

WHEN RECORDED RETURN TO:

USACE Utah Regulatory Office
Attention: _____
533 West 2600 South, Suite 150
Bountiful, Utah 84010

ENT 113316:2019 PG 1 of 14
Jeffery Smith
Utah County Recorder
2019 Oct 31 04:02 PM FEE 40.00 BY SM
RECORDED FOR Vanguard Title Insurance Agency, LLC
ELECTRONICALLY RECORDED

THIS SPACE FOR RECORDER'S USE ONLY

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS (hereafter the "Declaration") is made as of October 29, 2019, by Sunrise Ranch Mapleton, LLC (hereafter "Declarant").

WHEREAS Declarant is the owner of certain real property located in Utah County, Utah (hereafter the "Preserve Area"), described and shown in Exhibit "A" attached hereto and incorporated herein; *and*

WHEREAS Declarant intends to protect the Preserve Area as wildlife habitat and a wetland preserve, to be so held in perpetuity and in compliance with land use restrictions imposed by Department of the Army Section 404 Permit No. SPK-2018-00710 (hereafter the "Permit") attached hereto as Exhibit B, issued to the Declarant by the Army Corps of Engineers Utah Regulatory Office (hereafter the "Corps") in connection with Declarant's proposed project to construct a roadway called Doubleday Street ; *and*

WHEREAS the Mapleton Sunrise Ranch Mitigation Plan (hereafter the "Plan") is incorporated into the Permit, making all of the Plan's obligations and restrictions affecting ownership, use and management of the Preserve Area enforceable requirements of the Permit; *and*

WHEREAS the Declaration shall not be construed to impose restrictions or conditions on the Preserve Area additional to those provided for in the Permit; *and*

WHEREAS the Preserve Area consists of both jurisdictional wetland features and associated natural upland areas, as defined by the Regulatory Division of the Corps; *and*

WHEREAS the Declaration benefits the Declarant, their successors and assigns, as well as the public, by helping to preserve and maintain in perpetuity the wetland and

upland open space, drainage, and wildlife habitat of the Preserve Area in a healthy natural condition,

NOW, THEREFORE, the Declarant declares as follows:

1. Purpose. The purpose of the Declaration is to protect in perpetuity the Preserve Area, a compensatory mitigation site under federal law, in accordance with the terms of the Permit, ensuring that its natural condition is preserved, enhanced, or restored through the activities authorized in the Permit; through conservation of its value, character, and ecological and hydrological integrity; through conservation and protection of its animal and plant populations; and through prevention of any use or activity that would impair or interfere with its environmental value, except as provided hereunder, and as authorized in the Permit.

2. Prohibition on future DA permits. The Preserve Area shall not be made the subject of a future Individual or General Department of the Army (DA) permit for fill, or any plan of development, except for the purpose of enhancing or restoring its natural habitat in compliance with the terms set forth herein.

3. Covenant Running with the Land. In consideration of the benefits obtained by the Declarant from the Permit and other valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Declarant does hereby covenant and agree to restrict, and does by this instrument restrict, management and use of the Preserve Area to conform to the limitations contained herein and in the Plan, and affirms that the Declaration is a covenant running with the land.

4. Prohibited Activities. Unless authorized in the Plan, or authorized in writing by the Corps to preserve, maintain, repair, prevent fire, or enhance the Preserve Area, the following activities within the Preserve Area are prohibited:

- a) Discharge of any dredged or fill material;
- b) Plowing or commercial cultivation;
- c) Planting of nuisance, exotic, or non-native plants that are not beneficial to wildlife;
- d) Grazing, feeding, penning of livestock, or commercial or recreational uses of livestock;
- e) Dumping, disposal, storage or placement of any equipment, soil, trash, refuse, rubbish, or other waste material;

