

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 JEFF NIELSEN, hereinafter the 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 28 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 watermark 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 watermark for these lands at the

date of statehood.

9. The DIVISION and the UPLAND LANDOWNER acknowledge that the location of the ordinary high watermark as of the date of statehood is not now known to the DIVISION or to the UPLAND LANDOWNERS 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 watermark 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 watermark, 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:

| <u>PARCEL</u> <u>Tax ID Nos.</u> | <u>OWNERS</u> | <u>INTEREST</u> | <u>SOURCE/DATE</u> |
|-------------------------------------|---------------|-----------------|--|
| 16:031:0008 | JEFF NIELSEN | Fee Simple | Warranty Deed Dated 3/30/90 |
| 16:004:0003 | JEFF NIELSEN | Fee Simple | Warranty Deeds Dated 2/27/92 and 7/20/84 |
| 16:003:0004 | JEFF NIELSEN | Fee Simple | Warranty Deed Dated 3/30/90 |
| 16:003:0008 | JEFF NIELSEN | Fee Simple | Warranty Deed Dated 7/20/84 |

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. 071, attached hereto as Exhibit 2.

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 the UPLAND LANDOWNER 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 northward and above the proposed boundary line, which is the surveyed meander line, on Parcel "A" and westward and above the proposed boundary line, which is also the surveyed meander line, on Parcels "B" and "C", as described on the attached Exhibit 1 (Boundary Description) and as proposed in the attached Exhibit 2 (Record of Decision No. 071 and accompanying exhibits), subject to the limitations and reservations as set forth in this Agreement.

2. The UPLAND LANDOWNER 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 a parcel of land lying southward and below the proposed boundary line, which is the surveyed meander line, on Parcel "A", and eastward of the proposed boundary line, which is also the surveyed meander line, on Parcels "B" and "C", as described on Exhibit 1 hereto (Boundary Description) and as proposed in the attached Exhibit 2 (Record of Decision No. 071), subject to the limitations and reservations as set forth in this Agreement.

3. The lands released and compromised by the UPLAND LANDOWNER 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. 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.

5. 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 watermark on other areas of Utah Lake or in other disputes. The State reserves the right to dispute the location of the ordinary high watermark 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.

6. This Stipulation and Compromise Agreement shall be binding upon the heirs and

UPLAND LANDOWNER:

Jeff Nielsen
JEFF NIELSEN

STATE OF UTAH)

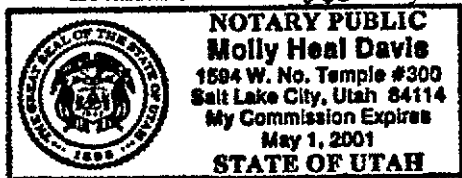
SS.
COUNTY OF Salt Lake

On this 20th day of January, ~~1999~~ ²⁰⁰⁰, personally appeared before me

JEFF NIELSEN, 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.

IN WITNESS WHEREOF, I have hereunto set my official signature and affixed my

notarial seal this 20th day of January, ~~1999~~ ²⁰⁰⁰



My Commission Expires:

5/01/01

Molly Heal Davis
NOTARY PUBLIC in and for the State of Utah, County of Salt Lake

EXHIBIT 1

JEFF NIELSEN

CALCULATED UTAH LAKE MEANDER LINE --- SEC. 19 (LOT 1), TOWNSHIP 7 SOUTH, RANGE 1 EAST (PARCEL "A")

Commencing at the meander corner common to Section 19 of Township 7 South, Range 1 East, and Section 24 of Township 7 South, Range 1 West, SLB&M, thence the following course and distances along the calculated Utah Lake Meander Line:

| | |
|---------------|---|
| N 77-59-57 E, | 760.69 feet; |
| N 58-02-34 E, | 793.66 feet; |
| N 30-35-37 E, | 515.58 feet; |
| N 08-07-11 E, | 396.31 feet to the calculated Meander Corner position |

common to Sections 18 and 19 of Township 7 South, Range 1 East.

Basis of bearing = Utah State Plane Coordinates - Nad '83 (HARN)
Adjustment. Distances converted to feet.

UTAH LAKE MEANDER LINE --- SECTIONS 19, 20 TOWNSHIP 6 SOUTH, RANGE 1 EAST (PARCEL "B")

Commencing at the calculated Meander Corner position between Sections 18 and 19 of Township 6 South, Range 1 East, SLB&M, said position being more specifically located as being S 89-46-06 E along the extension of section line, 1902.75 feet from the North Quarter Corner of Section 19 of the above-mentioned township and range; thence the following along the calculated Utah Lake Meander Line:

| | |
|---------------|---|
| S 42-38-59 E, | 1089.57 feet to the calculated Meander Corner common to Sections 19 and 20; |
| S 43-31-09 E, | 420.72 feet to the intersection with the easterly extension of the northerly boundary of an adjoining parcel described and recorded in the Utah County Recorder's Office under entry #10944-84. |

Basis of bearing = Utah State Plane Coordinates - Nad '83 (HARN)
Adjustment. Distances converted to feet.



