

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 CORPORATION, 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 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>OWNER</u>	<u>INTEREST</u>	<u>SOURCE/DATE</u>
TAX ID # 21:032:0001	PROVO CITY CORPORATION	Fee Simple	Quit Claim Deed Dated 7/27/79
	" " "	" "	Quit Claim Deed Dated 4/14/81

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. 041, 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 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 northward of the outer toe of the airport dike, as it existed on February 20, 1998, as described on Exhibit 1 attached hereto and as shown on Exhibit B to the attached Record of Decision No. 041 (Exhibit 2), 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 lakeward of the outer toe of the western airport dike and southern airport dike, as it existed on February 20, 1998, as described on Exhibit 1 hereto and as shown on Exhibit B to the attached Record of Decision No. 041 (Exhibit 2), 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. Access to the sovereign lands along the described boundary is available from the lake and from the road which traverses the entire length of the airport dike. Access from the dike road to the interior of the dike is prohibited except for designated access points.

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 No. 041 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 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.

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 _____ 1999.

**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).

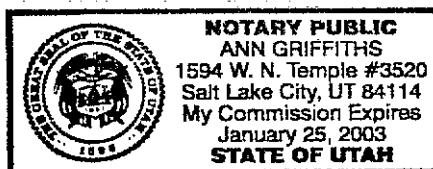
On this 3 day of March, 1999, personally appeared before me
ARTHUR W. DuFAULT, Director of the Division of Forestry, Fire and State Lands, known
to me to be the person whose name is subscribed to the foregoing instrument and who has
acknowledged to me that he executed the same on behalf of said Division.

IN WITNESS WHEREOF, I have hereunto set my official signature and affixed my
notarial seal this 3 day of March, 1999.

My Commission Expires:

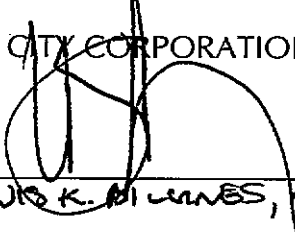
1-25-03

Ann Griffiths
NOTARY PUBLIC In and for the
State of Utah, County of Salt
Lake.



UPLAND LANDOWNER:

PROVO CITY CORPORATION



BY: LEWIS K. BILLINGS, maid

STATE OF UTAH)

COUNTY OF Utah)

On this 3rd day of March, 1999, personally appeared before me, Lewis K. Billings known to me to be the person whose name is subscribed to foregoing instrument and who has acknowledged to me that he/she executed the same on behalf of PROVO CITY CORPORATION.

IN WITNESS WHEREOF, I have hereunto set my official signature and affixed my notarial seal this 3rd day of March, 1999.

My Commission Expires: 6-22-99

Marilyn T. Perry
NOTARY PUBLIC In and for the State
of Utah, County of Utah



PROVO MUNICIPAL AIRPORT

BOUNDARY DESCRIPTION

Beginning at a point East, 102.50 feet and South, 661.00 feet from the East 1/4 Corner of Section 9, T7S, R2E, SLB&M. Thence N89°49'00"W, 988.50 feet; thence N0°20'00"E, 1,599.06 feet; thence N89°54'30"W, 593.76 feet; thence N34°15'00"W, 268.98 feet; thence N17°37'47"E, 878.58 feet; thence N78°04'51"W, 700.00 feet; thence S6°12'31"W, 832.07 feet; thence S88°48'00"W, 686.01 feet; thence N34°13'00"W, 300.00 feet; thence West, 840.24 feet; thence N34°03'33"W, 2,741.24 feet; thence S55°56'27"W, 1,520.00 feet; thence S34°03'33"E, 3,473.02 feet to a point on the lake side toe of the Flood Protection Dike; thence along said dike toe the following S12°20'58"E, 464.29 feet; thence S12°20'24"E, 1,188.15 feet; thence S8°52'14"E, 579.75 feet; thence S13°46'57"E, 1,006.01 feet; thence S11°44'00"E, 257.19 feet; thence S6°32'02"W, 638.71 feet; thence S7°05'41"W, 610.75 feet; thence S1°45'14"W, 470.13 feet; thence S21°37'41"W, 1,080.05 feet; thence S0°11'45"E, 385.03 feet; thence S38°36'25"E, 182.45 feet; thence N78°58'06"E, 319.44 feet; thence N65°33'48"E, 346.02 feet; thence N89°10'56"E, 319.20 feet; thence N64°57'25"E, 565.62 feet; thence N62°46'09"E, 777.30 feet; thence N71°17'43"E, 1,303.28 feet; thence S34°03'33"E, 1,267.81 feet; thence N55°56'27"E, 1,400.00 feet; thence N34°03'33"W, 850.57 feet; thence N71°38'04"E, 481.04 feet; thence N58°02'51"E, 662.90 feet; thence N32°31'12"E, 152.45 feet; thence N0°09'00"E, 705.18 feet; thence N56°08'00"W, 1,654.30 feet; thence leaving said dike toe N0°35'08"W, 1,983.55 feet; to the point of beginning. Containing 869.81 ± acres.