- f) Leveling, grading or landscaping;
- g) Destruction or removal of any native tree, shrub or other vegetation, except that Declarant, its successors and assigns, may use prescribed fire as a vegetation management technique, in conformance with local, state and federal law;
- h) Operation of motorized vehicles away from established roads and trails, unless off-road access is necessary to conduct authorized activities;
- i) Construction of buildings or roads, erection of billboards or signs (except for "No Trespass" signs) or other advertising, installation of utility lines, grading of trails, or construction of benches;
- j) Discharge of untreated stormwater into the Preserve Area; Declarant shall only accept into the Preserve Area stormwater or other discharge water from adjoining properties that has received primary treatment (i.e. detention to settle out suspended solids, filtration through vegetated strips, oil/water separation, or similar methods to ensure that any stormwater discharged into or onto the Preserve Area meets applicable local, state and federal standards.
- k) Exploration for or extraction of oil or gas, mining of any kind;
- l) Excavation, dredging, or removal of sand, loam, peat, gravel, rock, soil or other materials;
- m) Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation;
- n) Commercial recreation, including but not limited to commercial fishing, hunting, camping or trapping, but Declarant, its successors and assigns, may utilize the Preserve Area for non-commercial waterfowl hunting, including the use of guides and outfitters, and may use qualified professionals to help manage wetland habitat and waterfowl populations;
- o) Subdivision of the Preserve Area for any purpose; conveyance of the Preserve Area must include all real property described and shown on Exhibit A hereto (exclusive of a conveyance arising from an action in eminent domain);

5. Not an Offer to Dedicate: No Rights of Public Use. The provisions of the Declaration do not constitute an offer for public use. This instrument does not constitute an irrevocable offer to dedicate.

6. Rights of the Corps. Declarant hereby grants to the Corps the right to enforce the terms and conditions of the Declaration. The Corps' forbearance in the event of any breach of the terms of the Declaration by the Declarant shall not be construed to be a waiver of such term, or of any subsequent breach of the same, or any other term of the Declaration. No delay or omission by the Corps in the exercise of any right or remedy upon any breach by Declarant shall impair such right or remedy, or be construed as a waiver. Without obligation to enforce the provisions of the Declaration, the Declarant hereby grants to the Corps the following rights of enforcement:

- a) The right to take action to preserve and protect the environmental value of the Preserve Area;
- b) The right to prevent any activity within the Preserve Area that is inconsistent with the purpose and terms of the Permit or the Declaration, and to require the Declarant to restore at Declarant's expense any areas or features of the Preserve Area that may be damaged, degraded or altered by a prohibited activity or use;
- c) The right to enter upon and inspect the Preserve Area in a reasonable manner and at reasonable times with prior notice to determine whether Declarant, or its successors or assigns, is complying with the covenants and prohibitions contained in the Declaration and the Permit; and
- d) The right to proceed at law or in equity to enforce the provisions of the Permit or the Declaration, to require restoration of damage to the Preserve Area, or prevent the occurrence of any of the prohibited activities set forth herein.

7. Enforcement Procedure. In the event of violation of the terms and conditions hereof, the Declarant or the Corps shall give written notice to the other, and the alleged violator shall have the right to cease or to cure the violation without penalty. If the party in violation does not cease or cure the violation within sixty (60) days after receipt of written notice, the terms and conditions herein may be enforced by the Declarant or the Corps by suit for injunctive relief or for other appropriate remedy in equity or at law; provided, however, that no violation shall resort in a forfeiture or reversion of title. If, however, such violation is of a nature or character that it is not reasonably susceptible to being ceased or cured within the initial sixty (60) day period, the party in violation shall have a reasonable period beyond the initial sixty (60) day period in which to cease or cure such violation, provided the party in violation has commenced to cease or cure such violation within the initial sixty (60) day period and diligently prosecutes the same to completion. Venue for such suit shall be in Utah County, Utah, unless agreed otherwise by the parties. These remedies are in addition to any other remedy, fine, or

penalty that may be applicable under Code of Federal Regulations Title 33, Sections 320-332.

8. Notice to the Corps. Pursuant to 33 CFR § 332.7(3), the Declarant, and/or its successors and assigns, shall provide the Corps at least ninety (90) days advance written notice before taking any action that would convey title to the Preserve area or would void, modify, amend, alter, release, or revoke this Declaration, and the Corps shall have the right to approve or disapprove such proposed modification according to applicable regulations in effect at the time of such request for modification.

9. Successors and Assigns Bound. Declarant hereby agrees and acknowledges that the Preserve Area shall be held, sold, conveyed, owned and used subject to the terms, conditions and obligations contained in the Declaration. Such terms, conditions and obligations are a burden and restriction in perpetuity on the use of the Preserve Area. The provisions of the Declaration are enforceable as equitable servitudes and conditions, restrictions and covenants running with the land, and shall be binding on the Declarant and upon each and all of its respective heirs, devisees, successors and assigns, officers, directors, employees, agents, representatives, executors, trustees, successor trustees, beneficiaries and administrators, and upon future owners of the Preserve Area and each of them.

