

AGREEMENT

OF

STIPULATION AND COMPROMISE

REGARDING UTAH LAKE BOUNDARY

This Agreement is entered into on the date of execution shown below between the STATE OF UTAH, by and through the Division of Forestry, Fire and State Lands, hereinafter the DIVISION, and PROVO CITY, hereinafter UPLAND LANDOWNER.

RECITALS

1. The United States Supreme Court held on June 8, 1987 that the title to the bed of Utah Lake passed to the State of Utah under the equal footing doctrine upon admission of Utah to the United States on January 4, 1896.

2. The State of Utah's ownership and management of the bed of Utah Lake are subject to a duty to preserve and protect the public trust values reserved and established at common law and as established by Article XX of the Utah Constitution and the laws of Utah.

3. The DIVISION is authorized by the provisions of Sections

65A-1-2 and 65A-10-1, Utah Code Annotated, as the state agency with management authority for the sovereign lands of the State of Utah. The DIVISION has been delegated responsibility to manage sovereign lands in the best interest of the State, and with authority to lease or sell sovereign lands but only in quantities and for the purposes as serve the public interest and do not interfere with the public trust of these lands.

4. The DIVISION is further authorized by the provisions of Section 65A-10-3, Utah Code Annotated, to enter into agreements with the owners of lands adjoining navigable lakes for the purpose of establishing the boundaries of the sovereign lands of the State, subject to the requirements for consultation and notice as required by that section.

5. The DIVISION'S statutory predecessor, the Division of State Lands and Forestry, obtained approval of the Board of State Lands and Forestry of the procedures for the resolution of disputes over the location of these boundaries as required by the forgoing statutes.

6. The DIVISION has given notice, as required by the forgoing statutes, to the affected state agencies and to any person with an ownership interest in the lands affected by this Agreement establishing the boundary between the adjoining lands

and the sovereign lands. The DIVISION has also consulted with the Attorney General's office concerning this Agreement.

7. The UPLAND LANDOWNER acknowledges that the DIVISION claims ownership of the sovereign lands of Utah Lake which are those lands lying below the ordinary high water mark as of the date of statehood and owned by the State by virtue of its sovereignty. The DIVISION acknowledges that the UPLAND LANDOWNER claims ownership of an interest in the lands adjacent and upward of said sovereign lands. The DIVISION'S claim of ownership includes lands lying below the surveyed meander line.

8. The unique historical and physical characteristics of Utah Lake and the lands near the boundary between the sovereign lands and the adjoining lands subject to this Agreement have limited the availability of evidence of any vegetative or erosion line which can now be clearly identified by either party in order to determine the ordinary high water mark for these lands at the date of statehood.

9. The DIVISION and the UPLAND LANDOWNER acknowledge that the location of the ordinary high water mark as of the date of statehood is not now known to the DIVISION or to the UPLAND LANDOWNER and is not now capable of determination or survey by reference to a known monument.

10. The DIVISION and the UPLAND LANDOWNER acknowledge that the location of the ordinary high water mark may be subject to determination by a proper adjudication of the relevant facts and issues. The parties to this Agreement disagree about the facts and issues relevant to such a determination.

11. The DIVISION and the UPLAND LANDOWNER acknowledge that the location of the ordinary high water mark, as it may be located upon the lands which are subject to this Agreement, has not been adjudicated or otherwise determined by any judicial authority with jurisdiction to determine such matters.

12. The UPLAND LANDOWNER claims ownership of the lands adjoining Utah Lake identified as follows:

OWNER	PARCEL	INTEREST	SOURCE/DATE
Provo City Corp.	22:050:0001	Fee Simple	Various, as
" " "	22:050:0005	" "	Recorded at
" " "	22:050:0015	" "	Utah County
" " "	21:050:0012	" "	Recorder's
" " "	22:050:0019	" "	Office.....
" " "	22:050:0039	" "	
" " "	22:050:0041	" "	
" " "	22:050:0044	" "	
" " "	21:054:0006	" "	
" " "	38:164:0008	" "	
" " "	38:139:0500	" "	
" " "	38:139:0501	" "	
" " "	38:139:0502	" "	
" " "	38:139:0503	" "	
" " "	44:079:0010	" "	
" " "	44:079:0500	" "	
" " "	44:079:0501	" "	

"	"	"	44:079:0502	"	"
"	"	"	44:079:0503	"	"
"	"	"	44:079:0504	"	"
"	"	"	44:079:0506	"	"
"	"	"	44:079:0507	"	"
"	"	"	44:079:0509	"	"
"	"	"	44:079:0510	"	"

13. The DIVISION claims an interest in the lands lying below the surveyed meander line.

14. The location of the surveyed meander line, elevations and other topographic information are shown on various Exhibits to Record of Decision No. 015, attached hereto as Exhibit 1.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND RELEASES OF CLAIMS CONTAINED HEREIN, IT IS MUTUALLY AGREED AS FOLLOWS:

1. The DIVISION releases and quit claims to PROVO CITY CORPORATION all of its title, ownership, claims, rights, chose in action, rights of way, easements, and all other rights appurtenant or separate to the real property located eastward and above the boundary line, which is the east right-of-way of I-15, as shown on Exhibit B to the attached Record of Decision (Exhibit 1), subject to the limitations and reservations as set forth in this Agreement.

2. PROVO CITY CORPORATION releases and quit claims to the DIVISION for and on behalf of the STATE OF UTAH all of its title, ownership, claims, rights, chose in action, rights of way, easements and all other rights appurtenant or separate to a parcel of land lying in the southwest quarter of Section 18, Township 7 South, Range 3 East, containing nine and sixty-four hundredths (9.64) acres comprising the Bureau of Reclamation (BOR) site, and the real property in Sections 18 and 19, T7S, R3E and in Section 13, T7S, R2E, located westward and below the proposed boundary line which is the east right-of-way of I-15 as shown on Exhibit B to the attached Record of Decision (Exhibit 1), subject to the limitations and reservations as set forth in this Agreement.

3. The lands released and compromised by PROVO CITY CORPORATION to the DIVISION by the terms of this Agreement shall be sovereign lands subject to the rights of the public to access the lands and to use the lands in manners consistent with the public trust.

4. The lands adjacent to the south portion of East Bay have been acquired for U.S. Army Corps of Engineers wetland mitigation. Provo City has also included the lands to be quitclaimed by the Division to Provo City as part of the Corps of

Engineers mitigation plan and, therefore, will protect and manage these lands relinquished to Provo City by this Agreement and the adjoining acquired lands as wetlands. The wetlands under the jurisdictional control of the U.S. Army Corps of Engineers will be protected as a matter of federal law. Provo City will mitigate any possible loss of ponds, streams or waterways by deeding to the State or permanently preserving an equivalent acreage of ponds, streams or waterways elsewhere prior to the loss or destruction. The amount to be preserved shall be not less than that amount currently existing in ponds, streams and waterways within the golf course area to be quitclaimed (below meander survey). (See Exhibit A-5 to the attached Record of Decision). This criteria may be satisfied by establishment of protected ponds, waterways and acreage as part of the future agreement between the parties regarding the boundary in the vicinity of the Provo City Airport.

5. This Agreement is entered into in lieu of and under the threat of litigation to determine the location of the boundary between the sovereign lands and the adjoining lands. These parties reaffirm the facts as set forth in the recitals to this Agreement. It is understood that each party may claim boundaries that are different than the boundary line agreed to in this

Agreement. This boundary is intended by the parties to reasonably approximate the boundary of the sovereign lands at the time of statehood based on the facts and arguments of the parties to this Agreement and based on the facts and arguments contained in the attached Record of Decision and accompanying Exhibits.

6. This Agreement is only intended to resolve the dispute between these parties with regard to the boundary between the properties. The statements or agreements herein are not intended to pertain to the location of the ordinary high water mark on other areas of Utah Lake or in other disputes. The State reserves the right to dispute the location of the ordinary high water mark at other locations in other litigation with these or other parties. Any statements or agreements herein are for settlement purpose only and not admissible as statements of fact or policy in any other litigation between the Division and upland landowners pertaining to the boundary of Utah Lake or otherwise.

7. This Stipulation and Compromise Agreement shall be binding upon the heirs and assigns of the parties to this Agreement and shall be recorded at the office of the Utah County Recorder.

Dated this 18 day of November 1997.

STATE OF UTAH DIVISION OF  
FORESTRY, FIRE AND STATE LANDS

BY Arthur W. DuFault  
ARTHUR W. DuFAULT, DIRECTOR

STATE OF UTAH )  
ss.  
COUNTY OF SALT LAKE )

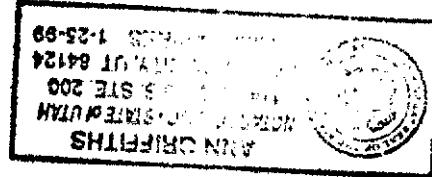
On this 18 day of November, 1997, personally  
appeared before me ARTHUR W. DuFAULT, Director of the Division of  
Forestry, Fire and State Lands, known to me to be the person  
whose name is subscribed to the foregoing instrument and who has  
acknowledged to me that he executed the same on behalf of said  
Division.

IN WITNESS WHEREOF, I have hereunto set my official  
signature and affixed my notarial seal this 18 day of  
November, 1997.

My Commission Expires:

1-25-99

Arthur W. DuFault  
NOTARY PUBLIC In and for the  
State of Utah, County of Salt  
Lake.





