

Return to:

PacifiCorp
Lisa Louder
1407 West North Temple #310
Salt Lake City, Utah 84116

PN: 2535986.1
ROW No. 20040340

MMT # 05042419

(Space above for Recorder's use only)

02.134.0.0004

RIGHT OF WAY EASEMENT

For value received and subject to the terms and conditions set forth in this document, DEPOT ASSOCIATES, L.L.C., a Delaware limited liability company ("**Grantor**"), hereby grants to PACIFICORP, an Oregon corporation, its successors and assigns, ("**Grantee**"), a non-exclusive right-of-way easement 10 feet in width and 9937 feet in length, more or less, for the construction, reconstruction, operation, maintenance, repair, replacement, enlargement, and removal of electric power transmission and distribution lines and all necessary or desirable accessories and appurtenances thereto, including without limitation: supporting towers, poles, props, guys and anchor, wires, fibers, cables and other conductors and conduits therefor; and pads, transformers, switches, vaults and cabinets (collectively, the "**Electric System**"), along the general course now located by Grantee on, over or under the surface of the real property of Grantor in Tooele County, State of Utah, more particularly described and/or shown on Exhibit "A" attached hereto and by this reference made a part hereof.

THE EASEMENT PROPERTY AND ALL ASPECTS THEREOF IS GRANTED IN ITS "AS IS", "WHERE IS" CONDITION, WITHOUT WARRANTIES, EITHER EXPRESS OR IMPLIED, "WITH ALL FAULTS", INCLUDING BUT NOT LIMITED TO BOTH LATENT AND PATENT DEFECTS, AND THE EXISTENCE OF HAZARDOUS MATERIALS, IF ANY. GRANTEE HEREBY WAIVES ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE TITLE, CONDITION AND USE OF THE EASEMENT PROPERTY, INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Without limiting the generality of the foregoing, the Easement Property is granted to Grantee subject to: (i) any state of facts which an accurate ALTA/ASCM survey (with Table A items) or physical inspection of the Easement Property might show, (ii) all zoning regulations, restrictions, rules and ordinances, building restrictions and other laws and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction; and (iii) reservations, easements, rights-of-way, covenants, conditions, restrictions, encroachments, liens, and encumbrances and all other matters of record or enforceable at law or in equity.

The conductors and any other wires or lines located on any power poles shall be at least twenty-three (23) feet above the existing surface of the Easement Property at their lowest elevation. Any and all guy wires and anchors must be located within the Easement Property. Grantee shall not add any additional improvements, such as power poles, pads, transformers, switches, vaults, cabinets, or other equipment or facilities ("**Future Improvements**") on or underneath the surface of the Easement Property, without the prior written consent of Grantor, which consent shall not be unreasonably withheld, conditioned or delayed. Grantee shall align, place and install any Future Improvements, parallel to or consistent with the existing facilities and in a manner that will reasonably minimize any detrimental effect on the use, enjoyment and development of the CPB Property by Grantor. Grantor shall have the right to deny the request to install any Future Improvements if Grantor determines that the location of the Future Improvements is likely to unreasonably interfere with or impair, or has the potential to interfere with or impair, Grantor's current or future use or development of the Grantor's adjacent real property. The parties will use good faith efforts to cooperate with each other to agree upon mutually acceptable plans and specifications for the Future Improvements.

In the event Grantee needs to perform construction work on the Easement Property, Grantee shall: (i) provide Grantor with at least thirty (30) days' prior written notice of such work, except in the event of an emergency when no prior notice shall be necessary; (ii) use good faith efforts to ensure that there is continual pedestrian and vehicular access to the CPB Property through the Easement Property; (iii) use reasonable efforts to minimize any interference or disruption to Grantor's use and occupancy of the Easement Property; and (iv) perform any such work expediently and in a good and workmanlike manner.

Grantee, at its sole cost and expense, shall maintain and repair the Electric System and any and all related improvements installed by Grantee, in good order and condition. Grantee shall promptly repair any damage to the Easement Property and Grantor's improvements located thereon (including, without limitation, any and all landscaping, trees, fences, water and/or irrigation pipes, lines and ditches, curbs, gutters, asphalt surfaces, fences, signs, lighting, etc.) and any other improvements located on Grantor's adjacent property caused by Grantee, its agents, servants, employees, contractors or anyone performing work by, through, for, or under Grantee ("**Grantee's Agents**"), and shall restore the Easement Property and Grantor's adjacent property and the improvements thereon, as they may exist from time to time, to the same or better condition as they existed prior to any entry onto or work performed on the Property by Grantee and Grantee's Agents.