10. Modification. After recording, these restrictive covenants may only be amended under exceptional circumstances by a recorded document signed by the Declarant, or a successor or assign, and by the Corps, in the Corps' sole discretion, with no obligation to do so.

11. Notice of Conservation Restrictions in Other Permit Applications. Any permit application, or request for certification or modification sought by the Declarant, its successors or assigns, which may affect the Preserve Area made to any governmental entity with authority over wetlands or other waters of the United States shall expressly reference and include a copy (with the recording stamp) of the Declaration.

12. Eminent Domain. If any part of the Preserve Area is taken by exercise of the power of eminent domain, so as to terminate the covenants contained in the Declaration, in whole or in part, the Declarant shall notify the Corps in writing of such proceedings upon first notice to Declarant, so that the Corps may provide the condemnor, and the court overseeing the action, an accurate estimate of the cost of replacing in-kind the ecological units and the conservation functions, services and values of the mitigation provided by the Preserve Area, and Declarant shall expend all funds received in compensation of said conservation functions, services and values to obtain comparable mitigation at an alternate location approved by the Corps.

Options for compensation of damages to Waters of the United States occasioned by an eminent domain taking of all or any part of the Preserve Area may include (1) re-recording of the Corps' Sacramento District model conservation restrictions, including the covenants set forth herein, by the new owner / condemnor, thereby preserving the Waters of the United States and their upland buffers in the Preserve Area, without adverse impact; or (2) payment of funds sufficient for the acquisition and protection of alternative real property in the same hydrologic watershed providing equivalent conservation functions, services and values of wetlands, streams, creeks, shorelines, or other Waters of the United States and their buffers; or (3) payment of funds to purchase conservation mitigation credits from an authorized wetland/stream mitigation bank in the same hydrologic watershed sufficient to replace the conservation mitigation functions, services and values of the wetlands, streams, creeks, shorelines, or other waters of the United States and their buffers lost by the taking; or (4) payment of funds to an in-lieu fee mitigation wetlands/streams trust account approved by the Corps in an amount sufficient to purchase and protect alternative real property in the same hydrologic watershed providing the equivalent mitigation conservation functions, services and values as the Preserve Area; or (5) acquisition of any other aquatic conservation mitigation as may be approved by the Corps in appropriate proportion to compensate the taking and in compliance with regulations and requirements in place at the time of the action.

In the event of a taking of all or a portion of the Preserve Area through the exercise of the power of eminent domain and a loss of aquatic resources protected under the Clean Water Act, or Rivers and Harbors Act, any failure of the proponent to provide adequate and appropriate damages in the form of compensatory mitigation, as described herein and as determined by the Corps through application of its Section 404 Clean Water Act and Rivers and Harbors Act regulations and procedures, shall cause the Corps to refer the matter to the United States Department of Justice for legal action.

14. Severability. The provisions of the Declaration are severable and the violation of any of the provisions of this Declaration by a Court shall not affect any of the other provisions which shall remain in full force and effect.

DECLARANT: Surprise Ranch Mapleton, LLC



Date: Oct 29, 2019

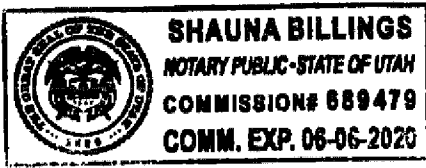
By: Heath J. Johnston
 Its Manager

: ss.

COUNTY OF UTAH)

On the 29th day of October, 2019, personally appeared before me Heath J. Johnston, who is the manager of SUNRISE RANCH MAPLETON, LLC, who is the owner of the property described in the attached Exhibit A and duly acknowledged to me that HE executed the same for and in behalf of said limited liability company.