UPLAND LANDOWNER:

PROVO CITY CORPORATION

BY

Geo. Stewart  
Attest: Marilyn J. Perry, City Recorder

STATE OF UTAH )  
ss.  
COUNTY OF Utah )

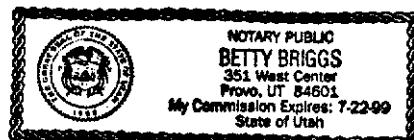
On this 28th day of October, 1997, personally appeared before me, George D. Stewart, known to me to be the person whose name is subscribed to the foregoing instrument and who has acknowledged to me that he executed the same on behalf of PROVO CITY.

IN WITNESS WHEREOF, I have hereunto set my official signature and affixed my notarial seal this 28th day of October, 1997.

My Commission Expires:

7-22-99

Betty Briggs  
NOTARY PUBLIC In and for the State  
of Utah, County of Utah.



## RECORD OF DECISION

RECORD NUMBER: 97-07-21-ULBA-015

DATE OF EXECUTION 7/23/97 UTAH LAKE BOUNDARY  
AGREEMENT NO. : ULBA 015

### UPLAND LANDOWNER:

Provo City Corporation  
P.O. Box 1849  
Provo, Utah 84603

### OTHER PARTIES WITH OWNERSHIP INTERESTS:

U.S. Department of the Interior  
Bureau of Reclamation  
Provo Area Office  
302 East 1860 South  
Provo, Utah 84606

### ADJACENT LANDOWNERS:

Utah Department of Transportation  
Gordon M. Thomas  
Novell, Inc.  
Motel 6 Operating, LP  
Provo Redevelopment Agency  
Virgil M. Gleave and Winston Gleave  
Colleen and Jeffrey Oberhansley  
Max Jones

### Life Estate:

Judith Davis, Gayle Crookston, Carol L. Jones

### East Bay North Subdivision:

Snarr Advertising, Inc.  
Dennis and Ronald Norton  
Sterling and William Jacobson



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East Bay PUD, Plat X:

Novell, Inc.  
Price Development Co.  
Utah Department of Transportation  
Provo City Corporation

East Bay PUD, Plat R:

Richard McCloskey, et. al.

East Bay PUD, Plat U:

Interwest Safety Supply  
Provo City Corporation

Keystone Acres, Plat A:

Norma and Dean Boshard  
Bryce Sorenson  
Melvin and Edith Kirk  
Provo City Corporation (Corp.)

**DESCRIPTION OF LANDS DIRECTLY AFFECTED:**

This agreement affects the sovereign lands located on the east side of Provo Bay (**Exhibit A-1**) and adjacent to the upland properties referred to as adjoining lands, which are mostly shown on the attached map (**Exhibit A-2**) and identified by the following Utah County (Co.) Tax Identification Numbers:

UTAH CO. TAX ID NUMBER 22:050:0001 - Provo City, Corp., et. al  
(Life Estate: Judith Davis, Gayle Crookston, Carol L. Jones)  
UTAH CO. TAX ID NUMBER 22:050:0005 - Provo City Corp.  
UTAH CO. TAX ID NUMBER 22:050:0015 - Provo City Corp.  
UTAH CO. TAX ID NUMBER 21:050:0012 - Provo City Corp.  
UTAH CO. TAX ID NUMBER 22:050:0019 - Provo City Corp.  
UTAH CO. TAX ID NUMBER 22:050:0039 - Provo City Corp.  
UTAH CO. TAX ID NUMBER 22:050:0041 - Provo City Corp.  
UTAH CO. TAX ID NUMBER 22:050:0044 - Provo City Corp.  
UTAH CO. TAX ID NUMBER 22:050:0049 - Novell, Inc.

UTAH CO. TAX ID NUMBER 22:050:0052 - Provo City Corp., et. al  
UTAH CO. TAX ID NUMBER 22:053:0004 - Provo City Corp.  
UTAH CO. TAX ID NUMBER 21:054:0006 - Provo Redevelopment Agency  
UTAH CO. TAX ID NUMBER 21:054:0029 - Motel 6 Operating, LP  
UTAH CO. TAX ID NUMBER 22:053:0042 - Gordon M. Thomas  
UTAH CO. TAX ID NUMBER 22:053:0038 - Provo City Corp.  
UTAH CO. TAX ID NUMBER 22:053:0039 - Colleen and Jeffrey Oberhansley  
UTAH CO. TAX ID NUMBER 22:053:0040 - Colleen and Jeffrey Oberhansley  
UTAH CO. TAX ID NUMBER 22:053:0025 - Virgil M. Gleave

East Bay North Subdivision

LOT 1, PLAT A " 38:136:0001 - Snarr Advertising, Inc.  
LOT 2, PLAT A " 38:163:0002 - Sterling and William Jacobson  
LOT 3, PLAT A " 38:163:0003 - Dennis and Ronald Norton

East Bay PUD Plat X:

PARCEL 1 " 38:164:0001 - Novell, Inc.  
PARCEL 5 " 38:164:0005 - Price Development Co.  
PARCEL 6 " 38:164:0006 - Utah Department of Transportation  
PARCEL 7 " 38:164:0007 - Novell, Inc.  
PARCEL 8 " 38:164:0008 - Provo City Corp.  
PARCEL 9 " 38:164:0009 - Novell, Inc.

East Bay PUD Plat R:

PARCEL 23 " 38:116:0023 - Richard McCloskey, et. al.

East Bay PUD Plat U:

PARCEL 26 " 38:139:0026 - Interwest Safety Supply  
PARCEL 0500 " 38:139:0500 - Provo City Corp.

Keystone Acres Plat A:

PARCEL 1 44:079:0001 - Norma and Dean Boshard  
PARCEL 2 44:079:0002 - Bryce C. Sorenson  
PARCEL 505 44:079:0005 - Bryce C. Sorenson  
PARCEL 6 44:079:0006 - Melvin and Edith Kirk

PARCELS 10, 500, 501, 502, 503, 504, 506, 507,  
509 and 510 - Provo City Corp.  
PARCEL 0501 " 38:139:0501 - Provo City Corp.  
PARCEL 0502 " 38:139:0502 - Provo City Corp.  
PARCEL 0503 " 38:139:0503 - Provo City Corp.

## REQUESTED/PROPOSED ACTION

Approval of an agreement to determine the boundary between the sovereign lands of the State of Utah around Utah Lake and the lands owned by Provo City in the East Bay area. Provo City lands north of Provo Bay in the vicinity of the municipal airport are not involved in this Record of Decision (ROD), but will be addressed separately and subsequently.

## RELEVANT FACTUAL BACKGROUND

### I. Description of the Adjoining Land

The Utah Lake meander survey line ("meander") extends well eastward in this part of Provo Bay (**Exhibit A-2**), as do contour lines elsewhere covered by water during historically recorded lake elevations. One of these is at 4490 feet (**Exhibit A-4**). Because of large fluctuations in Provo Bay, and from the process of accretion, much of this area is now fast, dry land. Construction of I-15 means that lake waters will never again inundate this area. The roughly triangular zone bounded by the freeway and the meander line is thus hydrologically and visually separate from the rest of Utah Lake. It is also rather heavily developed. Provo City owns most of the involved land, but many individual and corporate owners adjoin the meander line.

### II. Description of the Land and Current Uses

The East Bay area refers to land located east of Interstate 15 and University Avenue and south and west of the meander line. This Record of Decision resolves the boundary for sovereign lands below the meander survey line and east of I-15 (**Exhibits A-1 and A-2**).

The sovereign lands consist of two general areas. The north area is larger and consists of lands east of University Avenue and south of approximately 1800 South and west of the meander line which curves gently from the I-15 corridor east, then west, then south back to the I-15 corridor. Within this area are located the Bureau of Reclamation complex (**Exhibit A-2**), the East Bay Municipal Golf Course and wetlands. The land adjoining and upland of this area consists of the East Bay Business Center and the Novell Complex. See photographs (**Exhibit E**) for depictions of the existing conditions in Winter 1997 for

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the north and south areas.

The second general area, or south area, consists of land lying east of the I-15 corridor and west of the surveyed meander line in the area immediately north of the Springville exit as shown on **Exhibit A-2**. The sovereign lands claimed extend from the I-15 corridor to a point approximately 600 feet east and then curves west and returns to the I-15 corridor. The lands located in the south area are wetlands or agricultural in dry years. The adjoining lands are also agricultural. The adjoining lands have been acquired by Provo City for wetlands mitigation necessitated by the Provo City Airport expansion.

In the 1970's and '80's, Provo City acquired property in the vicinity of the surveyed meander line in the north East Bay area. The purpose was to relocate the golf course and created a business center in a campus-like environment. In the vicinity, Provo City had already constructed a water treatment plant, shops, sludge drying area, and a landfill. In earlier times some of the land had been used as a dump. Ravines and lowlands had been filled with refuse and garbage. A portion of the land known as the L.D.S Church Welfare Farm had been in agricultural use. Earlier surveys indicate that before these changes the land was inundated by lake water when Provo Bay experienced high water levels.

In order to proceed with the development of East Bay and relocation of the golf course, Provo City sought to secure title to land below the meander survey line. A 1982 land exchange with the Federal Government resulted in the purported conveyance of 74.21 acres below meander to Provo City. The Federal Government reserved 9.64 acres for an administrative office site, namely the BOR complex with its offices, parking areas and warehousing. This occurred prior to the time when the State of Utah and the Federal Government began litigation over ownership of the bed of Utah Lake. **Exhibit A-4** shows East Bay area topography before large-scale filling and construction began.