Grantee, and its successors and assigns, hereby agrees to indemnify, defend (with counsel acceptable to Grantor) and hold harmless Grantor, and any entity controlling, controlled by or under control with Grantor ("**Affiliates**"), and its and their Affiliates' officers, directors, employees, managers, members, agents, servants, successors, and assigns from and against any and all liens, encumbrances, costs, demands, claims, judgments, and/or

damage caused by or arising out of (i) the acts and omissions of Grantee, and its agents, servants, employees, and/or contractors; (ii) the use of the Easement Property and/or the Power Lines by Grantee, its agents, servants, employees, or contractors; and (iii) any work performed on the Easement Property by Grantee or Grantee's Agents.

Grantor hereby reserves the right to use the Easement Property for any use not inconsistent with Grantee's permitted use of the Easement Property. Without limiting the foregoing, Grantor reserves the right: (i) for pedestrian and vehicular access across and through the Easement Property; (ii) for the placement and movements of rail cars and motor vehicles, (iii) for the placement and maintenance of landscaping, trees, signs, light standards, sidewalks, curbs and gutters, ditches, irrigation pipes and related appurtenances, fences, asphalt roadways and driveways, and railroad lines and tracks and related improvements; (iv) to grant other non-exclusive easements, licenses and rights within or on the Easement Property to other parties. Notwithstanding the foregoing, Grantor agrees not to construct any permanent building or structure within the Easement Property or to place any trees or other improvement at a distance from the conductors that would violate the National Electric Safety Code. If any trees or other landscaping or improvements are within an unsafe distance of the conductors as set forth in the National Electric Safety Code, upon thirty (30) days' prior written notice to Grantor, Grantee shall have the right to trim such trees and other vegetation to ensure proper clearance standards and or request that such other improvements be removed or relocated.

Subject to the terms and conditions of this document, the easement granted herein shall be perpetual and shall run with the land, and the terms and conditions of this document shall inure to the benefit of and be binding upon the parties. The easement granted herein is an easement in gross and is personal to Grantee and may not be transferred or assigned, and no rights arising under this document may be conveyed, licensed or otherwise transferred to any other entity, except in the event of the acquisition or merger of Grantee or of substantially all of Grantee's assets. As such, Grantee shall not have the right to assign or convey this document or any right herein in whole or in part. Subject to the above, the terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

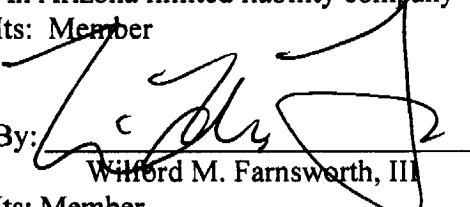
By accepting the easement granted herein and/or upon the recordation of this document, Grantee shall be deemed to have affirmatively accepted and agreed to the terms and conditions set forth in this document.

DATED this 18th day of May, 2005.

DEPOT ASSOCIATES, L.L.C.,
a Delaware limited liability company

By: IBC Holdings, LLC
An Arizona limited liability company
Its: Administrative Member


By: MainSpring Capital IV, LLC
An Arizona limited liability company
Its: Member

By: 
Wilford M. Farnsworth, III
Its: Member

STATE OF Arizona)
: ss
COUNTY OF Maricopa)

The foregoing instrument was acknowledged before me on the 18th day of May, 2005, by Wilford M. Farnsworth, III, the Member of MainSpring Capital IV, LLC, an Arizona limited liability company, Member of IBC Holdings, LLC, an Arizona limited liability company, Administrative Member of Depot Associates, L.L.C.

My Commission Expires:


Notary Public
Residing at

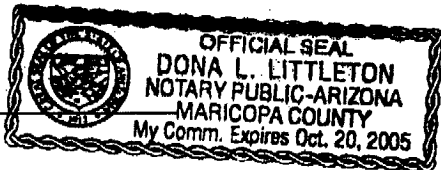


Exhibit "A"**Legal Description of Easement Property**

A right of way 10 feet in width, being 5 feet on each side of the following described survey line:

Beginning on the Grantor's land at a point 688 feet south and 567 feet east, more or less, from the north one quarter corner of Section 31, T. 3S., R. 4W., S.L.M., thence N.60°26'W. 815 feet, more or less, thence N.29°33'E. 1,551 feet, more or less, thence N.60°28'W. 83 feet, more or less, to the northwesterly boundary line of said land, said northwesterly boundary line also being the southeasterly right of way line of the United States of America (Army Rail Road Line) rights of way, and being in the NW1/4 of the NE1/4 and the NE1/4 of the NW1/4 of said Section 31, and the SW1/4 of the SE1/4 of Section 30, Township and Range aforesaid.