Al B



NOTARY PUBLIC



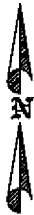
EXHIBIT "A"

Sunrise Ranch Wetlands Mitigation Preservation Boundary

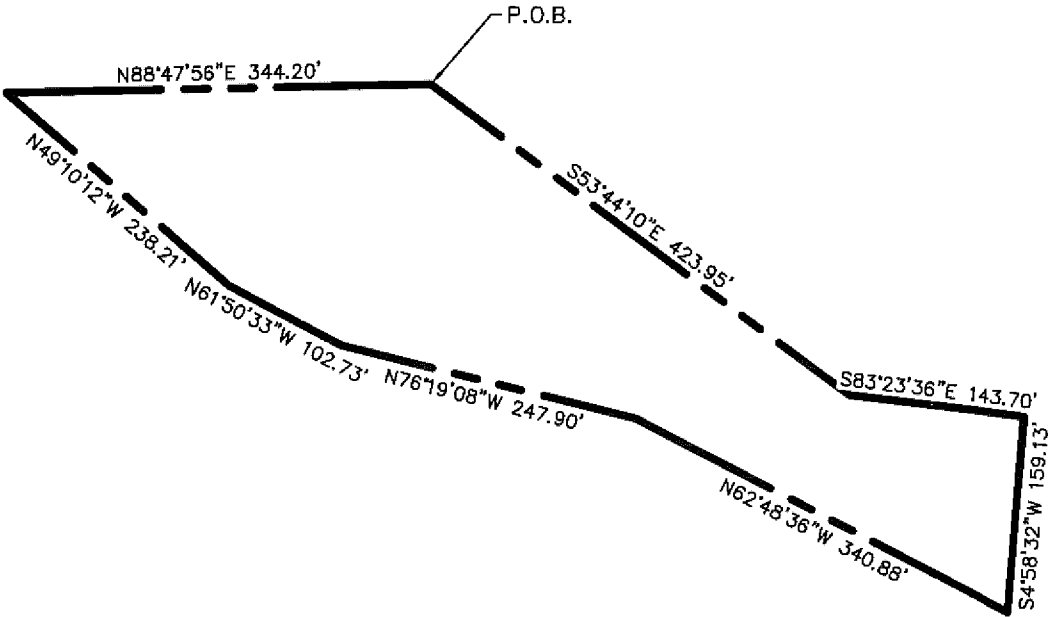
The basis of bearing for this description is North 00°42'33" West between the East Quarter Corner of Section 9, Township 8 South, Range 3 East, Salt Lake Base & Meridian and the Southeast Corner of said Section 8.

Beginning at a point South 00°42'33" East 7.56 feet along the section line and West 1719.02 feet from the East Quarter Corner of Section 9, Township 8 South, Range 3 East, Salt Lake Base & Meridian and running thence South 53°44'10" East 423.95 feet; thence South 83°23'36" East 143.70 feet; thence South 04°58'32" West 159.13 feet; thence North 62°48'36" West 340.88 feet; thence North 76°19'08" West 247.90 feet; thence North 61°50'33" West 102.73 feet; thence North 49°10'12" West 238.21 feet; thence North 88°47'56" East 344.20 feet to the point of beginning.