Due to the history of human-caused manipulation of land elevations and water levels in the East Bay area, the location of the ordinary high watermark at statehood is uncertain. The BOR, Provo City and the State of Utah have an interest in clearing title and avoiding protracted litigation.

### **III. Description of the Proposed Boundary Line**

The proposed boundary line set forth in the Agreement of Stipulation and Compromise (**Exhibit C**), is the east boundary of the I-15 corridor as it crosses the north and south areas (**Exhibit B**). The State of Utah will quitclaim to Provo City all interest in lands located below the surveyed meander line and east of the I-15 corridor, with the exception of the 9.64 acres containing the BOR site described in **Exhibit A-4** and depicted on **Exhibit A-5**.

**CRITERIA/CHECKLIST FOR EVALUATION (RULE, POLICY, ETC.)****I. Limitations of the Public Trust.**

At common law, lands beneath navigable waters could not be owned privately, but were considered to be held by the sovereign in public trust for the benefit of the community. It was early held by the United States Supreme Court that such lands and waters were not granted by the Constitution to the United States but were reserved to the states.

In order to place Utah on a "equal footing" with the existing states, title to the land beneath lakes and streams capable of navigation were among the rights of sovereignty confirmed upon the State of Utah at the time of statehood. These "sovereign lands" are therefore established under the United States Constitution as lands of the State subject to a common law trust obligation to the public.

Article XX of the Utah Constitution confirms that public trust nature of these lands by declaring that all lands of the State "are hereby accepted and declared to be the public lands of the State and shall be held in trust for the people,... to be disposed of as may be provided by law, for the respective purposes for which they have been... acquired."

The limitations and purposes of the public trust which constrain the use and disposal of sovereign lands has been elaborated by federal and state case law. The basic issues affected by the public trust doctrine area (1) determination of the sovereign lands boundary; (2) nature of the public trust limitations on use of sovereign lands; and (3) conditions permitting disposal.

**(1) Determination of the sovereign lands boundary.** The question is one of fact based on evidence of the ordinary high watermark as of the time of statehood. There are a variety of factors or tests employed for this purpose including:

- (a) a mark impressed on the land by the waters' effect upon the soil so as to deprive it of vegetation and its value for agriculture Provo v. Jacobsen, 176 P.2d 130 (Utah 1947);
- (b) water elevation data in the absence of other data, U.S. v. Cameron, 466 F. Supp. 1099 (M.D. Fla. 1978).
- (c) the surveyed meander line if no other information is adequate, Utah v. United States, 403 U.S. 9 (1971).
- (d) on Utah Lake an additional factor affecting the sovereign land

boundary is the federal reservation of land below the meander line for reservoir purposes. This was the basis of the federal claim of ownership in Utah v. U.S., *supra*. The federal claim to land that may lie below the meander line and above the high watermark may be subject to the federal claim.

**(2) Nature of the public trust limitations on use.**

- (a) "[T]itle is held in trust for the people [present and future generations] of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein freed from the obstruction or interference of private parties" Illinois Central Railroad v. Illinois, 146 U.S. 387 at 452.
- (b) The state does not have the power to abdicate its role as trustee in favor of private parties, Illinois Central, *supra*.
- (c) Public uses include recreation, NPCA v. Board of State Lands, 215 Utah Adv. Rep. 21 (1993); Arizona Center for Law in the Public Interest v. Hassell, 837 P.2d 158 (Ariz. 1991); preservation, NACP, *supra*; State v. Lyon, 625 P.2d 239 (cal. 1981); National Audubon Society v. Superior Court, 33 Cal. 3d 419 (1983); and public access Mathews v. Bay Head Improvement Assoc., 471A.2d 355 (N.J. 1984).

**(3) Conditions permitting disposal.** Sovereign lands can never be sold except to promote the interest of the public therein (purchases consistent with the public's right of use and enjoyment of the sovereign lands and waters) without any substantial impairment of the public interest in the lands and waters remaining. Illinois Central, *supra*; Arizona v. Hassell, *supra*.

**II. Constitutional Limitations.**

As discussed in the prior section, the Utah Constitution requires that the sovereign lands "shall be held in trust for the people, ...to be disposed of as may be provided by law, for the respective purposes for which they have been...acquired." This limitation imposes obligations on the use of the lands as well as their disposal. (See NPCA v. Board of State Lands, 215 Utah Adv. Rep. 21 (1993)).

**III. Statutory Authority**

The authority of the Division of Sovereign Lands and Forestry to be responsible for policy for management of the sovereign lands is set forth in Utah Code Ann. 65A-1-2. Authority for the Division to manage sovereign lands is set out in Utah Code Ann. 65A-1-4, 65A-2-1, and 65A-10-1.

The Division is required by Utah Code Ann. 65A-2-2 to develop planning procedures for natural and cultural resources. Utah Code Ann. 9-8-301 et seq, and 9-9-401 et seq. require that the State protect paleontological, archeological, and cultural resources and Indian burial sites on sovereign lands.

The authority under Utah Code Ann. 65A-10-1 to sell or lease sovereign land is subject to "the qualities and for the purpose as serve the public interest and do not interfere with the public trust."

The authority of the Division to establish boundaries is set forth in Utah Code Ann. 65A-10-3 which provides:

- (1) The division, after consultation with the attorney general and affected state agencies and any person with an ownership interest in the land, may enter into agreements with owners of land adjoining navigable lakes and streams to establish sovereign land boundaries.

On July 21, 1993, pursuant to the authority of this statute, the Division of State Lands and Forestry presented to the Board a proposed plan for the establishment of the sovereign land boundary for Utah Lake. The proposed plan included a "draft" settlement agreement (Agreement of Stipulation and Compromise) and information packet to be distributed to the adjoining landowners. This plan was approved by the Board at that meeting.

The resolution process requires that the Division meet with the adjoining landowners and that, if possible, a proposed boundary agreement be reached which is then the basis for a written decision document (Record of Decision). This proposed decision is subject to notice to the public, to adjacent landowners and to affected state agencies. Accordingly, this Record of Decision (ROD) will be distributed to the public, the state agencies and landowners. If any of the parties file a petition for review, this Agreement will be subject to review before the Executive Director of the Department of Natural Resources for consistency with the statute, rule and policy.

## EVALUATION OF FACTS

The proposed Agreement of Stipulation and Compromise Regarding Utah Lake boundary is attached to this Record of Decision as **Exhibit C**. The Agreement provides that

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the boundary line between the sovereign lands and lands owned by the upland  
the East Bay area shall coincide with the east right-of-way line of I-15 west  
parcels (**Exhibit B**). The boundary vicinity is discussed under two separate  
They are not contiguous and differ somewhat in physical conditions.

landowner in  
of the subject  
areas below.

A further consideration for using the I-15 corridor as the boundary location is the fact that  
the freeway has bisected the historic boundary of the meander survey and created an  
impassable barrier for users of the sovereign lands. It is an obvious boundary location  
that is clearly recognizable and locatable for users of the sovereign lands.

North Area of the East Bay

Current conditions have been altered from the original lake bed by fill and improvements.  
The land is very flat and infiltrated by springs (see **Exhibit A-4**). The fill does not create  
a legal right to the lands, but affects the values to be preserved by this agreement. The  
high watermark may always have been difficult to locate. Resolution of the boundary by  
negotiations with Provo City, the adjoining landowner, is therefore appropriate.

The State's interests include protection of the existing and remaining wetlands in these  
areas. In addition, securing title to the Federal (BOR) site will benefit the State as a result  
of a subsequent agreement with the Federal Government. The agreement with the  
Federal Government will result in the State's control over many areas around the lake.  
Much of the land in the north portion now consists of wetlands or ponds used as part of  
the golf course. Provo City will not commit to protect these ponds, streams and  
waterways in a permanent state. Wetlands under the jurisdictional control of the U.S.  
Army Corps of Engineers will be protected as a matter of federal law. However, Provo  
City will mitigate any possible loss of ponds, streams or waterways by deeding to the  
State or permanently preserving an equivalent acreage of ponds, streams or waterways  
elsewhere prior to the loss or destruction. The amount to be preserved shall be not less  
than that amount currently existing in ponds, streams and waterways within the golf  
course area to be quitclaimed (below meander survey). See **Exhibit A-5**. This criteria  
may be satisfied by establishment of protected ponds, waterways and acreage as part of  
the future agreement between the parties regarding the boundary in the vicinity of the  
Provo City Airport.

South Area of the East Bay

As discussed, the lands adjacent to the south portion of East Bay have been acquired for  
U.S. Army Corps of Engineers wetland mitigation. Provo City has also included the  
lands to be quitclaimed by the Division to Provo City as a part of the Corps of Engineers

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mitigation plan and, therefore, will protect and manage these lands relinquished to Provo City by this Agreement and the adjoining acquired lands as wetlands. Thus, the public trust use for the lands lying below meander in the south portion are protected even though the boundary is located at the I-15 corridor.

Access

Since the agreed boundary will be the east ROW line of I-15, public access east of this line will be managed and designated by Provo City. Public access to the sovereign lands west of I-15 is currently available along the dirt sportsmen's access road that extends northward from the Springville interchange, and from a dirt road and parking lot extending from the south end of 500 West Street. Refer to **Exhibit D** for details on hunting, wildlife viewing and public access west of the freeway. As lake boundary negotiations proceed westward from I-15, it is expected that more public access will be secured.