Beginning on the Grantor's land in the above described survey line at a point 1,066 feet north and 617 feet east, more or less, from the south one quarter corner of Section 30, T. 3S., R. 4W., S.L.M., thence S.60°28'E. 108 feet, more or less, to a new pole in an existing power line on said land and being in the SW1/4 of the SE1/4 of said Section 30.

Beginning on the northeasterly boundary line of the Grantor's land at a point 1,217 feet north and 350 feet east, more or less, from the south one quarter corner of Section 30, T. 3S., R. 4W., S.L.M., thence N.60°28'W. 913 feet, more or less, thence S.29°28'W. 1,013 feet, more or less, thence N.60°30'W. 1,799 feet, more or less, thence N.60°39'W. 248 feet, more or less, on said land and being in Lot 104 of Utah Industrial Depot Subdivision No. 1 in the W1/2 of the SE1/4 and the E1/2 of the SW1/4 of said Section 30.

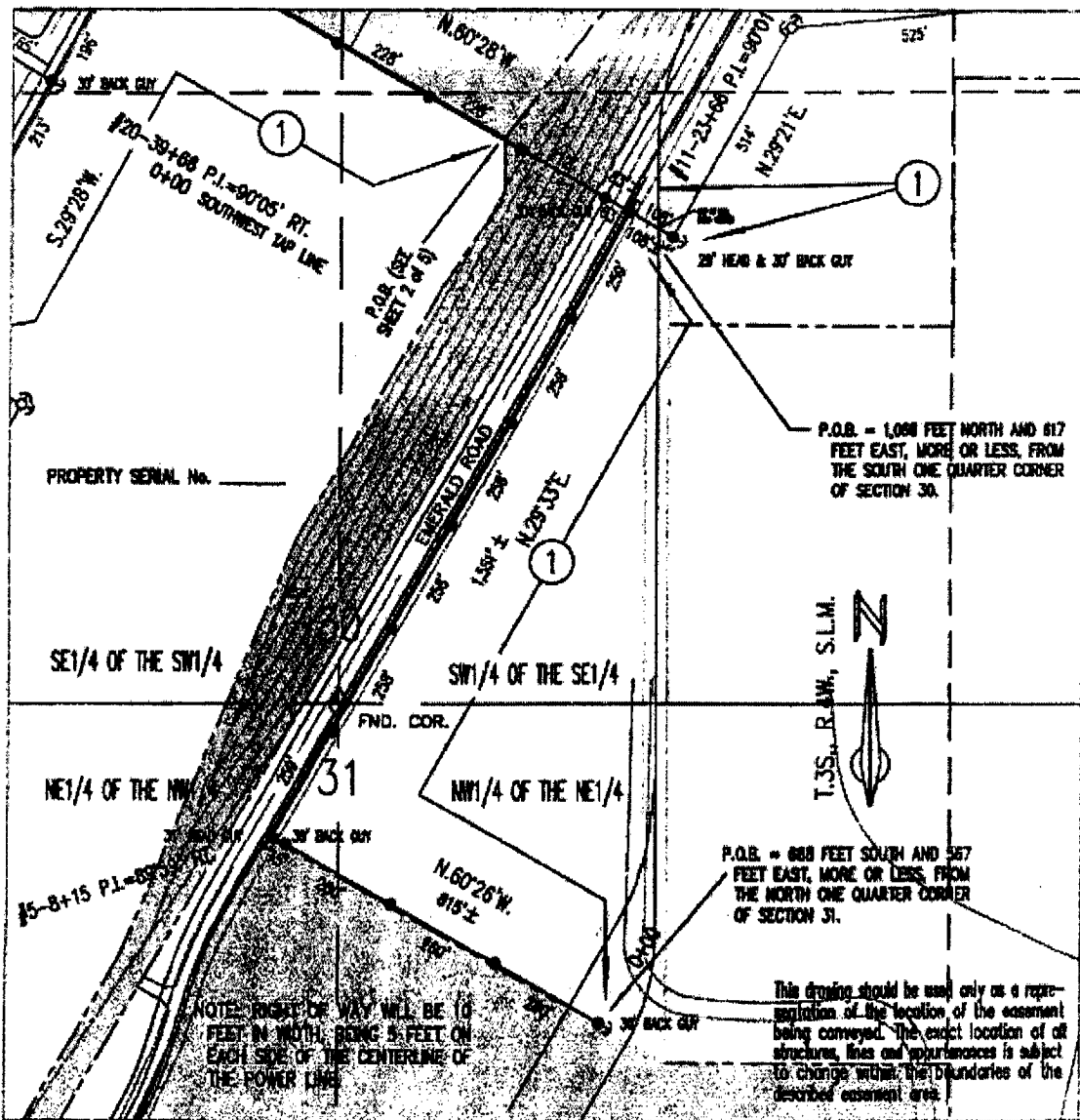
Beginning in the above described survey line at a point 1,342 feet north and 628 feet west, more or less, from the south one quarter corner of Section 30, T. 3S., R. 4W., S.L.M., thence N.60°27'W. 381 feet, thence N.29°30'E. 2,629 feet, more or less, to a northeasterly boundary line of said land being in the NE 1/4 of the SW 1/4, the SE1/4 of the NW1/4 and the SW1/4 of the NE1/4 of said Section 30.