RECORD OF DECISION

RECORD NUMBER: 98-0213.041

DATE OF EXECUTION: April 6, 1998

**UTAH LAKE BOUNDARY
AGREEMENT NO: 041**

PRIMARY LAND OWNER:

CERTIFIED MAIL NO: _____

Provo City Corporation
351 West Center Street
Provo, Utah 84601

AFFECTED LAND OWNERS:

Donna I. Knudsen
3218 West Center Street
Provo, Utah 84601-3615

Moroni Frenzel
40 90 West Center Street
Provo, Utah 84601-8235

Keith Johnson
4000 West Center Street
Provo, Utah 84601-8235

Eva A. Halladay
3420 West Center Street
Provo, Utah 84601-8234

Benjamin A. & Melanie H. Allen
3600 West Center Street
Provo, Utah 84601-8234

K.B.O. Limited
1484 North 650 West
Orem, Utah 84057-2535

Thomas K. Halladay
3420 West Center Street
Provo, Utah 84601-8234



Provo City/Airport Landowners Boundary
Page 2

James L. Baxter, et. al.
c/o Reva B. Pope
487 East 2155 North
Provo, Utah 84604

L. G. & L.G. Sparks
174 West 4750 North
Provo, Utah 84604

Stanley G. Carter
1815 West 600 South
Provo, Utah 84601-3831

Winnifred H. Durrant Family Ltd. Ptshp.
2470 West 458 South
Provo, Utah 84601

Mark L and Dana L. Layton
984 South 1000 East
Orem, Utah 84097

Federick F Boone, et.al.
3285 West 550 South
Provo, Utah 84601-8239

A. Dean Powell
383 South Palisades Drive
Orem, Utah 84651-1826

Rocky Mountain Holdings, LLC
800 South 3110 West
Provo, Utah 84601

ADJACENT LANDOWNERS:

Harold E. Swensen
52 South 3110 West
Provo, Utah 84601

Provo City/Airport Landowners Boundary
Page 3

George and Nita Hinckley
285 South 3110 West
Provo, Utah 84601-3647

Utah Stake of Church of Jesus Christ of
Latter-day Saints
50 East North Temple
Salt Lake City, Utah 84150

Utah County
51 South University Avenue
Provo, Utah 84601

Utah Lake State Park
Division of Parks And Recreation
4400 West Center Street
Provo, Utah 84601

DESCRIPTION OF LANDS DIRECTLY AFFECTED:

This Record of Decision affects the sovereign land immediately adjacent to the upland property owned by Provo City and affecting all parties listed above under "AFFECTED LAND OWNERS", as and shown on the attached maps (Exhibits A1 and A2) and identified by the following parcel designation:

**Utah County Tax ID Number: 21:032:0001, 21:026:0004, 21:003:0003,
21:026:0021, 21:026:0017, 21:026:0007, 21:029:0023, 21:029:0021, 21:026:0036,
21:029:0031, 21:029:0029, 21:026:0019, 21:026:0022, 21:029:0030, 21:026:0001,
21:0026:0003, 21:033:0004, 21:033:0001, 21:033:0002, 21:026:0024, 21:026:0020,
21:033:0005, 21:034:0003, 21:029:0005, 21:034:0004, 21:034:0016, 21:034:0018,
21:035:0003, 21:034:0084, 21:035:0005, 21:035:0001, 21:035:0001, 21:035:0004.**

REQUESTED/PROPOSED ACTION

Approval of an agreement to determine the boundary between the sovereign lands of the State of Utah around Utah Lake and Provo City. The general location of the agreement is the east central shore of Utah Lake and more commonly known as the Provo Airport (see "Subject" arrow on Exhibit A1).