**CONCLUSION/ACTION**

Based on the above analysis, the Division of Forestry, Fire and State Lands determines that the boundary between the sovereign lands should be established between the bed of Utah Lake and the upland lands as set forth in this Record of Decision and as shown on the attached exhibits. The Division and Provo City shall execute the appropriate deeds and sign the attached Agreement of Stipulation and Compromise with the purpose of finally and fully resolving the boundary between the sovereign lands and the lands of the upland owner.

**ADMINISTRATIVE APPEALS**

Parties having an interest in this action may file a petition for administrative review by the Executive Director of the Department of Natural Resources. Said petition must be in writing and shall contain:

1. The statute, rule or board policy with which the Division action is alleged to be inconsistent;
2. The nature of the inconsistency of the Division action with the statute, rule or board policy;
3. The action the petitioner feels would be consistent under the circumstances with statute, rule or board policy; and

Provo City (East Bay) Boundary ROD  
Page 11

4. The injury realized by the party that is specific to the party rising from Division action. If the injury identified by the petition is not peculiar to the petitioner as a result of the Division action, the Director will decline to undertake consistency review.

Said petition must be received by the Director of the Division of Forestry, Fire and State Lands by 5:00 p.m. on August 12, 1997.

APPROVED BY:

A. W. DuFault  
ARTHUR W. DUFAULT, DIRECTOR  
DIVISION OF FORESTRY, FIRE  
AND STATE LANDS

DATE: 7/23/97

PREPARED BY:

Molly H. Davis  
MOLLY H. DAVIS  
LEGAL ASSISTANT  
ATTORNEY GENERAL'S OFFICE

DATE: 7/21/97

REVIEWED BY:

Steven F. Alder  
STEVEN F. ALDER  
ASSISTANT ATTORNEY GENERAL

DATE: 7/22/97

REVIEWED BY:

Richard J. Buehler  
RICHARD J. BUEHLER  
AREA MANAGER  
WASATCH FRONT AREA

DATE: 7/21/97

## EXHIBIT LIST

### PROVO CITY (EAST BAY) ROD

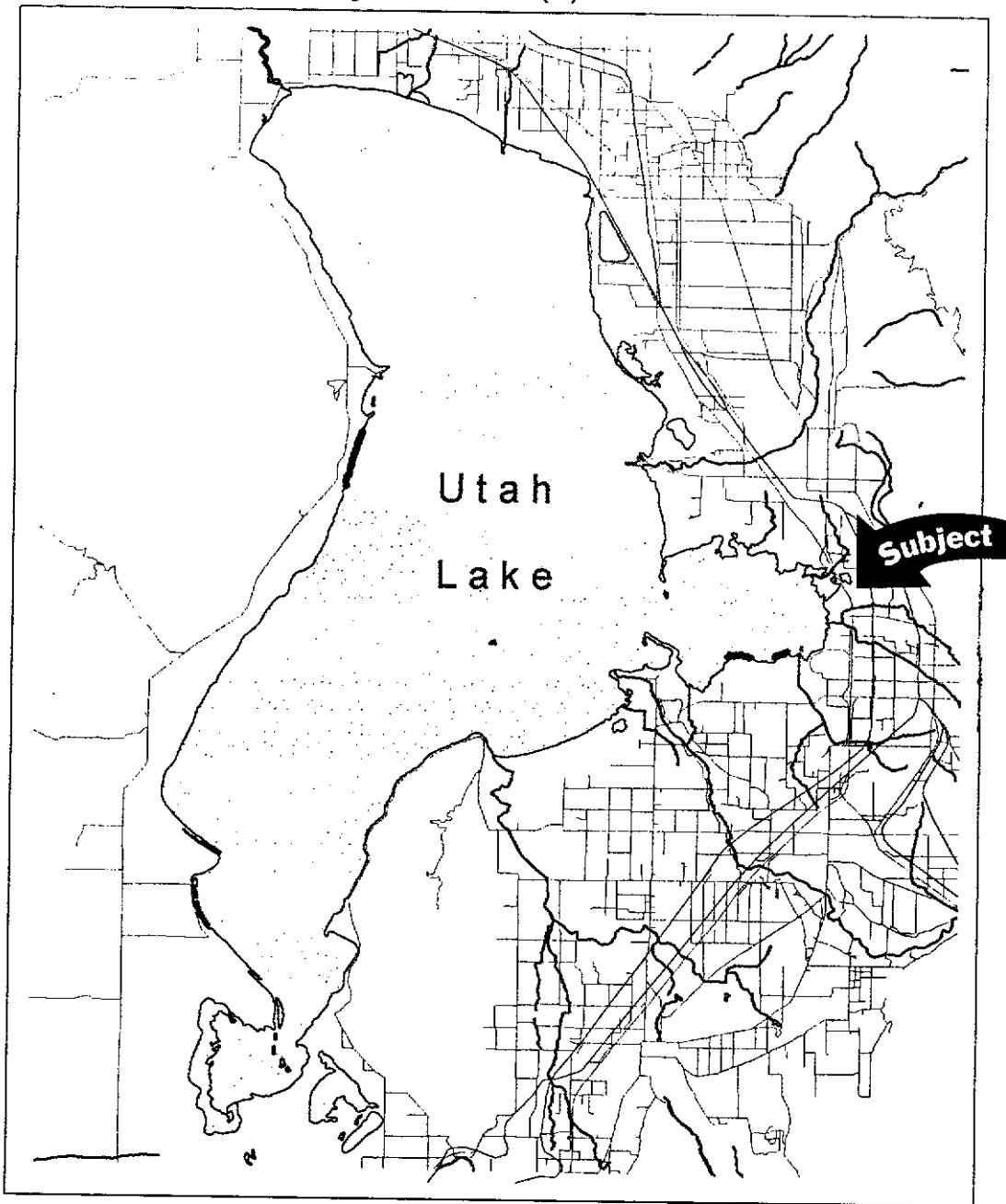
- A-1 MAP SHOWING GENERAL LOCATION OF BOUNDARY SETTLEMENT ON UTAH LAKE**
- A-2 BUREAU OF RECLAMATION SITE LOCATION MAP**
- A-3 LEGAL DESCRIPTION OF BUREAU OF RECLAMATION SITE**
- A-4 PROVO BAY AREA TOPOGRAPHIC MAP**
- A-5 EAST BAY GOLF COURSE ("SUBJECT") SHOWING PERMITTED WETLANDS AND OPEN WATERWAYS PLUS BOR COMPLEX ("SITE")**
- B PROPOSED BOUNDARY LINE ("SUBJECT") SHOWN ON REDUCED-SCALE UTAH LAKE SHORELINE MAP**
- C PROPOSED STIPULATION AND COMPROMISE AGREEMENT (DRAFT) PLUS ITS EXHIBITS 1 AND 2**
- D LETTER FROM DIVISION OF WILDLIFE RESOURCES REGARDING WETLANDS, WILDLIFE AND PUBLIC ACCESS**
- E - SIX ON-SITE PHOTOGRAPHS TAKEN IN JANUARY 1997**

**EXHIBIT**

**A - 1**

# Utah Lake

## Subject Parcel(s) Location



 Federal Land  
 Roads  
 Railroads  
 Streams  
 Bodies of Water



Utah Dept of Natural Resources  
Div of Forestry, Fire & State Lands

This map was created by D. Grierson using ArcView  
and data from the State Geographic Information Database  
and field data from the Division of Forestry, Fire and State Lands.

EXHIBIT

A-1

**EXHIBIT**

**A - 2**

928 644 5246

18

Provo City  
22:061-0038

## 1 eystone Acres

### Site

Map showing property boundaries and ownership in the East Bay area. The map includes the following details:

- Properties and Owners:**
  - Provo City Redevelopment 21:054:0033
  - Ruth M. Olsen 21:054:0015
  - Max Eggertsen 21:054:0012
  - Rodney Jensen Iris V. Jensen 21:054:0014
  - Circle K Properties 21:054:0009
  - Sunstone Hotel Investors 21:054:0008
  - Provo City Redevelopment 21:054:0006
  - Provo City 21:054:0028
  - Provo City 21:054:0029
  - Plat M 38:107
  - Plat F 38:095
  - Plat H 38:097
  - Plat J 38:102
  - Plat O 38:109
  - Plat B 38:091
  - Plat A 52:846
  - Plat K 38:104
  - Plat X 38:164
  - Plat S 38:110
  - Plat R 38:115
  - Plat U 38:138
  - Plat A 44:078
  - Plat Inc. 12:050:0006
  - Cullen Y Christensen 22:050:0026
  - D.A. Norton 22:050:0052
  - Richard Alfred Mary Alfred 22:050:0027
  - R. Coulom 22:050:0016
  - B & B Properties 22:050:0029
  - LZ & Z 22:050:0007
  - Fibres International 22:050:0006
  - Robert R. Sandberg Helen W. Sandberg 22:050:0013
  - Jerry L. York 22:051:0027
  - Provo City 22:051:0028
  - Provo City 22:050:0042
  - Provo City 22:050:0041
  - USA Bureau of Reclamation
  - Provo City 22:050:0044
  - Provo City 22:050:0001
  - Provo City 22:050:0038
  - Provo City 22:053:0004
  - Provo City 22:052:0028
  - Provo City 22:051:0004
- Geographical Features:** East Bay, Summit Group, East Bay North, Keystone Acres.
- Site Indication:** A large arrow points to a specific location labeled 'SITE'.
- Legend:** EXHIBIT A-2

**EXHIBIT  
A-2**

**EXHIBIT**

**A - 3**

## SALT LAKE MERIDIAN:

Township 7 South, Range 3 East

A parcel of land lying in the Southwest Quarter (SW $\frac{1}{4}$ ) of Section Eighteen (18), Township Seven (7) South, Range Three (3) East, containing Nine and Sixty-Four Hundredths (9.64) acres, more or less, and being more particularly described as follows:

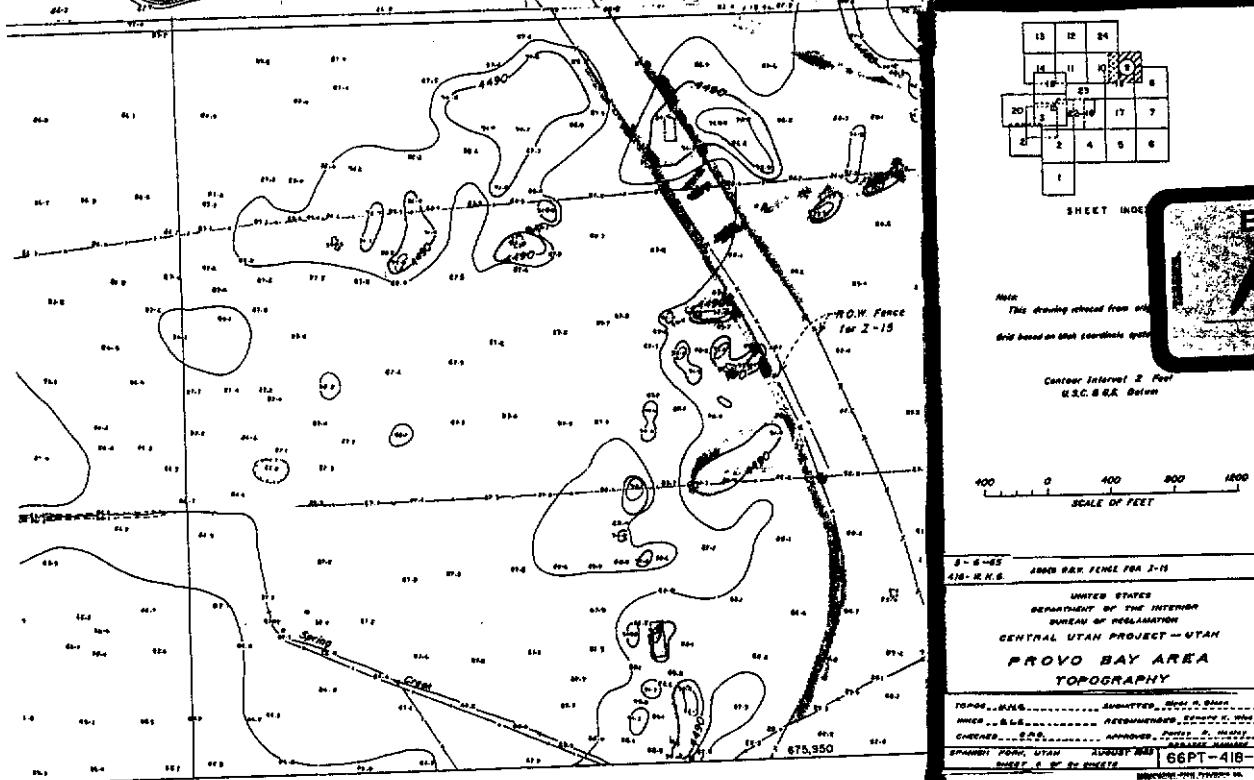
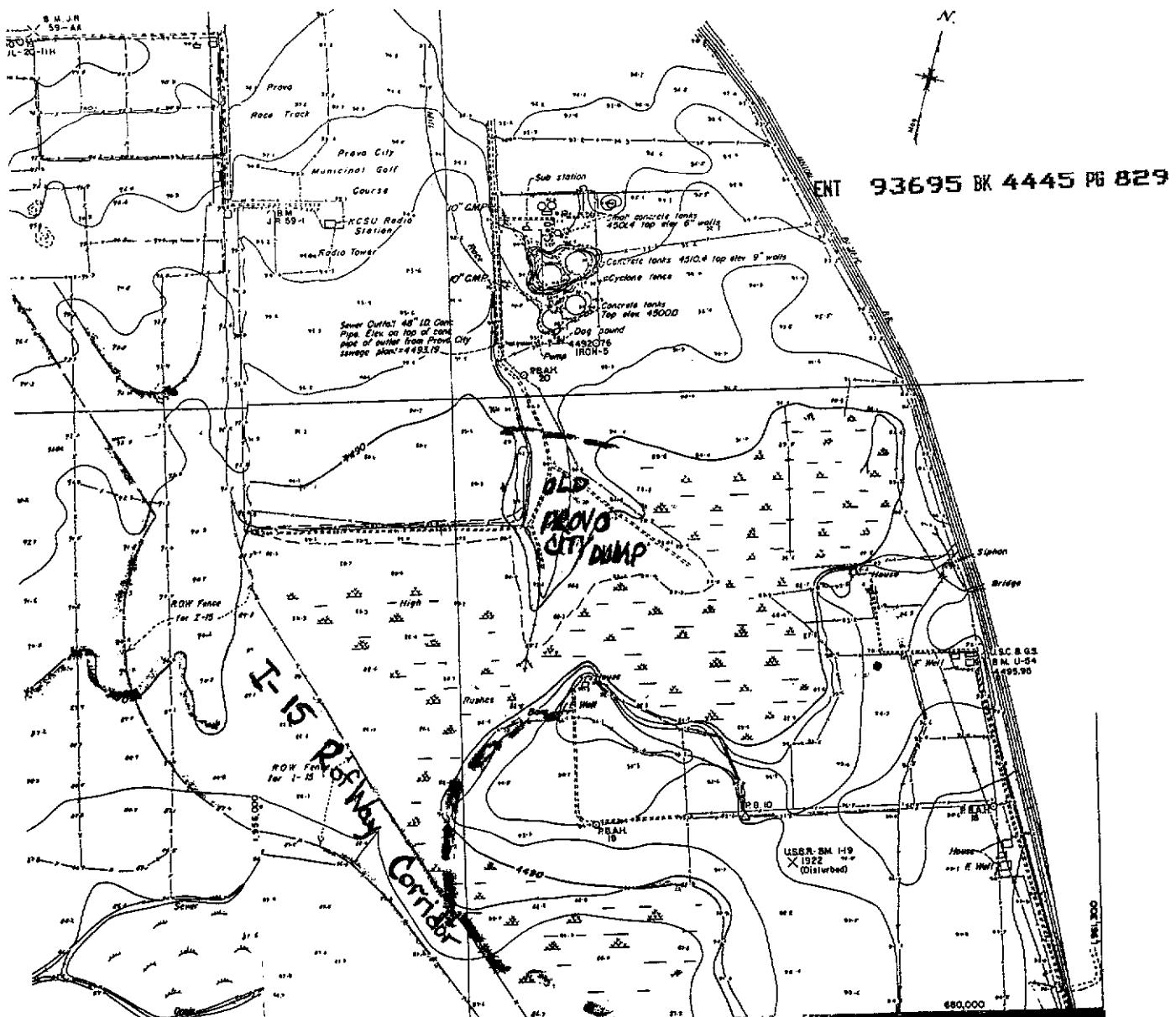
Beginning at a point which lies North 89°22' East Three Hundred Ninety-Eight (398.0) feet along the section line and South 00°38' East Thirty-One Hundred Thirty and One Tenth (3130.1) feet from the Northwest corner of said Section 18; said point has U.S.C. and G.S. plane grid coordinates North 683,103.99 and East 1,957,054.81; thence South 89°38' East Seven Hundred (700.0) feet to a point which lies South 01°05' West Thirty-Eight and One Tenth (38.1) feet from found monument; thence South 01°05' West Six Hundred (600.0) feet; thence North 89°38' West Seven Hundred (700.0) feet; thence North 01°05' East Six Hundred (600.0) feet, more or less to the point of beginning. (The foregoing bearings are based on the Utah Coordinate System, Central Zone.) Based on the Utah Coordinate System, the Northwest corner of said Section 18 has plane grid coordinates North 686,230.47 and East 1,956,622.41 and the North Quarter (N $\frac{1}{4}$ ) corner of said Section 18 has plane grid coordinates North 686,264.17 and East 1,959,297.92.

The above-described lands contain a total of 9.64 acres.