Beginning on the southwesterly boundary line of the Grantor's land at a point 233 feet north and 1,329 feet west, more or less, from the southeast corner of Section 19, T.3S., R. 4W., S.L.M., thence N.29°30'E. 50 feet, more or less, on said land and being in the S1/2 of the SE1/4 of said Section 19.

Beginning at an existing pole at a point 513 feet north and 719 feet east, more or less, from the south one quarter corner of Section 19, T. 3S., R. 4W., S.L.M., thence

S.60°28'E. 347 feet, more or less, to a southeasterly boundary line of the Grantor's land said land and being in the SW1/4 of the SE1/4 of said Section 19.

Assessor's Map No. _____ Tax Parcel No. _____



DATE: DECEMBER 22, 2004

SPONSOR: CLYDE F. LATTA

PROJ. ENGR: STANLEY G. SPENCER

SURVEYED BY: U.P.M. Co./R.A.S.

DRAWN BY: D. T. Boyd

CHECKED BY: D. T. Boyd

PLOT SCALE: 1" = 1'

CAD No: R:\ROW\000QYY01.DWG

APPROVAL

JERRY H. ISAACSON

LEAD SENIOR ENGINEER LINE CIVIL DESIGN

EXHIBIT "A"

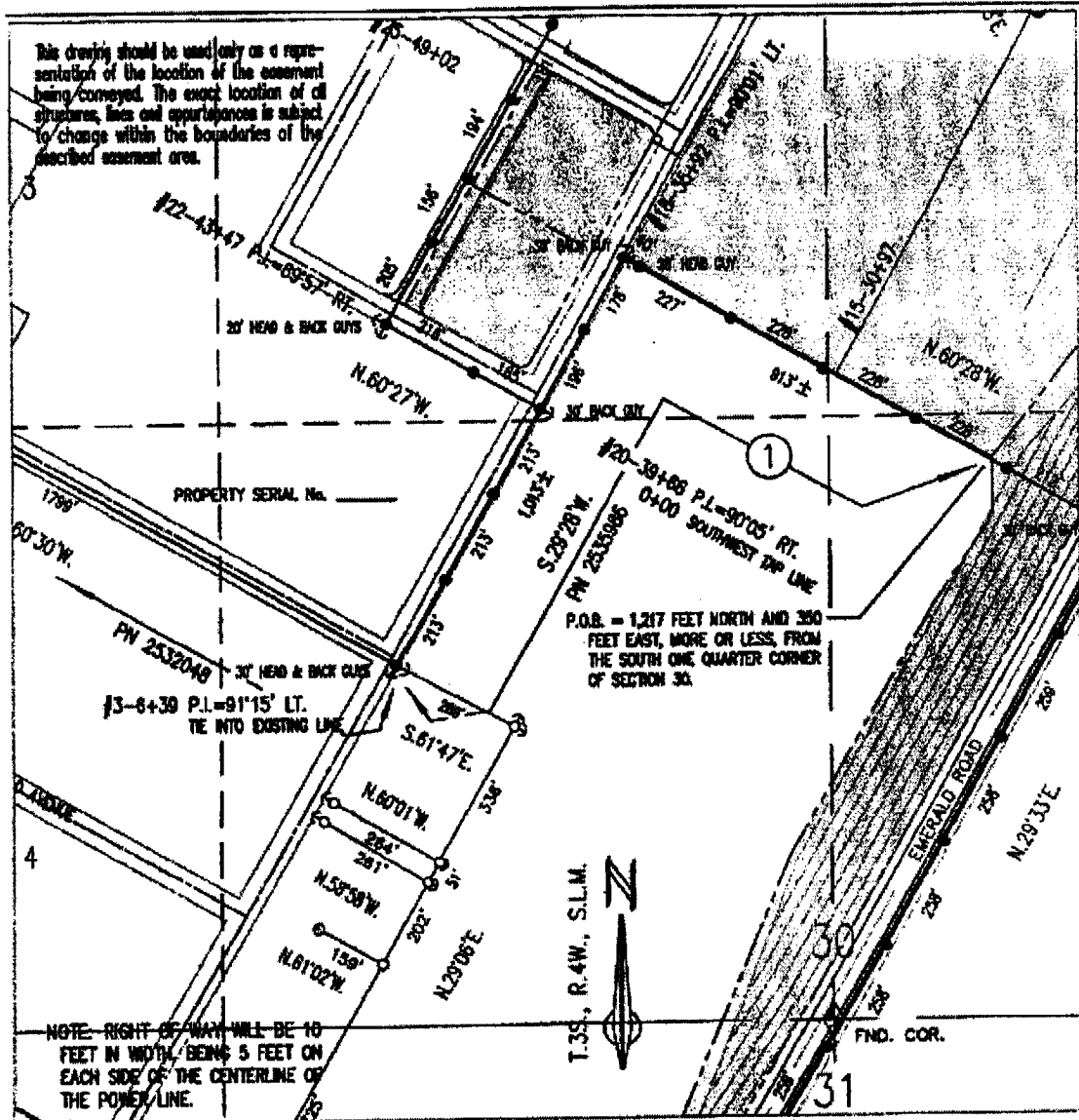
12.5kV PHASE ONE DISTRIBUTION LINE TO SERVE