UTAH LAKE MEANDER LINE --- SECTIONS 19, 20 TOWNSHIP 6 SOUTH, RANGE 1 EAST (PARCEL "C")

Commencing at the point of intersection of the calculated Utah Lake Meander Line with the easterly extension of the south line of Lot #1 of Section 19, Township 6 South, Range 1 East, said south line also known as the southerly boundary of the Northeast Quarter of the Northeast Quarter of Section 19, Township 6 south, Range 1 East, SLB&M, said point of intersection being more specifically described as being located South, 1314.25 feet and East, 2991.08 feet from the North Quarter Corner of Section 19 of the above-mentioned Township and Range; thence the following along said Meander Line;

S 10-34-34 E, 28.70 feet;

S 19-54-50 E, 456.67 feet;

S 08-21-59 E, 853.12 feet to the intersection with the easterly extension of

the southerly boundary of the subject parcel, said subject parcel being described and recorded under entry #22409-84 in the Utah County Recorder's Office.

Basis of bearing = Utah State Plane Coordinates - Nad '83 (HARN)

Adjustment. Distances converted to feet.

RECORD OF DECISION

RECORD NUMBER: 98-1027 071

DATE OF EXECUTION:

October 15, 1999

UTAH LAKE BOUNDARY

AGREEMENT NO: 071

UPLAND LAND OWNER:

Jeff Nielsen
P.O. Box 26703
Salt Lake City, Utah 84126-0703

CERTIFIED MAIL NO. Z 155 781 696

ADJACENT LANDOWNERS:

Corporation of the Presiding Bishop
of The Church of Jesus Christ
of Latter Day Saints
50 East North Temple
Salt Lake City, Utah 84150
59:098:0001

Waldo Company
c/o Wallace N. Davis
492 East 1960 South
Orem, Utah 84058-8136
16:031:0006

David Hatton
1177 East Aspen Ridge Lane
Provo, Utah 84604
16:002:0002

H. Paul Mendenhall
5897 North 10800 West
Lehi, Utah 84043
16:003:0012

Tamarack, Inc.
8907 Cameo Way
Sandy, Utah 84093-3739
16:003:0006



DESCRIPTION OF LANDS DIRECTLY AFFECTED:

This Record of Decision affects the sovereign land immediately adjacent to upland property owned by Jeff Nielsen as shown on the attached maps (Exhibits A1 and A2) and identified by the following parcel designations:

Parcel "A"

Utah County Tax ID Number: 16:031:0008

Parcel "B"

Utah County Tax ID Number: 16:003:0004

Parcel "C"

Utah County Tax ID Number: 16:003:0008

Utah County Tax ID Number: 16:004:0003

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 Jeff Nielsen (upland owner). The general location of the agreement is the west shore of Utah Lake (see subject arrows on Exhibit A1).

1. RELEVANT FACTUAL BACKGROUND**a. Description of the Adjoining Land**

The Nielsen property is comprised of four parcels located adjacent to the west side of Utah Lake (see Exhibit A2). The shoreline, in this region of the lake, is comprised of sand and rocks with moderate amounts of vegetation and an abandoned canal parallel to the shoreline along Parcels B and C. This is typical among all adjoining properties. Parcel A is located north of the Knolls and adjacent to the south property line of the Waldo Company property and adjacent to the north property line of the Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter Day Saints property and Parcel B is located adjacent to the south property line of the David Hatton, property and adjacent to the north property line of the Tamarack property. Parcel C is located adjacent to the south

Jeff Nielsen

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property line of the Tamarack property. The photographs included in Exhibit D characterize the existing shoreline of the area.

b. Description of the Land and Current Uses

There are no improvements on the Nielsen property, except the abandoned canal through Parcels B and C. The subject parcels are located east of Redwood Road, west of Utah Lake. Parcels B and C slope gently eastward toward the lake and Parcel A is located below a steep escarpment. The area around Parcel A is a popular access point to the lake. The meander line for Parcel A is above the compromise line where it crosses the west property line, near the compromise line midway through the property and above the compromise line where it crosses the north property line. The meander line is approximately 100 feet below the compromise line on Parcel B, and on Parcel C the meander line varies from approximately 25 to 100 feet below the compromise line. There are moderate amounts of wetland vegetation located near the waters edge comprised of cattail, bulrush, willow and tamarisk. The upland owner has agreed that the meander line is to be used to separate the upland property from the sovereign lands owned by the State of Utah for Parcel A, Parcel B and Parcel C. The beach is typical of this portion of the lake and is comprised of sand, rocks, and boulders.

c. Description of the Proposed Boundary Line

The Utah County Surveyor's Office has supplied the following legal description:

**CALCULATED UTAH LAKE MEANDER LINE --- SEC. 19 (LOT 1),
TOWNSHIP 7 SOUTH, RANGE 1 EAST (PARCEL "A")**

Commencing at the meander corner common to Section 19 of Township 7 South, Range 1 East, and Section 24 of Township 7 South, Range 1 West, SLB&M, thence the following course and distances along the calculated Utah Lake Meander Line:

| | |
|---------------|---|
| N 77-59-57 E, | 760.69 feet; |
| N 58-02-34 E, | 793.66 feet; |
| N 30-35-37 E, | 515.58 feet; |
| N 08-07-11 E, | 396.31 feet to the calculated Meander Corner position common to Sections 18 and 19 of Township 7 South, Range 1 East. |

Basis of bearing = Utah State Plane Coordinates - Nad '83 (HARN)
Adjustment. Distances converted to feet.