**EXHIBIT**

**A - 4**



**EXHIBIT**

**A - 5**

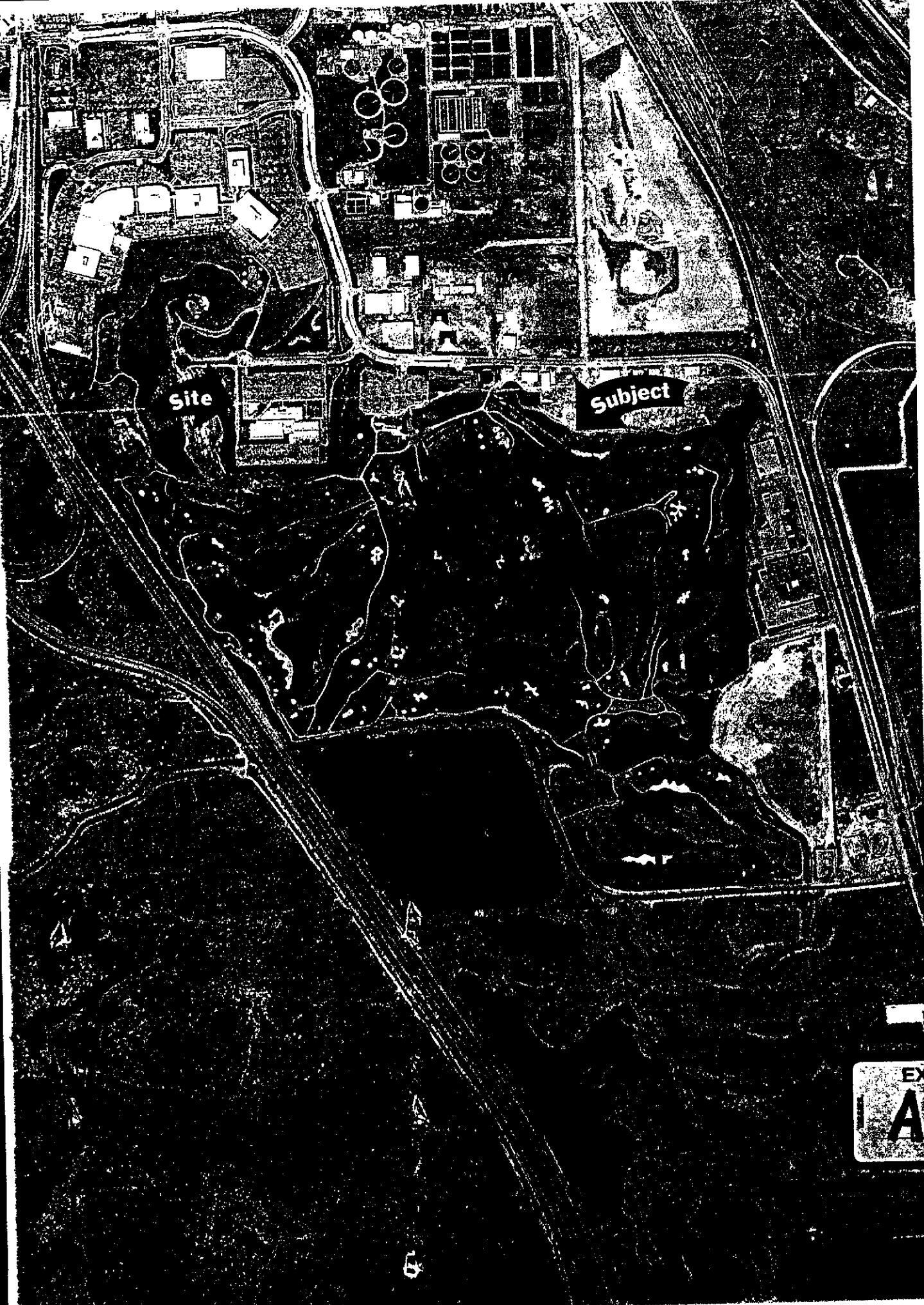
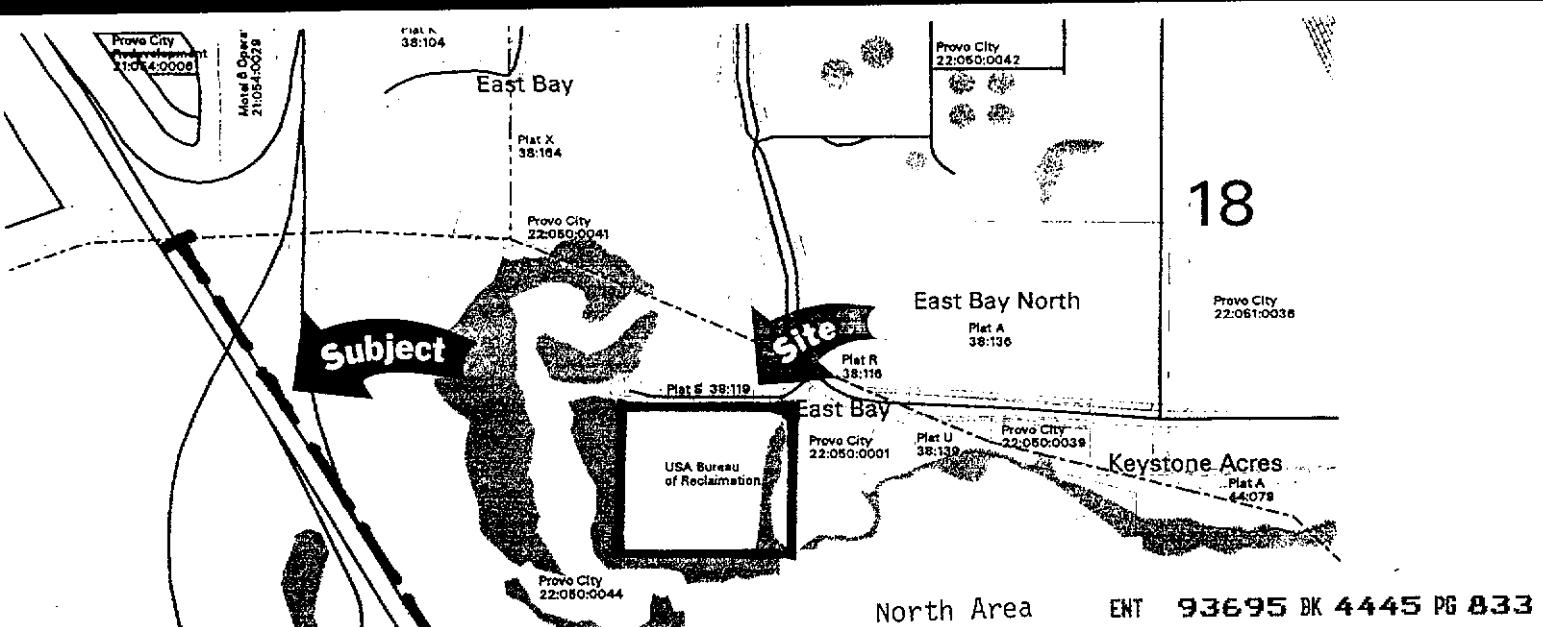


EXHIBIT  
**A-5**

ENT 93695 BK 4445 PG 832

**EXHIBIT**

**B**



## Utah Lake Shoreline

Map 9 of 31

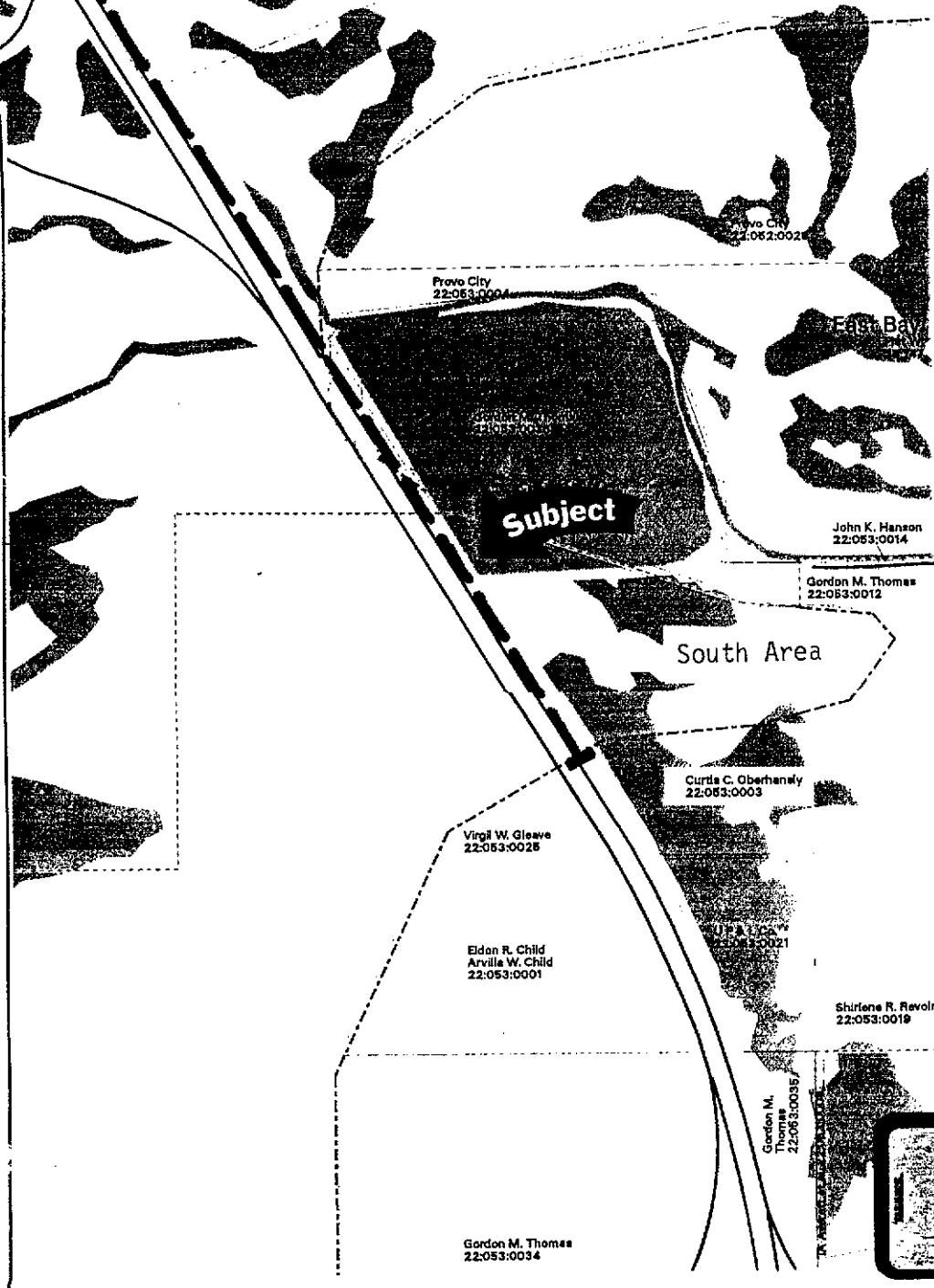
1" = About 800'

N

### Legend

- Roads
- Property Boundaries
- Railroads
- Meander Line
- Compromise Elevation Line  
Approx Elevation = 4489.045 ft.
- Utah Lake Elevation = 4487.31 ft.
- Incorporated Cities

**DATA SOURCES:**  
Property boundaries are official  
Utah County recorder data.  
Meander line location computed from  
original survey notes.  
Survey lines surveyed by  
Utah County Surveyor.  
Other data taken from 1995 Utah  
County serial photographic and/or  
USGS 7.5' quad maps.