I. RELEVANT FACTUAL BACKGROUND

A. Description of the Adjoining Land

The Property owned by Provo City is located adjacent to Utah Lake, and within the bounds of the Airport dike and South of the Provo River (see Exhibit A2). The property is within an area which is rich in wetlands and recreation values outside of the dike. The shoreline outside of the dike (lakeward) is heavily vegetated with wetland species including tamarisk, canary reedgrass, cattail and bulrush with scattered Russian Olive and Cottonwood trees. Adjacent upland properties have traditionally been used for agriculture with some land being converted to residential and commercial properties. The presence of the Provo Airport and Utah Lake State Park have an impact upon the area, its uses and the influence of the lake. The photographs included in Exhibit D characterize the existing shoreline of the area.

B. Description of the Land and Current Uses

The Provo City property contains a mix of agriculture, commercial, residential and associated uses. The existence of the airport is a major public benefit to the citizens of Utah County and the State in general. The airport dike plays a major influence on the land and its uses. The dike was constructed with federal funds as a measure to protect Airport improvements from the influence of Utah Lake to the west and the Provo River to the north. The dike extends completely around the Airport property except for the north east corner. In addition to the dike around the airport proper, a dike was also constructed along the south side of the Provo River from Center Street. This dike extends southward to connect with the airport dike. A road is located upon the top of this dike which allows access to the airport. This dike is constructed to a similar elevation as the airport dike and protects upland property from the influence of the lake. Drainage canals have been constructed around the entire airport dike to collect ground water. Pumps have been strategically placed to pump the collected ground water in to the lake. The lake level is typically above the elevation of the interior of the dike. A road is constructed and maintained along the top of the dike. The shoreline below (lakeward) of the canal is covered with a variety of wetland plants and trees, including canary reedgrass (*Phragmites*), cattail, bulrush, tamarisk, Russian Olive and Cottonwood. The drainage canal inside of the dike is generally void of these vegetative species. The area outside of the dike is heavily used by waterfowl and upland game. It is frequented by fishermen and boaters as well.

The area between the airport dike and the Provo River is a narrow strip of land bisected by Provo Center Street which extends to Utah Lake State Park (ULSP). The ULSP is located along the shoreline of Utah Lake and northwest of the airport. A mix

of Federal and State funds were used to construct ULSP. Dikes have been constructed around the ULSP to protect it from rising lake levels. During the flooding of the early 1980's ULSP was completely inundated and considerable damage occurred. When ULSP re-opened, diking and other measures were implemented to reduce the risk of subsequent flooding. It is expected that additional flood prevention measures will be taken by the State should the threat of flooding re-occur. Because of flood control measures taken at ULSP along with airport diking and the Center Street access road/dike, it is likely that the influence of Utah Lake on adjoining property located east of the airport and ULSP has been significantly reduced, if not entirely eliminated.

C. Description of the Proposed Boundary Line

The ownership boundary is proposed to be the outer-toe of the existing dike around the airport including the newly constructed runway safety extensions on the north and south sides and the Center Street access road/dike. Additionally, the State relinquishes any claim of ownership to the private property lying below the meander line and east of the western airport dike and south of the Center Street access road/dike and north of the southern airport dike. Further, the State has no claim of ownership or dispute over ownership on lands located above the meander line within the boundary of the Provo City v. Jacobson settlement. All lands located east of the eastern airport dike are excluded from this settlement.

II. 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

Provo City/Airport Landowners Boundary
Page 6

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.

1. **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 area a variety of factors or tests employed for this purpose including the following:
 - 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. Jacobson, 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 land that may lie below the meander line and above the high water mark 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,

Provo City/Airport Landowners Boundary

Page 7

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).

3. **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.

III. 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).

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:

Provo City/Airport Landowners Boundary
Page 8

1. 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.
2. 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.

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.