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UTAH LAKE MEANDER LINE --- SECTIONS 19, 20 TOWNSHIP 6 SOUTH,
RANGE 1 EAST (PARCEL "B")

Commencing at the calculated Meander Corner position between Sections 18 and 19 of Township 6 South, Range 1 East, SLB&M, said position being more specifically located as being S 89-46-06 E along the extension of section line, 1902.75 feet from the North Quarter Corner of Section 19 of the above-mentioned township and range; thence the following along the calculated Utah Lake Meander Line:

S 42-38-59 E, 1089.57 feet to the calculated Meander Corner
common to Sections 19 and 20;
S 43-31-09 E, 420.72 feet to the intersection with the easterly
extension of the northerly boundary of an adjoining parcel described and
recorded in the Utah County Recorder's Office under entry #10944-84.

Basis of bearing = Utah State Plane Coordinates - Nad '83 (HARN)
Adjustment. Distances converted to feet.

UTAH LAKE MEANDER LINE --- SECTIONS 19, 20 TOWNSHIP 6 SOUTH,
RANGE 1 EAST (PARCEL "C")

Commencing at the point of intersection of the calculated Utah Lake Meander Line with the easterly extension of the south line of Lot #1 of Section 19, Township 6 South, Range 1 East, said south line also known as the southerly boundary of the Northeast Quarter of the Northeast Quarter of Section 19, Township 6 south, Range 1 East, SLB&M, said point of intersection being more specifically described as being located South, 1314.25 feet and East, 2991.08 feet from the North Quarter Corner of Section 19 of the above-mentioned Township and Range; thence the following along said Meander Line;

S 10-34-34 E, 28.70 feet;
S 19-54-50 E, 456.67 feet;
S 08-21-59 E, 853.12 feet to the intersection with the easterly
extension of the southerly boundary of the subject parcel, said subject
parcel being described and recorded under entry #22409-84 in the Utah
County Recorder's Office.

Basis of bearing = Utah State Plane Coordinates - Nad '83 (HARN)
Adjustment. Distances converted to feet.

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16:031:0008, 16:004:0003, 16:003:0004 and 16:003:0008

2. **CRITERIA/CHECKLIST FOR EVALUATION (RULE, POLICY, ETC.)**

a. **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 Constitution to the United States but were reserved to the states.

In order to place Utah on an "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 the 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 purpose for which they have been... acquired."

The limitations and purpose 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 are (1) determination of the sovereign lands boundary; (2) nature of the public trust limitations on use of sovereign lands; and (3) conditions permitting disposal.

i. **Determination of sovereign lands boundary.** The question is one of fact based upon evidence of the ordinary high water mark as of the time of statehood. There are a variety of factors or tests employed for this purpose including the following:

- (1) 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. Jacobson, 176 P.2d 130 (Utah 1947).
- (2) Water elevation data in the absence of other data, U. S. v. Cameron, 466 F. Supp. 1099 (M.D. Fla. 1978).

Jeff Nielsen
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- (3) The surveyed meander line, if no other information is adequate, Utah v. United States, 403 U.S. 9 (1971).
- (4) 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 land that may lie below the meander line and above the high water mark may be subject to the federal claim.

ii. **Nature of the public trust limitations on use.**

- (1) "[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.
- (2) **The state does not have the power to abdicate its role as trustee in favor of private parties, Illinois Central, supra.**
- (3) 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**, NPCA, 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., 471 A.2d 355 (N.J. 1984).

- iii. **Conditions permitting disposal.** Sovereign lands can never be sold except to promote the interest of the public therein (purposes 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.

3. **Constitutional Limitations.**

As discussed in the prior section, the Utah Constitution requires that the sovereign lands

Jeff Nielsen
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"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).

To date, the nature of the Utah Constitution's limitations appear to be similar to the public trust limitations.

a. Statutory Authority.

The authority of the Division of Forestry, Fire and State Lands to be responsible for policy for management of the sovereign lands is set forth in Utah Code Ann. 65-1-2. The 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. requires 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 "quantities and purposes that 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. 65-10-3 which provides:

- i. The division, after consultation with the attorney general and affected state agencies, shall develop plans for the resolution of disputes over the location of sovereign land boundaries.
- ii. The division, after notice to 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, a plan was approved for the establishment of the sovereign land boundary for Utah Lake. The plan included a settlement agreement and information packet to be distributed to the landowners.