WETLANDS MITIGATION PRESERVATION AREA

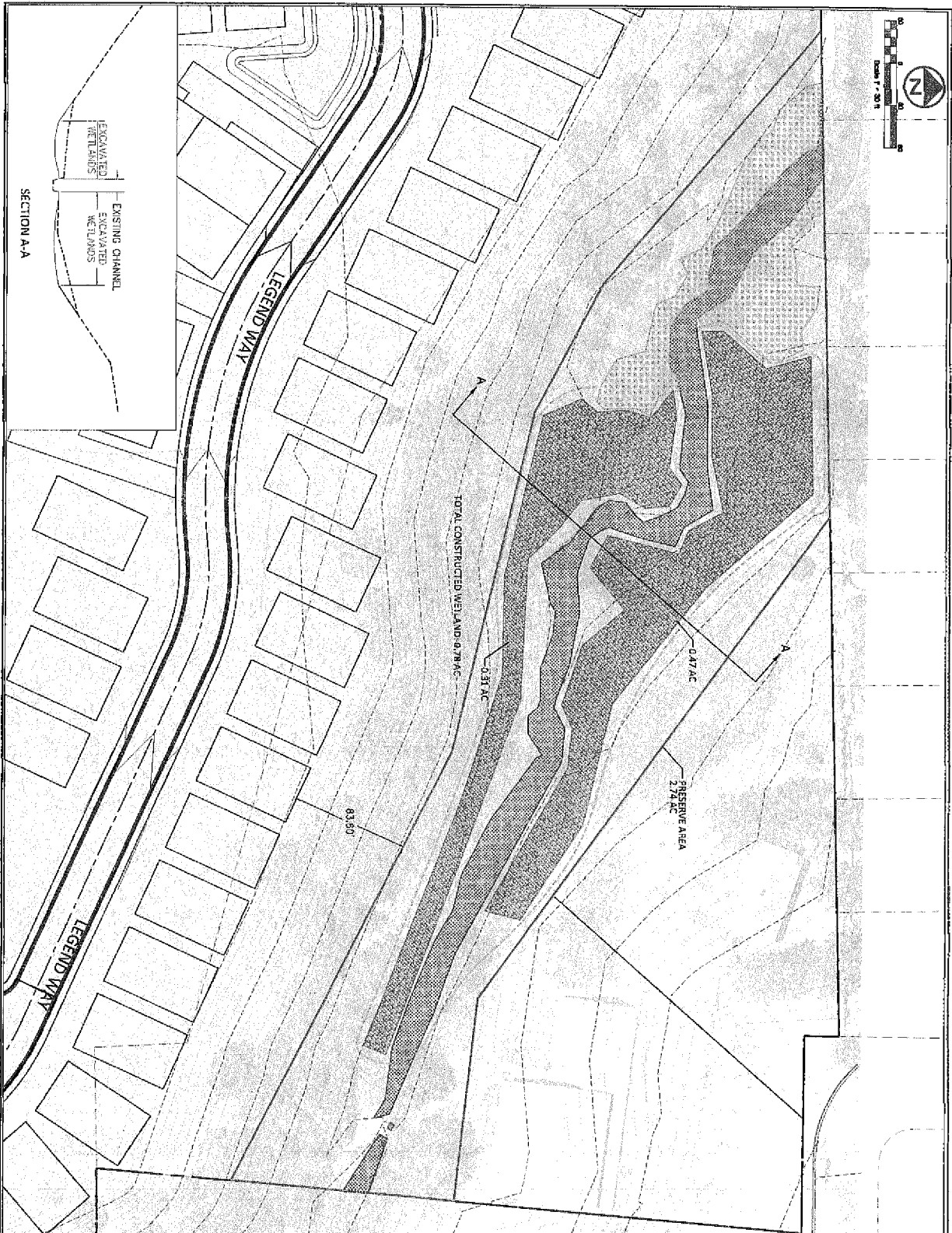


SCALE 1" = 150'



WILDING
ENGINEERING

14781 SOUTH HERITAGE CREEK WAY
BLUFFDALE, UTAH 84205
801.563.8118
WWW.WILDINGENGINEERING.COM



WILDING ENGINEERING

14771 SOUTH PARKWAY DRIVE SUITE 100
 WEST VALLEY CITY, UTAH 84119
 WWW.WILDINGENGINEERING.COM

LEGEND

- Existing Area Contain Wetland
- Existing Constructed Wetland
- Other Wetland
- Disturbed Wetland
- Constructed Wetland
- Disturbed Wetland
- Preservation Boundary

PROJECT INFORMATION	
PROJECT NAME	SUNRISE RANCH M2
CLIENT	WESTLAND MITIGATION AND PRESERVATION AREA
LOCATION	MAPLETON CITY, UTAH
DATE	
NO. OF SHEETS	
SHEET NO.	
DATE	

PROJECT NUMBER: MEC

SCALE: AS SHOWN

DATE: 2/13/19

DRAWN BY: M2

PROJECT: WESTLAND MITIGATION AND PRESERVATION AREA

DATE: 1/7/2019

SCALE: 1" = 30'

SHEET: M2

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EXHIBIT B – SECTION 404 PERMIT SPK-2018-00710



DEPARTMENT OF THE ARMY
 U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT
 1325 J STREET
 SACRAMENTO CA 95814-2922

December 21, 2018

Regulatory Division (SPK-2018-00710)

Ridgepoint Management Group, LLC
 Attn: Mr. Brad Jensen
 947 South 500 East, Suite 100
 American Fork, Utah 84003
 brad@ridgepointmg.com

Dear Mr. Jensen:

We are responding to your September 16, 2018 pre-construction notification for a Department of the Army Nationwide permit for the Sunrise Ranch project. The approximately 6-acre project site is located in a deep ravine near 485 North 1600 West, Latitude 40.1332°, Longitude -111.6062°, Mapleton, Utah County, Utah.