**EXHIBIT  
B**

**EXHIBIT**

**C**

**DRAFT**

**DRAFT**

ENT 93695 BK 4445 PG 835

AGREEMENT

OF

STIPULATION AND COMPROMISE

REGARDING UTAH LAKE BOUNDARY

This Agreement is entered into on the date of execution shown below between the STATE OF UTAH, by and through the Division of Forestry, Fire and State Lands, hereinafter the DIVISION, and PROVO CITY, hereinafter UPLAND LANDOWNER.

RECITALS

1. The United States Supreme Court held on June 8, 1987 that the title to the bed of Utah Lake passed to the State of Utah under the equal footing doctrine upon admission of Utah to the United States on January 4, 1896.

2. The State of Utah's ownership and management of the bed of Utah Lake are subject to a duty to preserve and protect the public trust values reserved and established at common law and as established by Article XX of the Utah Constitution and the laws of Utah.

3. The DIVISION is authorized by the provisions of Sections

EXHIBIT E

65A-1-2 and 65A-10-1, Utah Code Annotated, as the state agency with management authority for the sovereign lands of the State of Utah. The DIVISION has been delegated responsibility to manage sovereign lands in the best interest of the State, and with authority to lease or sell sovereign lands but only in quantities and for the purposes as serve the public interest and do not interfere with the public trust of these lands.

4. The DIVISION is further authorized by the provisions of Section 65A-10-3, Utah Code Annotated, to enter into agreements with the owners of lands adjoining navigable lakes for the purpose of establishing the boundaries of the sovereign lands of the State, subject to the requirements for consultation and notice as required by that section.

5. The DIVISION'S statutory predecessor, the Division of State Lands and Forestry, obtained approval of the Board of State Lands and Forestry of the procedures for the resolution of disputes over the location of these boundaries as required by the forgoing statutes.

6. The DIVISION has given notice, as required by the forgoing statutes, to the affected state agencies and to any person with an ownership interest in the lands affected by this Agreement establishing the boundary between the adjoining lands

and the sovereign lands. The DIVISION has also consulted with the Attorney General's office concerning this Agreement.

7. The UPLAND LANDOWNER acknowledges that the DIVISION claims ownership of the sovereign lands of Utah Lake which are those lands lying below the ordinary high water mark as of the date of statehood and owned by the State by virtue of its sovereignty. The DIVISION acknowledges that the UPLAND LANDOWNER claims ownership of an interest in the lands adjacent and upward of said sovereign lands. The DIVISION'S claim of ownership includes lands lying below the surveyed meander line.

8. The unique historical and physical characteristics of Utah Lake and the lands near the boundary between the sovereign lands and the adjoining lands subject to this Agreement have limited the availability of evidence of any vegetative or erosion line which can now be clearly identified by either party in order to determine the ordinary high water mark for these lands at the date of statehood.

9. The DIVISION and the UPLAND LANDOWNER acknowledge that the location of the ordinary high water mark as of the date of statehood is not now known to the DIVISION or to the UPLAND LANDOWNER and is not now capable of determination or survey by reference to a known monument.

10. The DIVISION and the UPLAND LANDOWNER acknowledge that the location of the ordinary high water mark may be subject to determination by a proper adjudication of the relevant facts and issues. The parties to this Agreement disagree about the facts and issues relevant to such a determination.

11. The DIVISION and the UPLAND LANDOWNER acknowledge that the location of the ordinary high water mark, as it may be located upon the lands which are subject to this Agreement, has not been adjudicated or otherwise determined by any judicial authority with jurisdiction to determine such matters.

12. The UPLAND LANDOWNER claims ownership of the lands adjoining Utah Lake identified as follows:

OWNER	PARCEL	INTEREST	SOURCE/DATE
Provo City Corp.	22:050:0001	Fee Simple	Various, as
" " "	22:050:0005	" "	Recorded at
" " "	22:050:0015	" "	Utah County
" " "	21:050:0012	" "	Recorder's
" " "	22:050:0019	" "	Office.....
" " "	22:050:0039	" "	
" " "	22:050:0041	" "	
" " "	22:050:0044	" "	
" " "	21:054:0006	" "	
" " "	38:164:0008	" "	
" " "	38:139:0500	" "	
" " "	38:139:0501	" "	
" " "	38:139:0502	" "	
" " "	38:139:0503	" "	
" " "	44:079:0010	" "	
" " "	44:079:0500	" "	
" " "	44:079:0501	" "	

"	"	"	44:079:0502	"	"
"	"	"	44:079:0503	"	"
"	"	"	44:079:0504	"	"
"	"	"	44:079:0506	"	"
"	"	"	44:079:0507	"	"
"	"	"	44:079:0509	"	"
"	"	"	44:079:0510	"	"

13. The DIVISION claims an interest in the lands lying below the surveyed meander line.

14. The location of the surveyed meander line, elevations and other topographic information are shown on various Exhibits to Record of Decision No. 015, attached hereto as Exhibit 1.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND RELEASES OF CLAIMS CONTAINED HEREIN, IT IS MUTUALLY AGREED AS FOLLOWS:

1. The DIVISION releases and quit claims to PROVO CITY CORPORATION all of its title, ownership, claims, rights, chose in action, rights of way, easements, and all other rights appurtenant or separate to the real property located eastward and above the boundary line, which is the east right-of-way of I-15, as shown on Exhibit B to the attached Record of Decision (Exhibit 1), subject to the limitations and reservations as set forth in this Agreement.

2. PROVO CITY CORPORATION releases and quit claims to the DIVISION for and on behalf of the STATE OF UTAH all of his title, ownership, claims, rights, chose in action, rights of way, easements and all other rights appurtenant or separate to the real property located westward and below the proposed boundary line which is the east right-of-way of I-15 as shown on Exhibit B to the attached Record of Decision (Exhibit 1), subject to the limitations and reservations as set forth in this Agreement.

3. The lands released and compromised by PROVO CITY CORPORATION to the DIVISION by the terms of this Agreement shall be sovereign lands subject to the rights of the public to access the lands and to use the lands in manners consistent with the public trust.

4. Wetlands under the jurisdictional control of the U.S. Army Corps of Engineers will be protected as a matter of federal law. Provo City will mitigate any possible loss of ponds, streams or waterways by deeding to the State or permanently preserving an equivalent acreage of ponds, streams or waterways elsewhere prior to the loss or destruction. The amount to be preserved shall be not less than that amount currently existing in ponds, streams and waterways within the golf course area to be quitclaimed (below meander survey). (See Exhibit A-5 to the

attached Record of Decision). This criteria may be satisfied by establishment of protected ponds, waterways and acreage as part of the future agreement between the parties regarding the boundary in the vicinity of the Provo City Airport.

5. This Agreement is entered into in lieu of and under the threat of litigation to determine the location of the boundary between the sovereign lands and the adjoining lands. These parties reaffirm the facts as set forth in the recitals to this Agreement. It is understood that each party may claim boundaries that are different than the boundary line agreed to in this Agreement. This boundary is intended by the parties to reasonably approximate the boundary of the sovereign lands at the time of statehood based on the facts and arguments of the parties to this Agreement and based on the facts and arguments contained in the attached Record of Decision and accompanying Exhibits.

6. This Agreement is only intended to resolve the dispute between these parties with regard to the boundary between the properties. The statements or agreements herein are not intended to pertain to the location of the ordinary high water mark on other areas of Utah Lake or in other disputes. The State reserves the right to dispute the location of the ordinary high water mark at other locations in other litigation with these or

other parties. Any statements or agreements herein are for settlement purpose only and not admissible as statements of fact or policy in any other litigation between the Division and upland landowners pertaining to the boundary of Utah Lake or otherwise.

7. This Stipulation and Compromise Agreement shall be binding upon the heirs and assigns of the parties to this Agreement and shall be recorded at the office of the Utah County Recorder and shall be

Dated this 18 day of November 1997.

STATE OF UTAH DIVISION OF  
FORESTRY, FIRE AND STATE LANDS

BY Arthur W. DuFault  
ARTHUR W. DUFault, DIRECTOR

STATE OF UTAH )  
ss.  
COUNTY OF SALT LAKE )

On this 18 day of November, 1997, personally  
appeared before me ARTHUR W. DUFault, Director of the Division of  
Forestry, Fire and State Lands, known to me to be the person  
whose name is subscribed to the foregoing instrument and who has

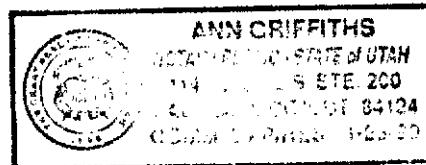
acknowledged to me that he executed the same on behalf of said Division.