Jeff Nielsen
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The resolution process requires that the Division meet with the adjoining land owners 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 land owners and to affected state agencies. Accordingly, this Record of Decision (ROD) will be distributed to the public, the state agencies and owners. If any parties file a petition for review, this agreement will be subject to review by the Division for consistency with the statute, rule and policy.

4. EVALUATION OF FACTS

a. Boundary Location.

The upland owner has agreed with the State of Utah to settle the boundary for Parcels A, B, and C at the Meander Line which will be utilized as the permanent boundary between public and private property. The location of the proposed boundary for these parcels is depicted on Exhibit B.

The level of the lake, as of October 21, 1998, is approximately two inches above the compromise level. The meander line, for Parcel A, is above the compromise line where it crosses the west property line, near the compromise line midway through the property and above the compromise line where it crosses the north property line. The meander line varies from approximately 25 to 100 feet below the compromise line for Parcel B, and for Parcel C, the meander line is approximately 100 feet below the compromise line. No high watermark is discernible on the surface of the shore. Considering current lake levels, it could be argued that the ordinary high watermark may be above the meander line but there is no current definitive evidence to support such argument. Given the lack of any discernible vegetation line, shore line or other means of determining the ordinary high watermark, the boundary between the Nielsen property and sovereign lands is proposed to be the meander line for Parcels A, B, and C as shown on **Exhibit B**.

The Proposed Agreement of Stipulation and Compromise regarding Utah Lake Boundary is attached to this ROD as **Exhibit C**. The agreement provides that the boundary between Jeff Nielsen's upland property, and the State's sovereign lands is the meander line as described by the Utah County Surveyor beginning on page three of this Record.

b. Access.

Access to the sovereign lands from State Highway 68 through Parcel A has not been restricted. A public access road is located just south of the property. Access to Parcels B and C is somewhat limited. Public access to the shoreline adjoining the Nielsen property has not been available without permission. Although private ownership exists on each side of the Nielsen properties, public access to sovereign land is available from a road to the south of Parcel A and on the north of Parcel B through the David Hatton property for a fee. Given the vegetation cover along the shoreline, it is likely that use of the shore adjacent to this portion of the lake will be limited and confined to sovereign lands, and that use of the upland lands will not be permitted. Incidental trespass may occur by curious boaters but this should be very limited. The State does not assert public access across the Nielsen properties.

c. Authority for agreement.

The proposed agreement has been pursued according to the plan for resolution of the sovereign lands boundary approved by the board on July 21, 1993. The owners of the adjacent properties, affected state agencies and the public will be advised that this decision document is complete and available for review. This will satisfy the requirements of the plan, as set forth, and Utah Code Annotated 65A-10-3.

This proposed boundary line is supportable based on historical evidence and based on the elevation changes and the differences in vegetation. The possible sovereign land values are all within the land and water below this line.

5. CONCLUSION/ACTION

Based upon the above analysis, the Division determines that the sovereign land boundary 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 shall execute the attached agreement of stipulation and Compromise between the Division of Forestry, Fire and State Lands and the upland landowners with the purpose of finally and fully resolving the boundary between the State's sovereign lands and the lands of the upland owners.

6. ADMINISTRATIVE APPEALS

- a. Parties having an interest in this action may file a petition for administrative review by the director of the Department of Natural Resources. Said petition must be in writing and shall contain:
- i. the statute, rule, or policy with which the division action is alleged to be inconsistent;
 - ii. the nature of the inconsistency of the division action with the statute, rule or policy;
 - iii. the action the petitioner feels would be consistent under the circumstances with statute, rule or policy; and
 - iv. the injury realized by the party that is specific to the party arising 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 November 12, 1999.

APPROVED BY:

PREPARED BY:

Arthur W. Dufault

H. Barry Tripp

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

H. BARRY TRIPP
WASATCH FRONT LANDS
ADMINISTRATOR

DATE: 10/15/99

DATE: October 7, 1999

REVIEWED BY:

REVIEWED BY:

Richard J. Buehler

Stephen G. Boyden

RICHARD J. BUEHLER
WASATCH FRONT AREA MANAGER

STEPHEN G. BOYDEN
ASSISTANT ATTORNEY GENERAL

DATE: 10/13/99

DATE: 10/14/99

LIST OF EXHIBITS

- A. PROPERTY LOCATION MAPS**
 - A1. GENERAL LOCATION ON UTAH LAKE SHORELINE**
 - A2. PARCEL(S) LOCATION**
- B. LOCATION OF PROPOSED BOUNDARY LINE**
- C. PROPOSED AGREEMENT OF STIPULATION AND COMPROMISE**
- D. PHOTOGRAPHS**