IV. EVALUATION OF FACTS

A. Boundary Location.

The changing level of Utah Lake had an unrestricted influence upon lands located upland of the Provo Airport. The construction of the dike has effectively terminated the effect of Utah Lake upon these upland properties. The dike was constructed with federal funds for the purpose of protecting airport property and improvements which add considerable public benefit to Utah County and the State in general. While the dike was not intended to protect adjoining private property, it has done so. Some of the property within the vicinity of the airport dike was included in a 1947 case, Provo City v. Jacobson in which ownership below the meander line of Utah Lake was awarded to Provo City for the airport. While the State may claim ownership below the meander line on other parts of the lake, it does not dispute ownership as defined in the Jacobson Case. The ULSP and Center Street access road/dike have also influenced Utah Lake which will also affect upland (eastward) property. A combination of federal and State funds were used to construct ULSP, including improvements which will control flooding of ULSP and adjoining uplands.

The Jacobsen Case formalized prior State action by Quit Claiming State interest to Provo City to lands located within the bounds of the airport dike in the 1930's. This action coupled with the fact that the airport dike, ULSP and the Center Street access road/dike have eliminated Utah Lake from influencing the airport as well as adjoining upland properties east of the airport dike, the State relinquishes any claim to ownership of the property within the bounds of the Provo City Airport dikes and any and all adjoining private property located between the meander line and east of the western airport dike and between the Center Street access road/dike and the southern airport dike; as further identified under "AFFECTED UPLAND OWNERS". The outer-toe of the re-constructed southern and western airport dikes as they existed on February 20, 1998 and southern-toe of the Center Street access road/dike are, therefore, determined to be the permanent boundary between State Sovereign Land and the Provo City Airport and adjacent private property within this part of the lake as depicted in Exhibit B.

B. Access.

Access to the sovereign lands along the described boundary is available from the lake and from the road which traverses the entire length of the airport dike. Access from the dike road to the interior of the dike is prohibited except for designated access points. Public access is also available through designated portions of ULSP. The State does not assert public access across or upon the interior of the airport dike or upland private property under this agreement.

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 the City's ownership of land within the dike, which was previously Quit Claimed by the State; the presence of the airport dike, Utah Lake State Park and the Center Street access road/dike and upon the ownership settlement resulting from *Provo City v. Jacobson*. The possible sovereign land values are all within the land and water below this line.

Provo City/Airport Landowners Boundary
Page 10

V. CONCLUSION/ACTION

Based upon the above analysis, the Division determines that the boundary should be established between the bed of Utah Lake and the Provo Airport as set forth in this Record of Decision and as shown on the attached exhibits. The State relinquishes any claim to ownership of land within the bounds of the Provo Airport and adjoining private land lying between the meander line and the western airport dike and between the south-toe of the Center Street access road/dike south of the Provo River and the outer-toe of the southern airport dike. The State, therefore, Quit Claims any interest it may have to Provo City and adjacent private property owners listed on page one of this document under "AFFECTED LAND OWNERS" who own property within the designated boundary as depicted in Exhibit B. The Division shall execute the attached Agreement of Stipulation and Compromise between the Division of Forestry, Fire and State Lands and Provo City Corporation with the purpose of finally and fully resolving the boundary between the State's sovereign lands and the lands of Provo City Corporation. This agreement also resolves the ownership with AFFECTED LAND OWNERS as herein described by relinquishing any and all State claim of title or ownership interest with these landowners.

All private property located to the east of the eastern airport dike are excluded from this agreement.

VI. ADMINISTRATIVE APPEALS

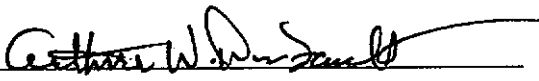
A. Parties having an interest in this action may file a petition for administrative review by the director of the Department of Natural Resources. Said petition must be in writing and shall contain:

1. the statute, rule, or 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 policy;
3. the action the petitioner feels would be consistent under the circumstances with statute, rule or policy; and
4. 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 May 8, 1998.

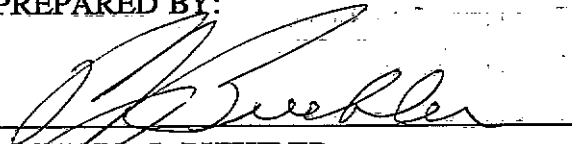
Provo City/Airport Landowners Boundary
Page 11

APPROVED BY:


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

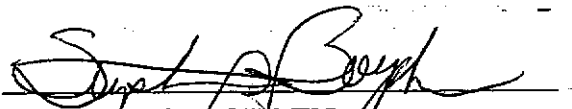
DATE: 4/6/98

PREPARED BY:


RICHARD J. BUEHLER
WASATCH FRONT AREA MANAGER

DATE: 4/6/98

REVIEWED BY:


STEPHEN G. BOYDEN
ASSISTANT ATTORNEY GENERAL

DATE: April 6, 1998

LIST OF EXHIBITS

A. MAPS

A1. GENERAL LOCATION MAP

A2. OWNERSHIP MAP

B. MAP OF PROPOSED BOUNDARY

**C. AGREEMENT OF STIPULATION &
COMPROMISE**

D. PHOTOGRAPHS

EXHIBIT A

MAPS

Utah Lake

Subject Parcel(s) Location



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

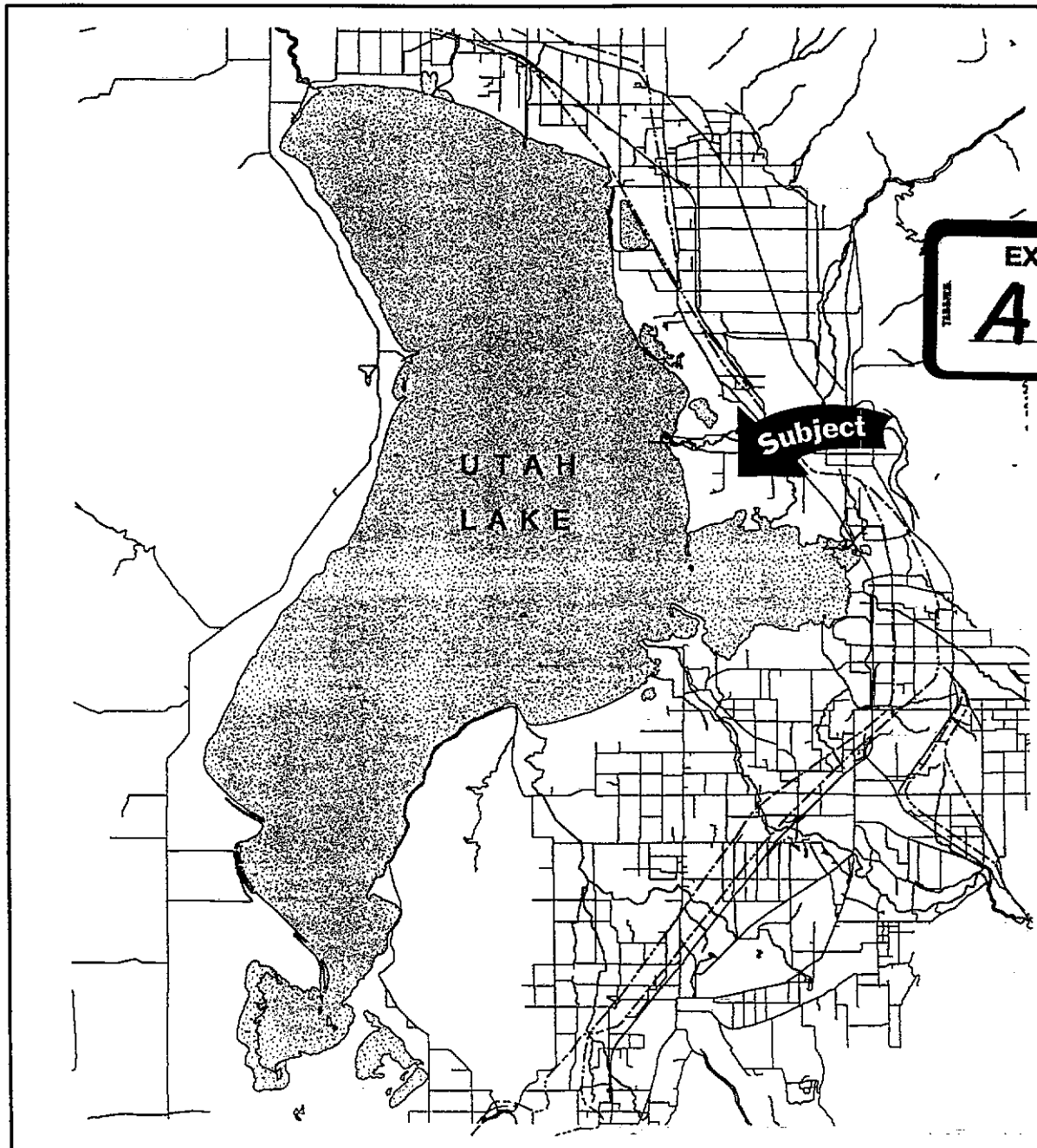






EXHIBIT
A1

-  Roads
-  Railroads
-  Water Courses
-  Water Bodies

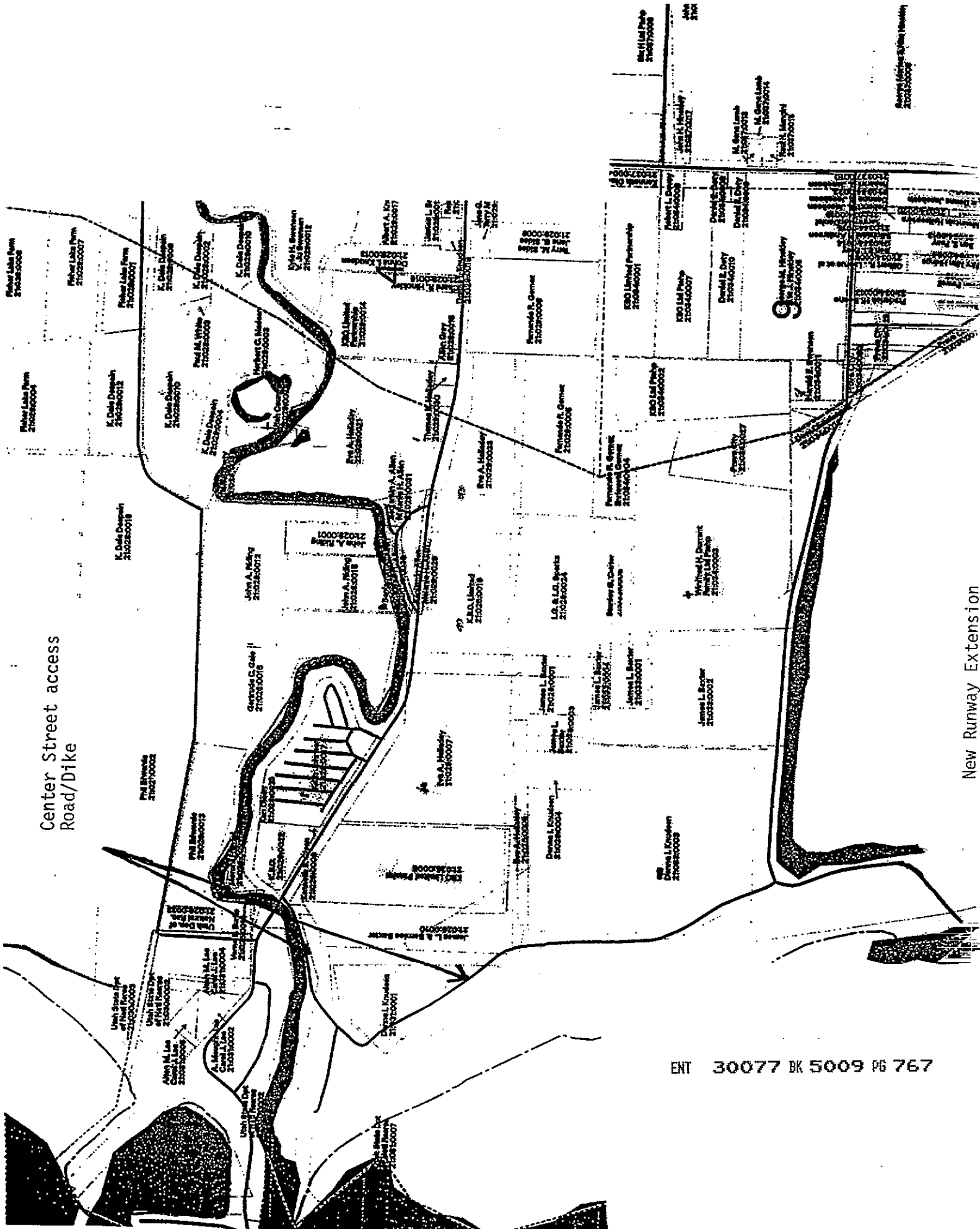


