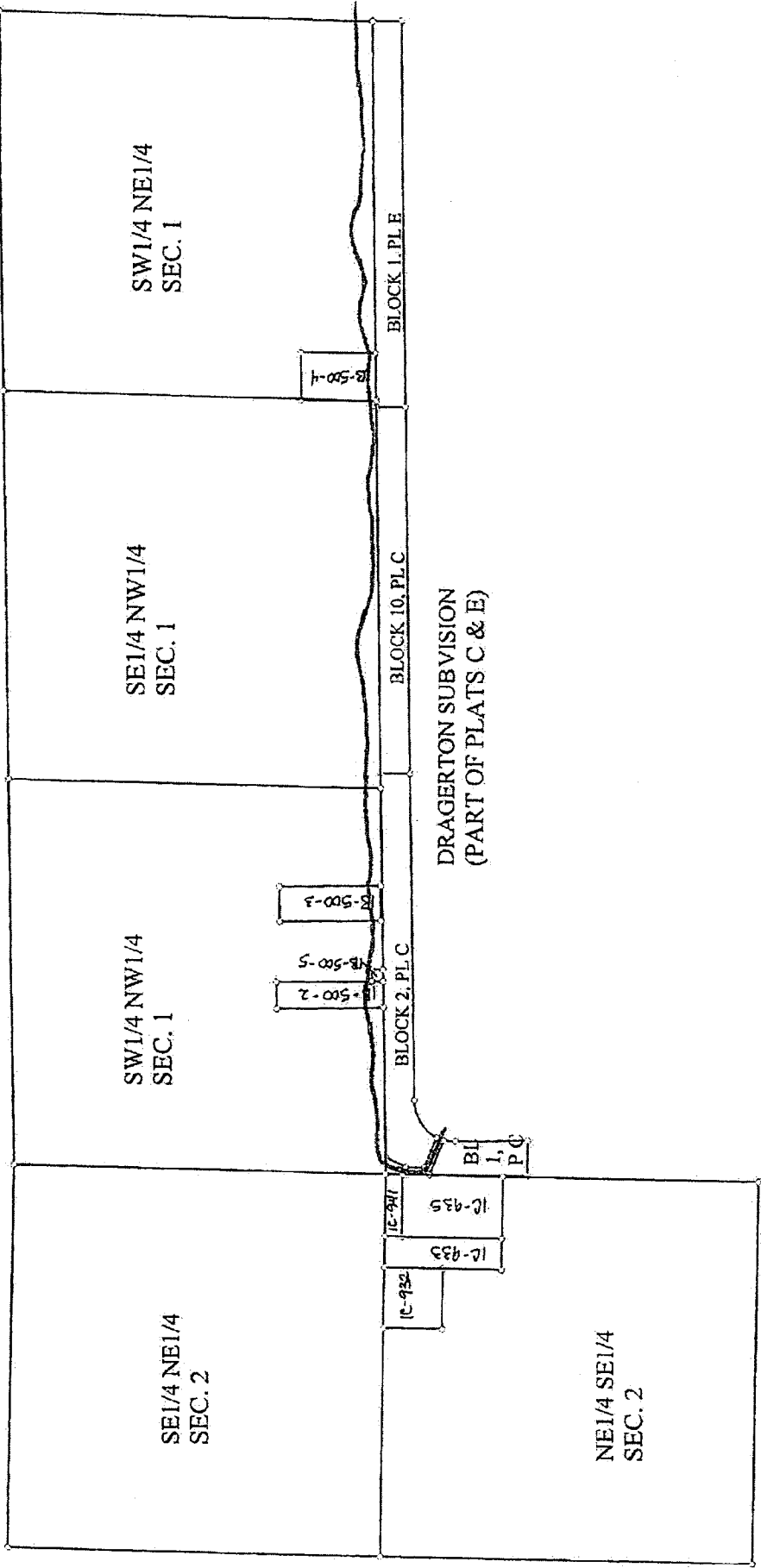
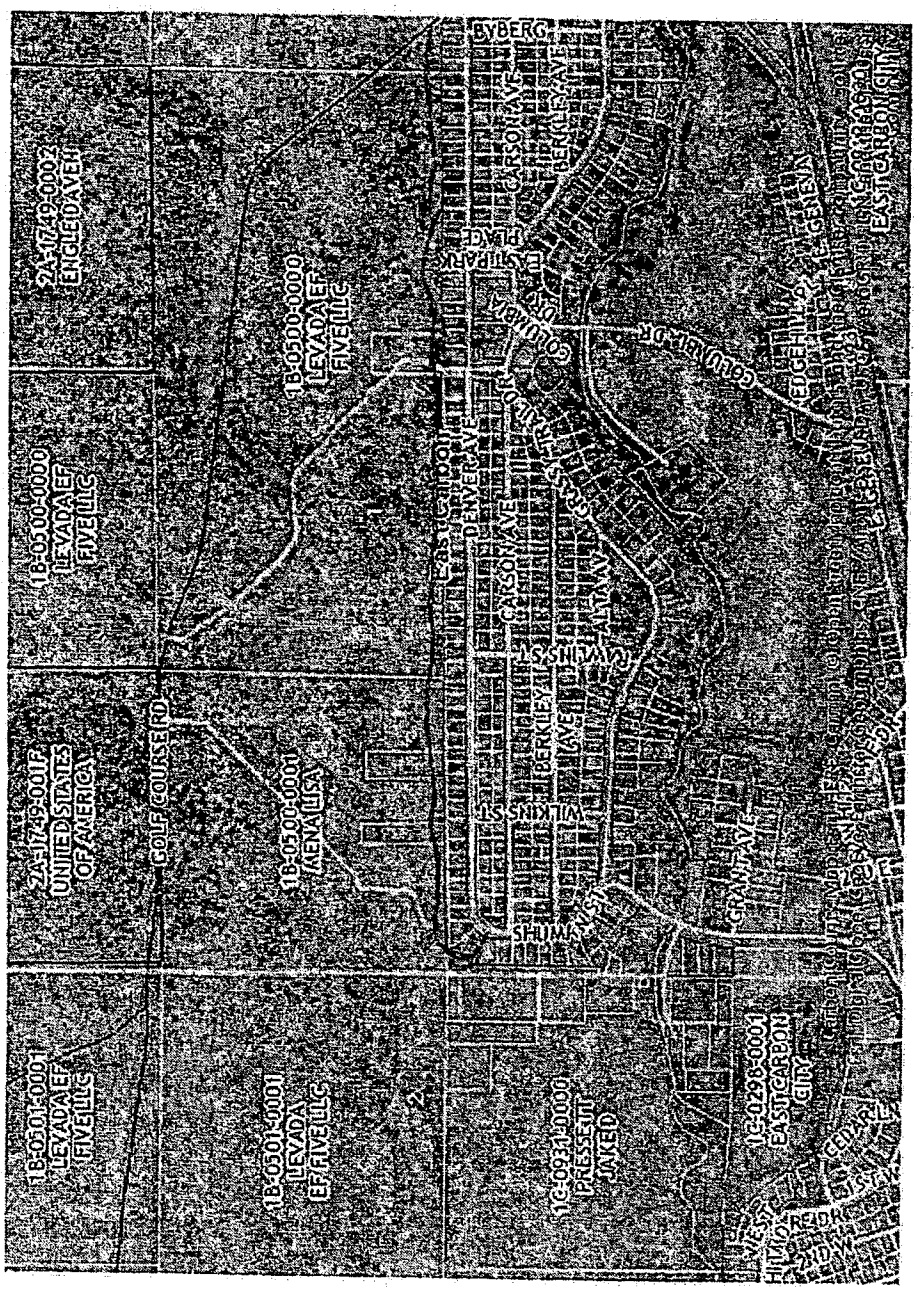


EXHIBIT A

Title:	Date: 05-07-2018
Scale: 1 inch = 550 feet	File: ECroad1.des

EXHIBIT B





# Denver Ave Overview



August 17, 2018

Parcels

1:2,257

0 0.01 0.03 0.05 mi

0 0.02 0.04 0.09 km

Carbon County, Carbon County Utah GIS, Carbon County Utah GIS,  
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus  
Web AppBuilder for ArcGIS