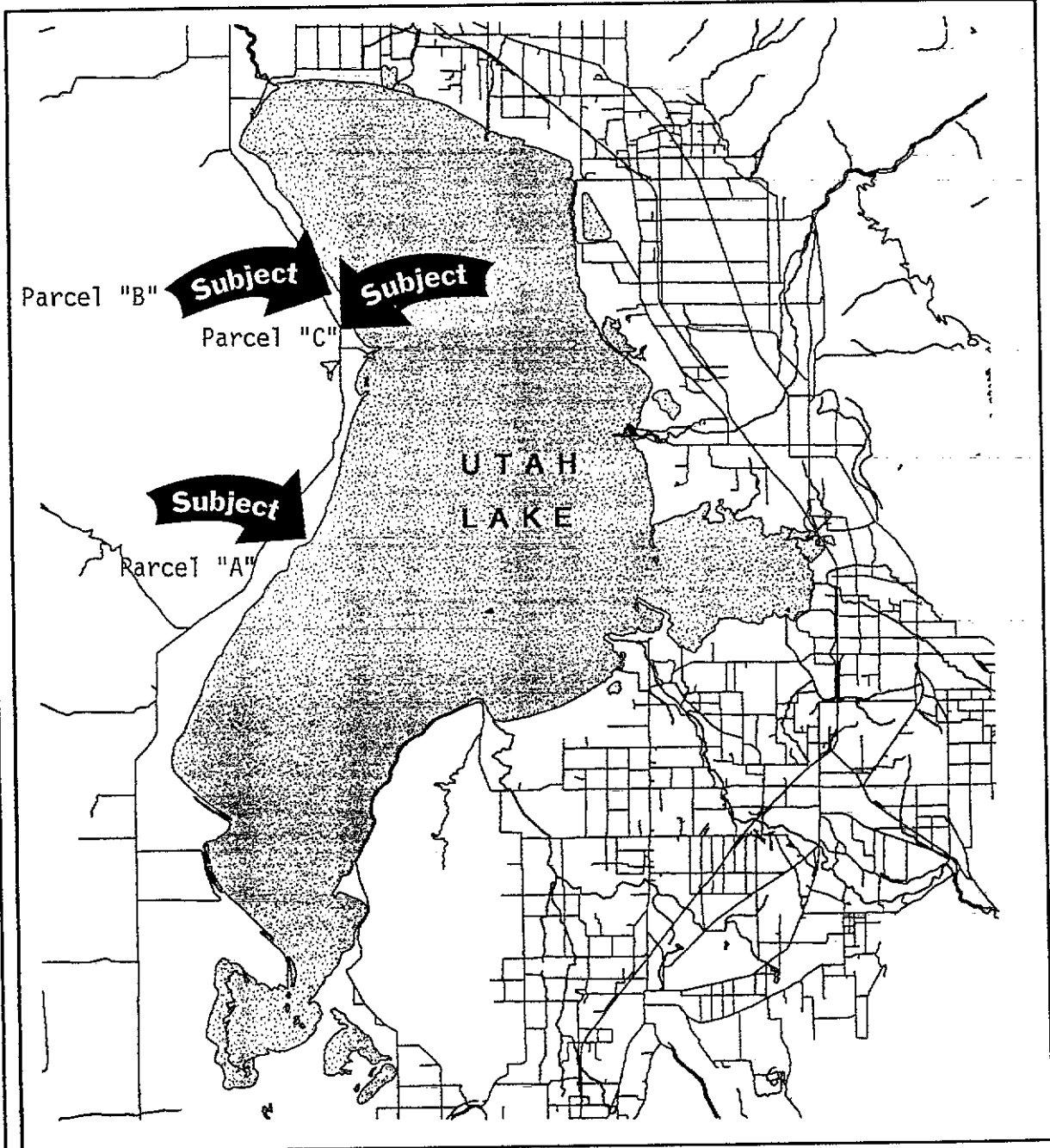
EXHIBIT A





PROPERTY LOCATION MAPS

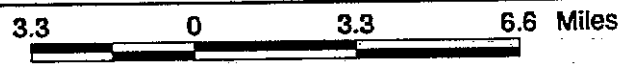
Utah Lake Subject Parcel(s) Location



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



-  Roads
-  Railroads
-  Water Courses
-  Water Bodies



May 1997



18

Lieber Management Co 18:031:0003
W. L. Ford & Son
Lieber Management Co 18:031:0002

ENT 6713:2000 P6 24 of 44

Douglas James et al
Gaylen W. Brown
et. al.
18:031:0009

Waldo Co
18:031:0007

Waldo Co
18:031:0006

Subject

PARCEL "A"

Nielsen Valve & Supply
Jeff Nielsen
18:031:0008

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EXHIBIT
A2

DAVE HATTON
Waldo Co.
16:002:0002

Subject

PARCEL "B"

Nielson Valve and
Supply Co.
Jeff Nielson
16:003:0004

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Nielson Valve and Supply Co.
16:003:0007

Tamarack Inc.
16:003:0006

PARCEL "C"

Subject

Jeff Nielson et al
16:003:0005

Florence J. Mendenhall
16:003:0008

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EXHIBIT

A2

Jeff Nielson et al
18:003:0008

PARCEL "C"