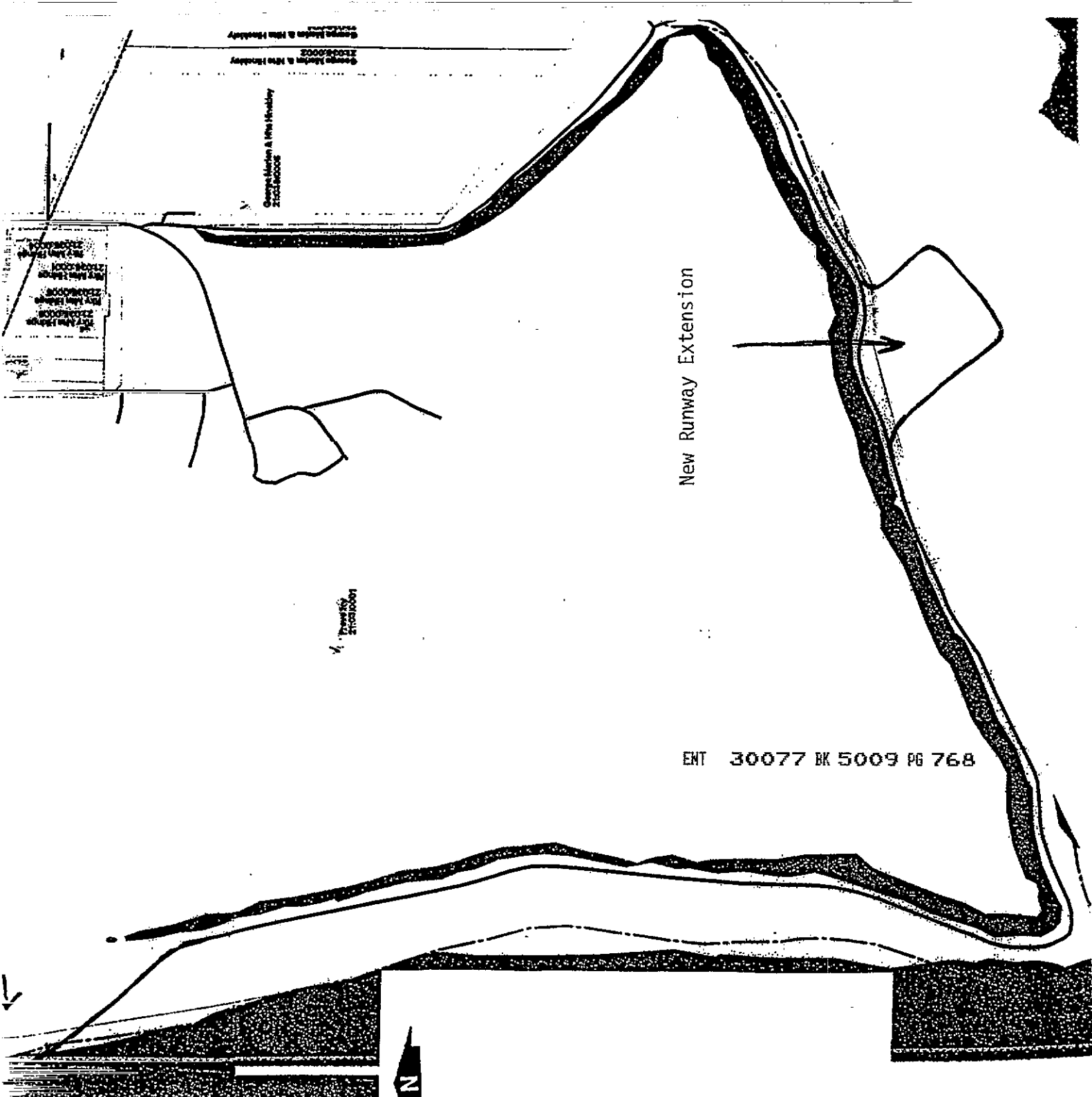
May 1997

Fold-Out









Center Street access
Road/Dike





ENT 30077 BK 5009 PG 768

Legend

-  Roads
-  Property Boundaries
-  Railroads
-  Meander Line
-  Section Lines
-  Compromise Elev. Line

 Water
Lake elev. = 4487 ft.