UTAH INDUSTRIAL DEPOT ASSOCIATES LLC & OTHERS

EASEMENT No. 1

TOOELE, TOOELE COUNTY, UTAH

	TOOELE AREA		REF.	REV.
			SCALE: 1" = 300'	SHEET 1 OF 4



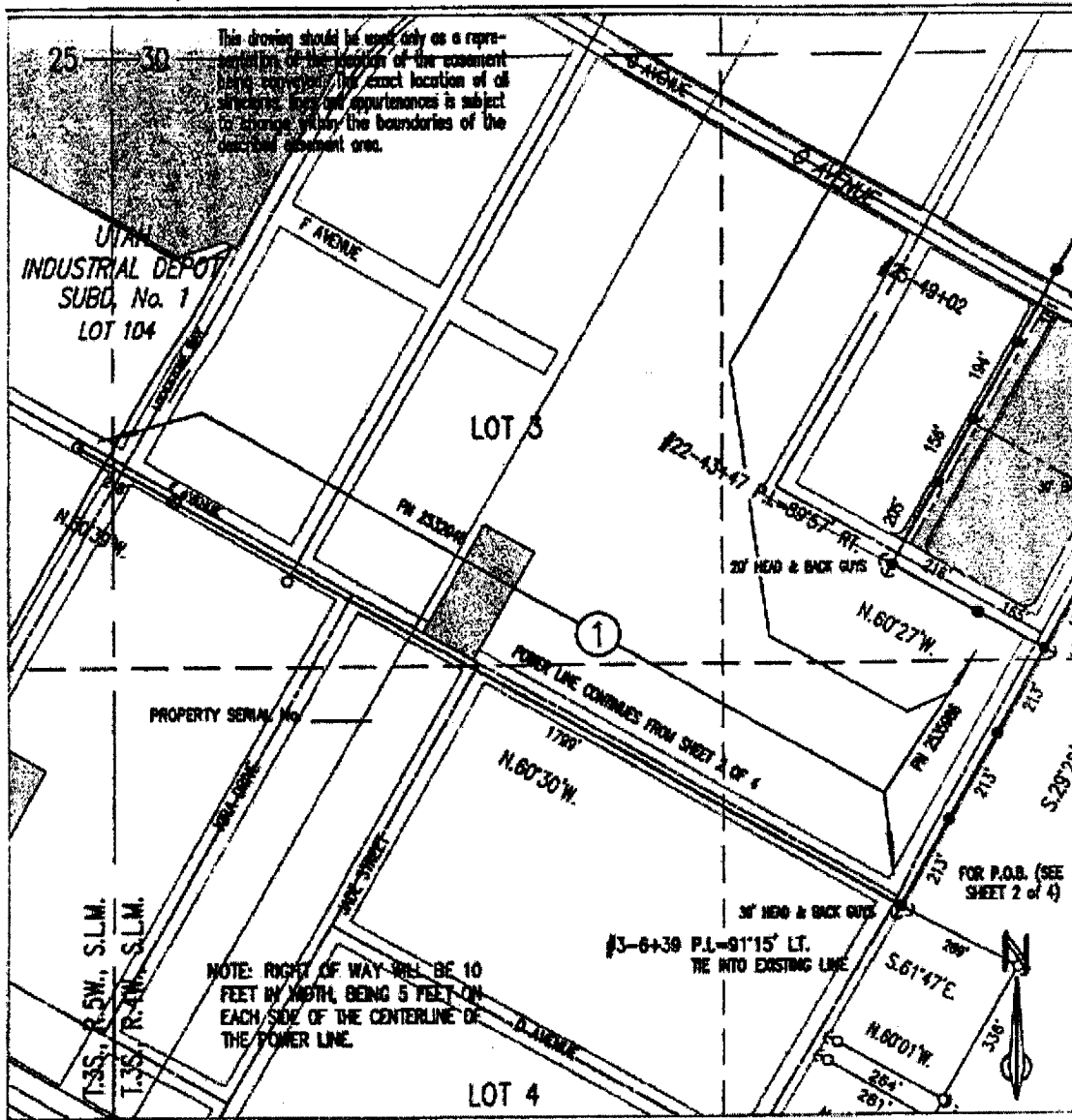
DATE: DECEMBER 22, 2004
 SPONSOR: CLYDE F. LATTA
 PROJ. ENGR: STANLEY G. SPENCER
 SURVEYED BY: U.P.M. Co./R.A.S.
 DRAWN BY: D. T. Boyd
 CHECKED BY: D. T. Boyd
 PLOT SCALE: 1 = 1
 CAD No: R:\ROW\00099Y01.DWG

APPROVAL
 JERRY H. ISAACSON

EXHIBIT "A"
 12.5KV PHASE ONE DISTRIBUTION LINE TO SERVE
 UTAH INDUSTRIAL DEPOT ASSOCIATES LLC & OTHERS
 EASEMENT No. 1
 TOOELE, TOOELE COUNTY, UTAH

PACIFICORP TOOELE AREA

SCALE: 1" = 300' | SHEET 2 OF 4 | PN 2535986/2535986 | REF. | REV.