Subject

Jeff Nielson
18:004:0000

Florence J. Mendenhall
18:003:0005
0012 ✓

H. Paul Mendenhall

MAY Taylor

Florence J. Mendenhall
18:004:0001

20

Florence J. Mendenhall
18:003:0009

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↑
Florence J. Mendenhall
old Mendenhall
18:0009

Ambro & Son, LLC

~~18:005:0003~~

18:005:0013 ✓



EXHIBIT B

MAP OF PROPOSED BOUNDARY

18

Lieber Management Co 18:031:0003
W. L. Ford & Maria
Lieber Management Co 18:031:0002

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DOUGLAS HOMES ET AL
Gaylen W. Brown
et. al.
18:031:0009

Waldo Co
18:031:0007

Waldo Co
18:031:0006

PARCEL "A"

Nielsen Valve & Supply
Jeff Nielsen
18:031:0008

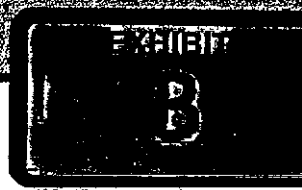
19

Meander Line

Compromise Line

Subject

ation of the Presiding
of the Church of Jesus
of Latter-Day Saints



Dave Hatton
Welding Co.
16:002:0002

PARCEL "B"

Nielson Valve and
Supply Co.
Jeff Nielson
16:003:0004

Compromise Line

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Nielson Valve and Supply Co.
16:003:0007

Tamarack Inc.
16:003:0006

Meander Line

Jeff Nielson et al
16:003:0008

PARCEL "C"

Florence J. Mendenhall
16:003:0009

19

Subject

Subject

EXHIBIT

B

Jeff Nielson et al
16:003:0008

Compromise Line

PARC

Jeff Nielson

16:004:0000

Subject

Meander Line

Florence J. Mendenhall
16:003:0005

0012 ✓

H. Paul Mendenhall

Mary Taylor

Florence J. Mendenhall
16:004:0001

20

Florence J. Mendenhall
16:003:0009

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nce J. Mendenhall
roid Mendenhall
36:0009

Ambro & Son, LLC

16:005:0005

16:005:0013 ✓

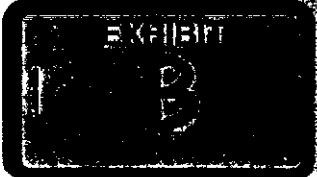


EXHIBIT C

**AGREEMENT OF STIPULATION &
COMPROMISE**

DRAFT

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 JEFF NIELSEN, hereinafter the 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 28 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 watermark 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 watermark for these lands at the date of statehood.

9. The DIVISION and the UPLAND LANDOWNER acknowledge that the location of the ordinary high watermark as of the date of statehood is not now known to the DIVISION or to the UPLAND LANDOWNERS 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 watermark 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 watermark, 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:

| <u>PARCEL</u> <u>Tax ID Nos.</u> | <u>OWNERS</u> | <u>INTEREST</u> | <u>SOURCE/DATE</u> |
|-------------------------------------|---------------|-----------------|--|
| 16:031:0008 | JEFF NIELSEN | Fee Simple | Warranty Deed Dated 3/30/90 |
| 16:004:0003 | JEFF NIELSEN | Fee Simple | Warranty Deeds Dated 2/27/92 and 7/20/84 |
| 16:003:0004 | JEFF NIELSEN | Fee Simple | Warranty Deed Dated 3/30/90 |
| 16:003:0008 | JEFF NIELSEN | Fee Simple | Warranty Deed Dated 7/20/84 |

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. 071, attached hereto as Exhibit 2.

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 the UPLAND LANDOWNER 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 northward and above the proposed boundary line, which is the surveyed meander line, on Parcel "A" and westward and above the proposed boundary line, which is also the surveyed meander line, on Parcels "B" and "C", as described on the attached Exhibit 1 (Boundary Description) and as proposed in the attached Exhibit 2 (Record of Decision No. 071 and accompanying exhibits), subject to the limitations and reservations as set forth in this Agreement.

2. The UPLAND LANDOWNER 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 a parcel of land lying southward and below the proposed boundary line, which is the surveyed meander line, on Parcel "A", and eastward of the proposed boundary line, which is also the surveyed meander line, on Parcels "B" and "C", as described on Exhibit 1 hereto (Boundary Description) and as

proposed in the attached Exhibit 2 (Record of Decision No. 071), subject to the limitations and reservations as set forth in this Agreement.

3. The lands released and compromised by the UPLAND LANDOWNER 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. 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.

5. 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 watermark on other areas of Utah Lake or in other disputes. The State reserves the right to dispute the location of the ordinary high watermark 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.

6. 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 _____ day of _____, 1998.

STATE OF UTAH DIVISION OF FORESTRY, FIRE AND STATE LANDS

BY _____
ARTHUR W. DuFAULT, DIRECTOR

STATE OF UTAH)
 ss.
COUNTY OF SALT LAKE)

On this _____ day of _____, 1998, 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 _____ day of _____, 1998.