IN WITNESS WHEREOF, I have hereunto set my official signature and affixed my notarial seal this 18 day of November, 1997.

My Commission Expires:

1-25-99

NOTARY PUBLIC in and for the State of Utah, County of Salt Lake.



UPLAND LANDOWNER:

PROVO CITY CORPORATION

BY

STATE OF UTAH )  
ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1997, personally appeared before me, \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument and who has acknowledged to me that he executed the same on

behalf of PROVO CITY.

IN WITNESS WHEREOF, I have hereunto set my official  
signature and affixed my notarial seal this \_\_\_\_\_ day of  
\_\_\_\_\_, 1997.

My Commission Expires:

NOTARY PUBLIC In and for the State  
of Utah, County of \_\_\_\_\_.

**EXHIBIT**

**D**



# State of Utah

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF WILDLIFE RESOURCES

ENT 93695 BK 4445 PG 846

Michael O. Leavitt

Governor

Ted Stewart  
Executive Director

Robert G. Valentine  
Division Director

Central Region  
1115 North Main Street  
Springville, UT 84663-1055  
801-489-5678  
801-489-7000 (Fax)

July 7, 1997

Dick Buehler  
Utah State Department of Natural Resources  
Division of Forestry, Fire, and State Lands  
P.O. Box 145703  
Salt Lake City, Utah 84114-5703

Dear Mr. Buehler:

As part of your ongoing effort to establish a sovereign land boundary around Utah Lake, you have consulted with the Division of Wildlife Resources to assess the value of selected portions of the shoreline habitat for wildlife. The following assessment is given for the shoreline habitat associated with lands owned by Provo City in the East Bay area.

The one-mile section of I-15, from the University Avenue Interchange to the SR-75 Interchange, was constructed through the eastern portion of Provo Bay in the late 1960's. The shoreline varies considerably in this area in response to relatively minor changes in the lake elevation. The area was identified as a high priority habitat in the Utah Lake Focus Area Implementation Plan; one of five focus area plans for Utah that identify wetland protection and enhancement opportunities for the Intermountain West Joint Venture (IWJV). The IWJV is one of 13 Joint Ventures in the United States and Canada with the responsibility to promote partnerships in the effort to protect and enhance wetlands. The driving force behind all of these efforts is the North American Waterfowl Management Plan.

Provo Bay was selected as a high priority habitat since it attracts the largest concentration of migratory waterfowl and shorebirds at Utah Lake during the spring and fall. However, drainage systems have a major impact on the characteristics of wetlands along the fringe of Provo Bay. Drainage ditches and canals route irrigation return flows, stormwater runoff, and Provo City's treated effluent past wetlands and directly into the open water areas of the bay. The drainage severely limits interspersion of semi-permanent wetlands, and when the lake is low, there are very few open water areas available during the nesting season. Much of the area has become dominated by cattails, which provides little habitat diversity.

Projects designed to detain water in wetlands would increase their value for migratory waterbirds and would be expected to have a significant beneficial impact on water quality. The wetland mitigation project carried out by Provo City has not only replaced wetlands that were impacted by the airport expansion, but has done so in a way that reduces the damage (lowered water table) caused by an earlier drainage project.

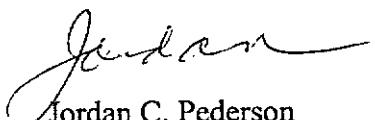


Dick Buehler  
July 7, 1997  
Page 2

We concur with your decision to establish the boundary between the city and sovereign land as the west boundary of the I-15 right-of-way. The property that would be retained by Provo City, east of I-15, supports a valuable wetland complex that will be managed by the city as a wetland preserve.

Thanks for the opportunity to comment on this segment.

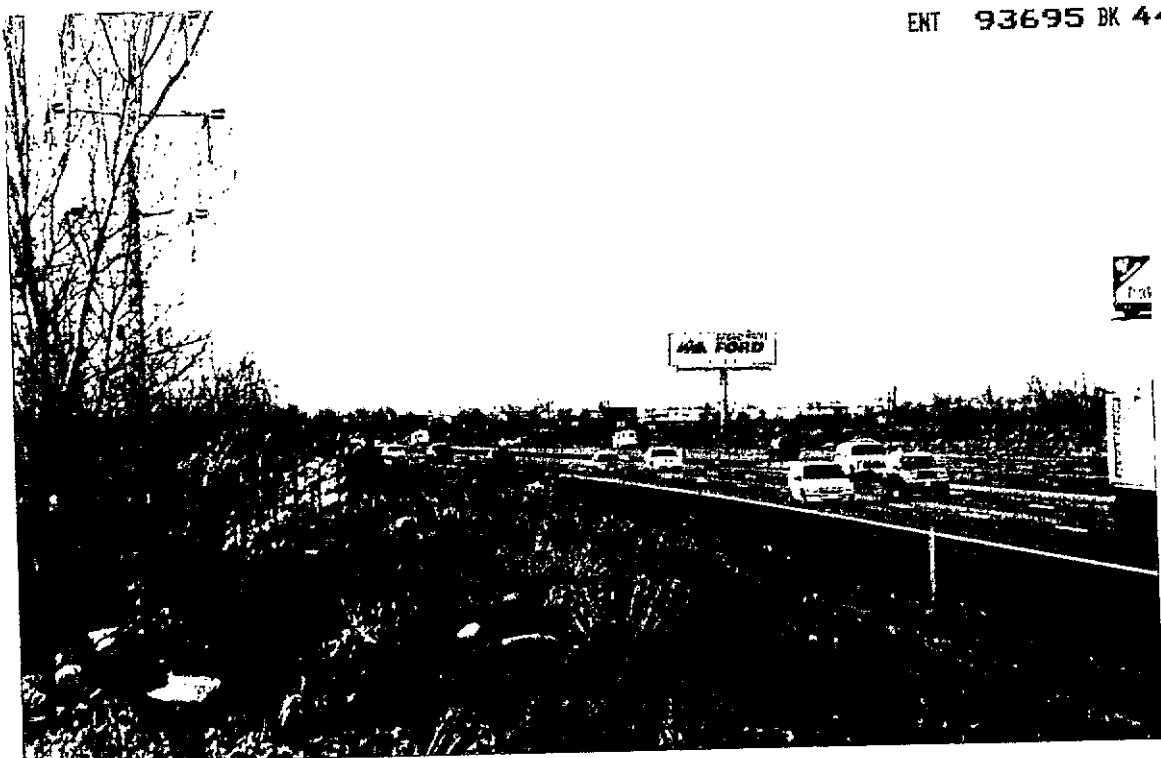
Sincerely,



Jordan C. Pederson  
Regional Supervisor

**EXHIBIT**

**E**



**Photo 1 (Top).** Looking northeast across I-15 to the south area. Features paralleling the lanes include elevated berms, fences and billboards. **Photo 2 (Lower).** A view of the north area, from near the BOR complex toward I-15 and the University Ave. offramp. 1/30/97.

EXHIBIT

**E**



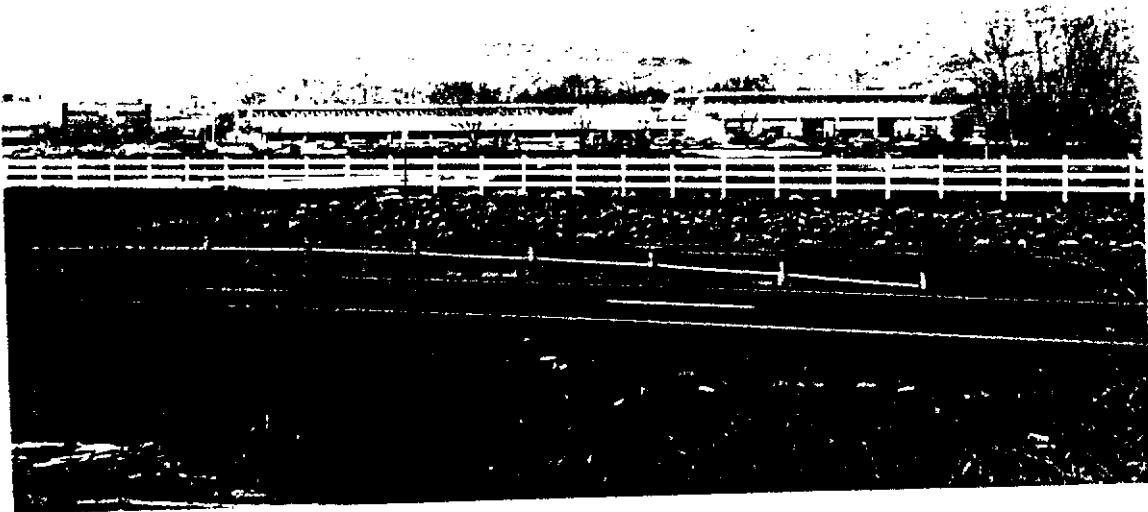
ENT 93695 BK 4445 PG 850



**Photo 3 (Top).** East Bay natural wetlands a little west of I-15; view is to the north. This area would remain sovereign land under the proposed agreement. **Photo 4 (Lower).** Sovereign land between I-15 and the onramp from University Ave. to southbound lanes. 1/30/97.

EXHIBIT

**E**



**Photo 5 (Top).** Looking northeast to the BOR complex from the elevated berm on the west side of I-15.

**Photo 6 (Lower).** A weekday view of the BOR complex parking lot and building. The camera location is near the northwestern corner of the parcel. 1/30/97.