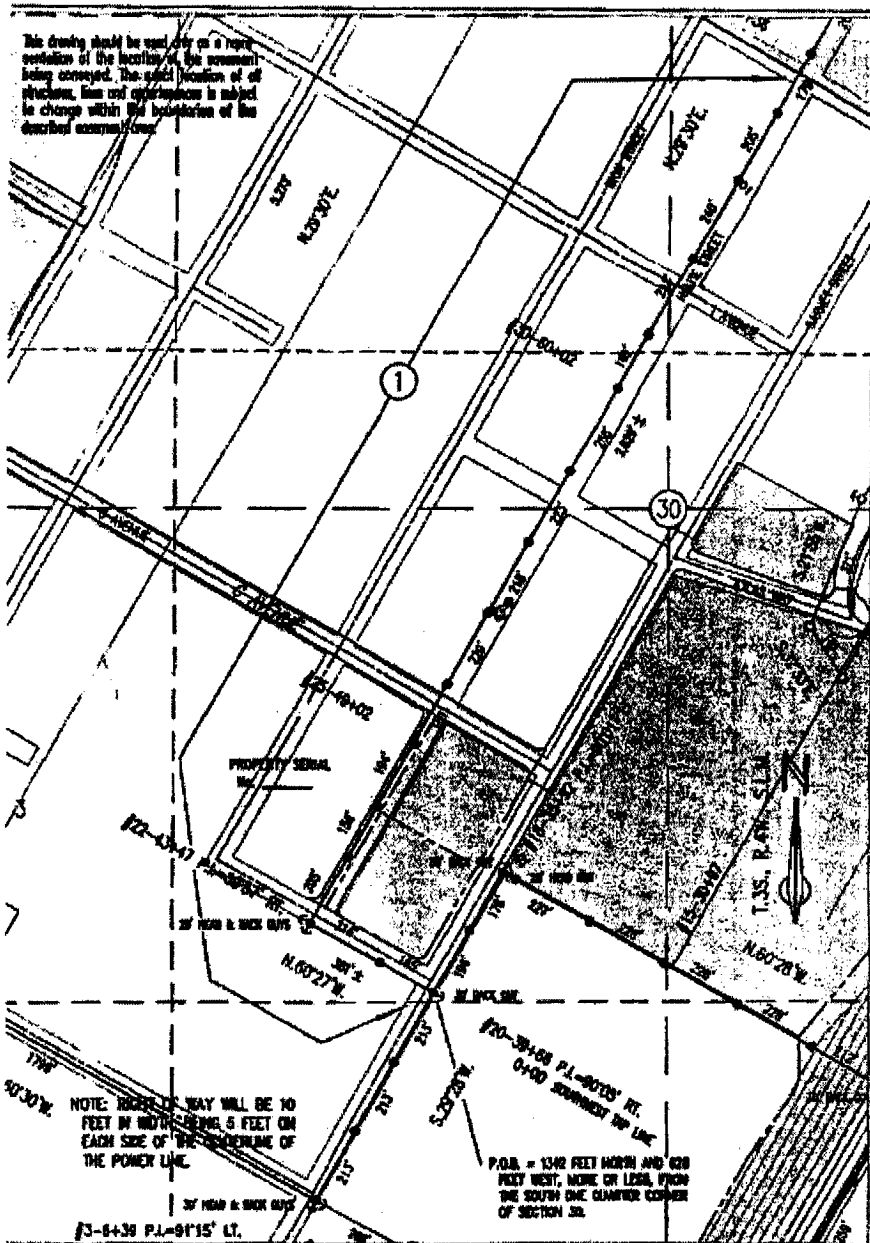


DATE: DECEMBER 22, 2004
SPONSOR: CLYDE F. LATTA
PROJ. ENGR: STANLEY G. SPENCER
SURVEYED BY: U.P.&L. Co./R.A.S.
DRAWN BY: D. T. Boyd
CHECKED BY: D. T. Boyd
PLOT SCALE: 1" = 1'
CAD No: R:\ROW\000QY01.DWG
APPROVAL JERRY H. ISAACSON

EXHIBIT "A"
**12.5KV PHASE ONE DISTRIBUTION LINE TO SERVE
UTAH INDUSTRIAL DEPOT ASSOCIATES LLC & OTHERS
EASEMENT No. 1
TOOELE, TOOELE COUNTY, UTAH**

PACIFICORP TOOELE AREA

SCALE: 1" = 300'	SHEET 2A OF 4	PN 2532048/2535986	REF.	REV.
------------------	---------------	--------------------	------	------