My Commission Expires:

NOTARY PUBLIC In and for the
State of Utah, County of _____

UPLAND LANDOWNER:

JEFF NIELSEN

STATE OF UTAH)
 ss.
COUNTY OF _____)

On this _____ day of _____, 1998, personally appeared before me
JEFF NIELSEN, 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.

IN WITNESS WHEREOF, I have hereunto set my official signature and affixed my
notarial seal this _____ day of _____, 1998.

My Commission Expires:

NOTARY PUBLIC in and for the State of
Utah, County of _____

EXHIBIT 1**JEFF NIELSEN****CALCULATED UTAH LAKE MEANDER LINE --- SEC. 19 (LOT 1), TOWNSHIP 7 SOUTH, RANGE 1 EAST (PARCEL "A")**

Commencing at the meander corner common to Section 19 of Township 7 South, Range 1 East, and Section 24 of Township 7 South, Range 1 West, SLB&M, thence the following course and distances along the calculated Utah Lake Meander Line:

N 77-59-57 E, 760.69 feet;
 N 58-02-34 E, 793.66 feet;
 N 30-35-37 E, 515.58 feet;
 N 08-07-11 E, 396.31 feet to the calculated Meander Corner position

common to Sections 18 and 19 of Township 7 South, Range 1 East.

Basis of bearing = Utah State Plane Coordinates - Nad '83 (HARN)
 Adjustment. Distances converted to feet.

UTAH LAKE MEANDER LINE --- SECTIONS 19, 20 TOWNSHIP 6 SOUTH, RANGE 1 EAST (PARCEL "B")

Commencing at the calculated Meander Corner position between Sections 18 and 19 of Township 6 South, Range 1 East, SLB&M, said position being more specifically located as being S 89-46-06 E along the extension of section line, 1902.75 feet from the North Quarter Corner of Section 19 of the above-mentioned township and range; thence the following along the calculated Utah Lake Meander Line:

S 42-38-59 E, 1089.57 feet to the calculated Meander Corner common to Sections 19 and 20;

S 43-31-09 E, 420.72 feet to the intersection with the easterly extension of the northerly boundary of an adjoining parcel described and recorded in the Utah County Recorder's Office under entry #10944-84.

Basis of bearing = Utah State Plane Coordinates - Nad '83 (HARN)
 Adjustment. Distances converted to feet.

UTAH LAKE MEANDER LINE -- SECTIONS 19, 20 TOWNSHIP 6 SOUTH, RANGE 1 EAST (PARCEL "C")

Commencing at the point of intersection of the calculated Utah Lake Meander Line with the easterly extension of the south line of Lot #1 of Section 19, Township 6 South, Range 1 East, said south line also known as the southerly boundary of the Northeast Quarter of the Northeast Quarter of Section 19, Township 6 south, Range 1 East, SLB&M, said point of intersection being more specifically described as being located South, 1314.25 feet and East, 2991.08 feet from the North Quarter Corner of Section 19 of the above-mentioned Township and Range; thence the following along said Meander Line;

S 10-34-34 E, 28.70 feet;

S 19-54-50 E, 456.67 feet;

S 08-21-59 E, 853.12 feet to the intersection with the easterly extension of

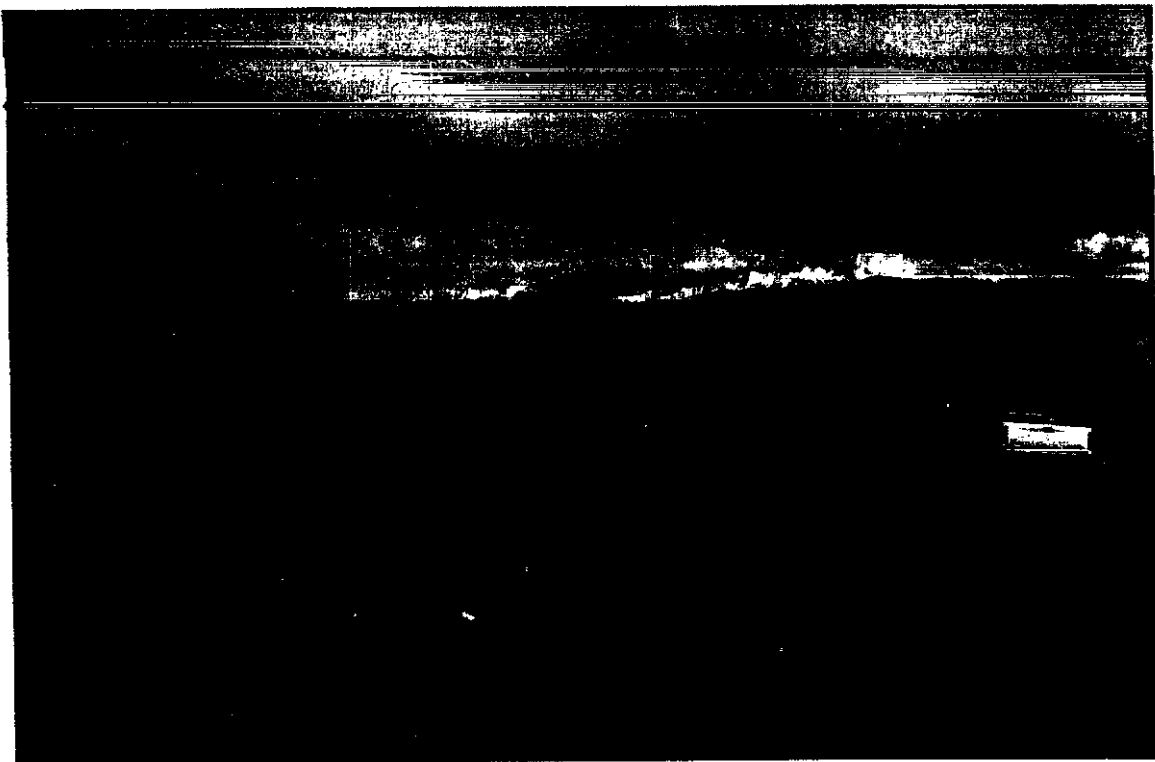
the southerly boundary of the subject parcel, said subject parcel being described and recorded under entry #22409-84 in the Utah County Recorder's Office.