Based on the information you provided to this office, the Sunrise Ranch project involves the discharge of fill material into waters of the U.S. subject to Section 404 of the Clean Water Act. The specific activity that requires DA authorization is the placement of fill material in aquatic features for the construction of an access road, including curb, gutter, sidewalks and park strips, associated with a proposed residential development. These activities will result in the permanent effects to approximately 0.23 acre of forested wetlands, 0.13 acre of emergent marsh wetlands, and 105 linear feet (0.03 acre) of perennial channel. The proposed activities would be conducted in accordance with the "Sunrise Ranch Phases C, D, I, & R" plans, dated November 20, 2018 (enclosure 1).

We have determined that activities in waters of the U.S. associated with the project are authorized by Nationwide Permit (NWP) Number 14 - *Linear Transportation Projects*. You must comply with all terms and conditions of the NWP and applicable regional conditions. Information about the NWP terms and conditions and Sacramento District regional conditions for Utah are available on our website at: www.spk.usace.army.mil/Missions/Regulatory/Permitting/NationwidePermits.aspx. In addition, your work must comply with the following special conditions:

1. You shall develop a final comprehensive mitigation and monitoring plan, which must be approved, in writing, by this office prior to initiation of construction activities authorized by this verification. You shall ensure the plan is presented in the format, and includes all information identified in the Final 2015 Regional Compensatory Mitigation and Monitoring Guidelines for the South Pacific Division, which can be found online at: <http://www.spd.usace.army.mil/Portals/13/docs/regulatory/mitigation/MitMon.pdf>, or most recent update. The purpose of this requirement is to ensure replacement of functions and

-2-

services of the aquatic environment that would be lost through the activities authorized by this verification.

2. You shall comply with all terms and conditions of the March 9, 2017, Section 401 Water Quality Certification from the State of Utah Department of Environmental Quality, Division of Water Quality. A copy of the 401 Water Quality Certification is available on our website at: <http://www.spk.usace.army.mil/Missions/Regulatory/Permitting/Nationwide-Permits/>. A hard copy will be mailed to you at your request.

3. Within 30 days after completion of the authorized work, you must sign the enclosed Compliance Certification and return it to this office with the information required by Sacramento District Regional Condition C(9) for Utah.

This verification is valid until March 18, 2022, when the existing NWP's are scheduled to be modified, reissued, or revoked. Furthermore, if you commence or are under contract to commence this activity before the date the NWP is modified, reissued, or revoked, you will have 12 months from the date of the modification, reissuance or revocation to complete the activity under the present terms and conditions. Failure to comply with the general and regional conditions of this NWP, or the project-specific special conditions of this authorization, may result in the suspension or revocation of your authorization.

We would appreciate your feedback on this permit action including your interaction with our staff and processes. For more information about our program or to complete our Regulatory Program national customer service survey, visit our website at www.spk.usace.army.mil/Missions/Regulatory.aspx.

Please refer to identification number SPK-2018-00710 in any correspondence concerning this project. If you have any questions, please contact me at the Bountiful Regulatory Office, 533 West 2600 South, Suite 150, Bountiful, Utah 84010, by email at Michael.A.Pectol@usace.army.mil, or telephone at (801) 295-8380 X 8315.