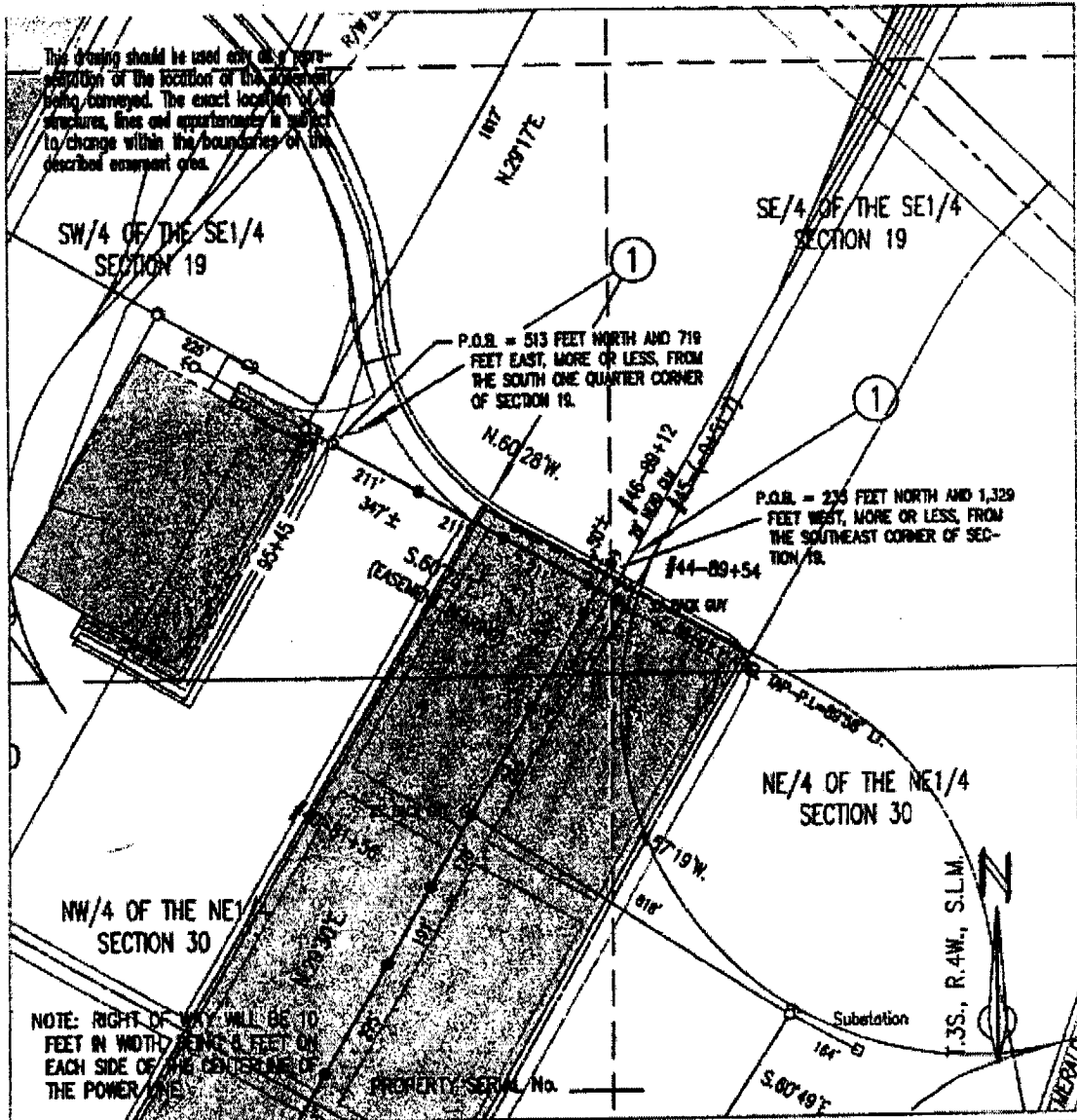
DATE: DECEMBER 22, 2004
 SPONSOR: CLYDE F. LATTI
 PROJ. ENGR: STANLEY B. SPENCER
 SURVEYED BY: U.P.M. Co./R.A.S.
 DRAWN BY: D. T. Boyd
 CHECKED BY: D. T. Boyd
 PLOT SCALE: 1" = 1'
 AD No: R:\FROM\00091701.DWG
APPROVAL
 JERRY H. ISAACSON
 LEAD DESIGN ENGINEER, CIVIL ENGINEER

EXHIBIT "A"

**12.5KV PHASE ONE DISTRIBUTION LINE TO SERVE
 UTAH INDUSTRIAL DEPOT ASSOCIATES LLC & OTHERS
 EASEMENT No. 1
 TOOELE, TOOELE COUNTY, UTAH**

PACIFICORP TOOELE AREA

SCALE: 1" = 300'	SHEET 3 OF 4	PN 2532048	REV.
------------------	--------------	------------	------



DATE: DECEMBER 22, 2004
SPONSOR: CLYDE F. LATTA
PROJ. ENGR: STANLEY G. SPENCER
SURVEYED BY: U.P.M. Co./R.A.S.
DRAWN BY: D. T. Boyd
CHECKED BY: D. T. Boyd
PLOT SCALE: 1" = 1'
CAD No: R:\ROW\000QYY01.DWG
APPROVAL
JERRY H. ISAACSON
LEAD SENIOR ENGINEER LINE CIVIL DESIGN

EXHIBIT "A"

12.5KV PHASE ONE DISTRIBUTION LINE TO SERVE
UTAH INDUSTRIAL DEPOT ASSOCIATES LLC & OTHERS
EASEMENT No. 1
TOOELE, TOOELE COUNTY, UTAH

PACIFICORP TOOELE AREA

SCALE: 1" = 300'	SHEET 4 OF 4	PN 2532048	REF.	REV.
------------------	--------------	------------	------	------