Basis of bearing = Utah State Plane Coordinates - Nad '83 (HARN)

Adjustment. Distances converted to feet.

EXHIBIT D

PHOTOGRAPHS



Looking North from the South
boundary of the Nielsen
property (Parcel "A"). Meander
Line is mid-slope on photo.

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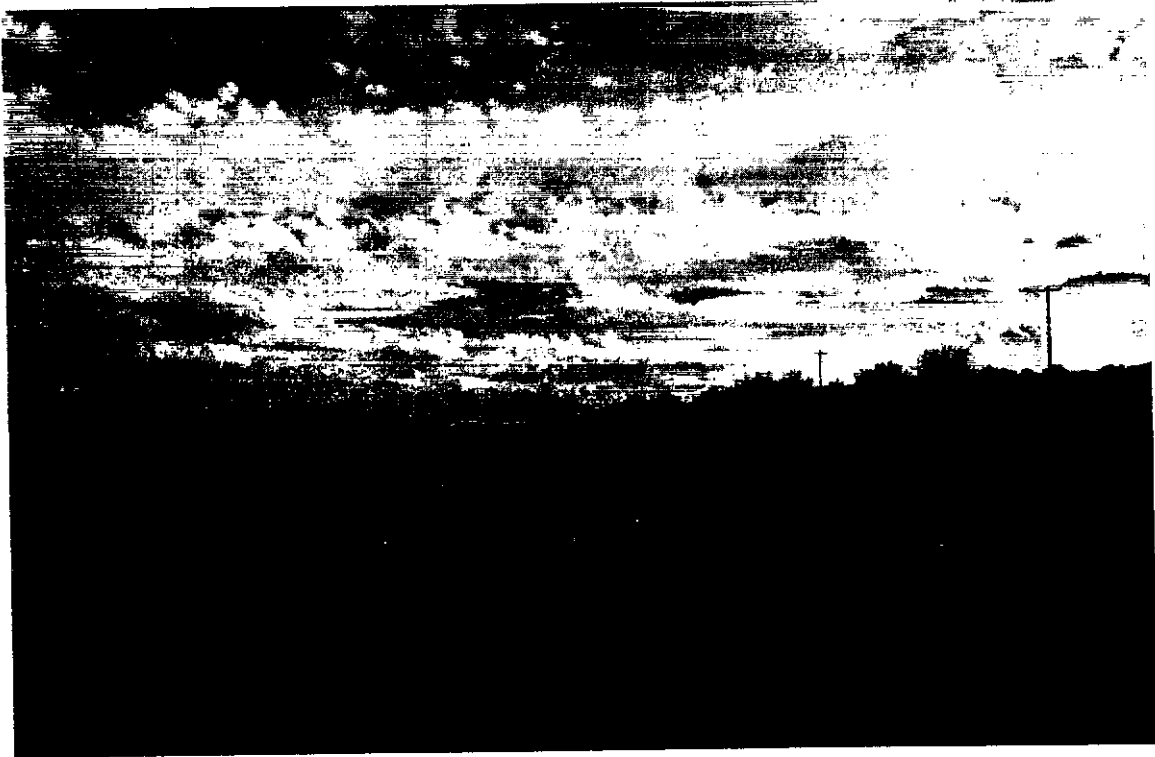


Looking South from North
boundary of the Nielsen
property (Parcel "A"). Meander
Line is mid-slope on photo.



Looking North from the South
boundary line of the Nielsen
property (Parcel "C"). Meander
Line located in water to right
of photo.

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Looking South from the North
boundary line of the Nielsen
property (Parcel "B").



Looking North from the South
boundary of the Nielsen
property (Parcel "C").
Meander Line is located in the
water to the right of photo.

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Looking South from the North
boundary of the Nielsen
property (Parcel "C").
Meander Line is located in the
water to the left of photo.