Sincerely,

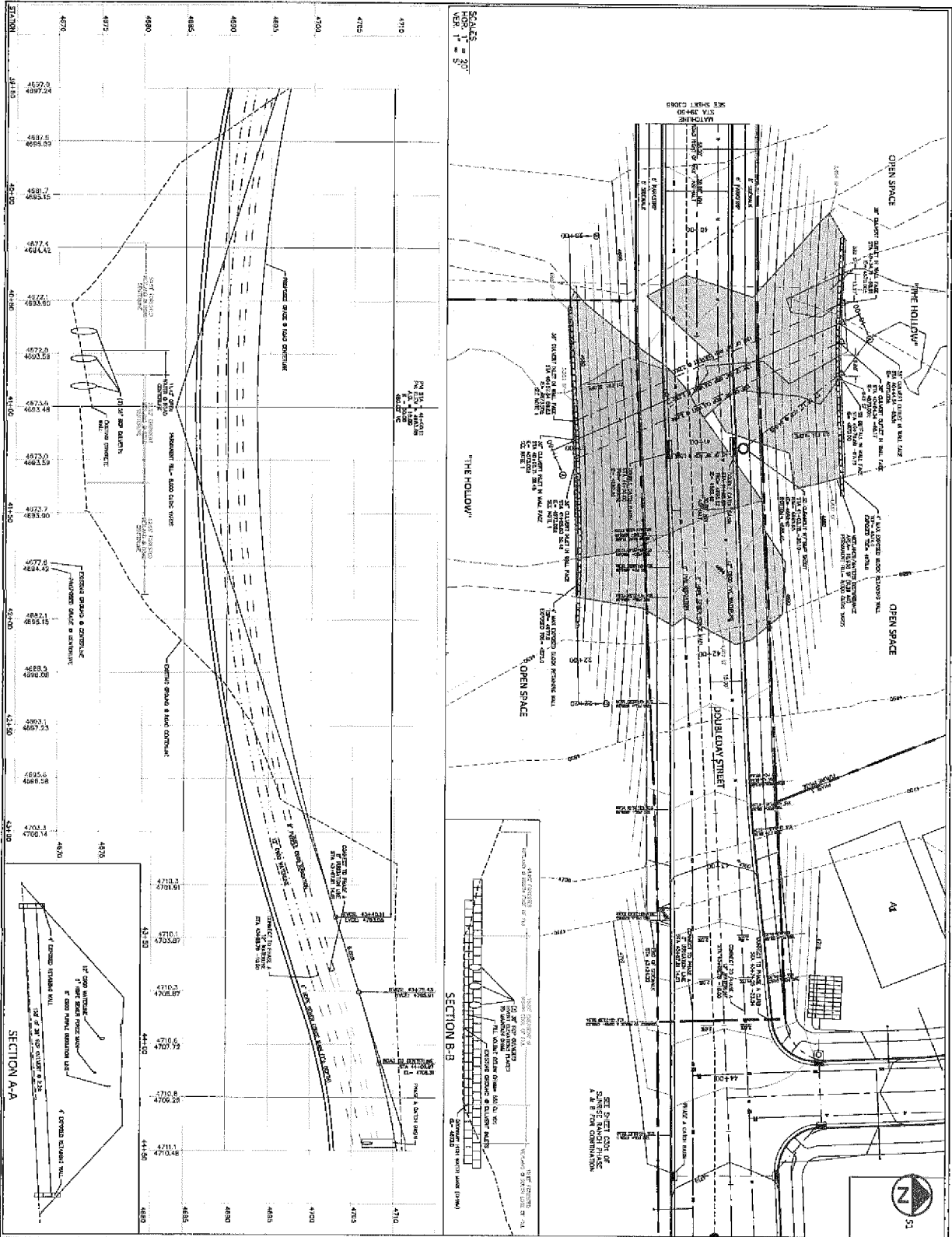


Michael A. Pectol
Project Manager
Nevada-Utah Section

Enclosure

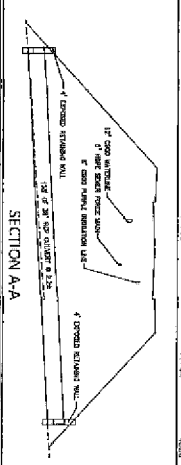
cc:

Harriet Nater, Wise Earth Concepts, Inc. (WiseEarth@msn.com)



SCALE:
WORK = 1" = 30'
AS SHOWN

SECTION B-B

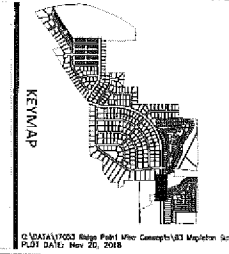


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PROJECT NO.	C307
DATE	11/9/18
SCALE	1" = 30'
DRAWN BY	TWC
CHECKED BY	MFC
DATE	17053.03

MAPLETON, UTAH
SUNRISE RANCH
PHASES C, D, I, & R
DOUBLEDAY STREET
STA 39+50 - 44+50

NO.	REVISION	DATE



WILDING ENGINEERING

10940 W. 26TH AVE., SUITE 200
 BIRCHMOUNT, UT 84303
 PH: (435) 225-4400
 WWW.WILDINGENGINEERING.COM

DATE PLOTTED: 11/9/18 10:41:40 AM
 PLOTTER: HP DesignJet T1100
 SCALE: 1" = 30'