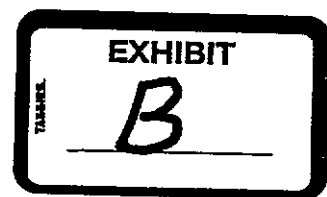
EXHIBIT B
PROPOSED BOUNDARY

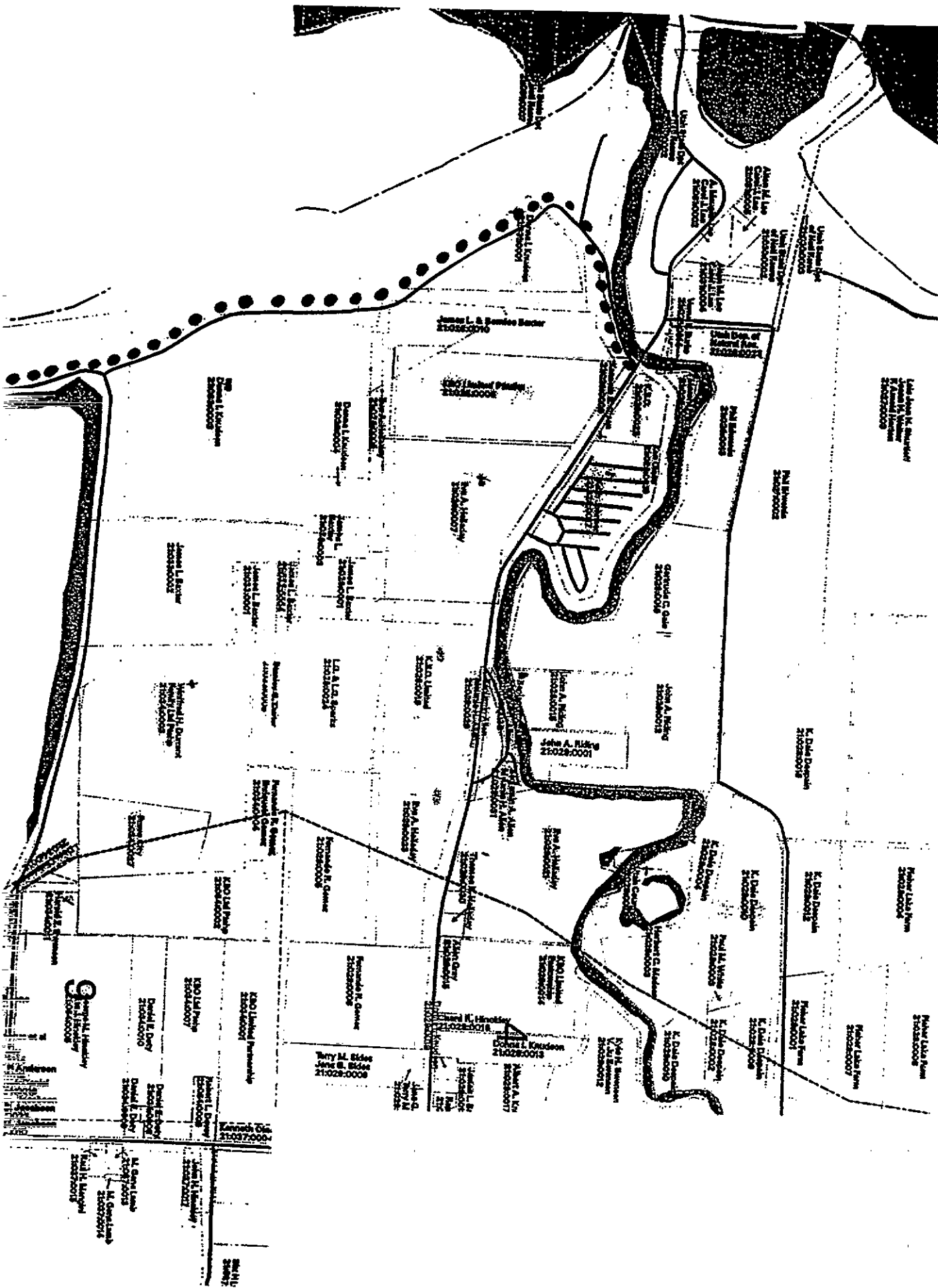
ENT 30077 BK 5009 PG ~~203~~
770

EXHIBIT A









MAPS

Fold-Out





Legend

-  Roads
-  Property Boundaries
-  Railroads
-  Meander Line
-  Section Lines
-  Compromise Elev. Line
-  Water
Lake elev. = 4487 ft.
-  Proposed Boundary

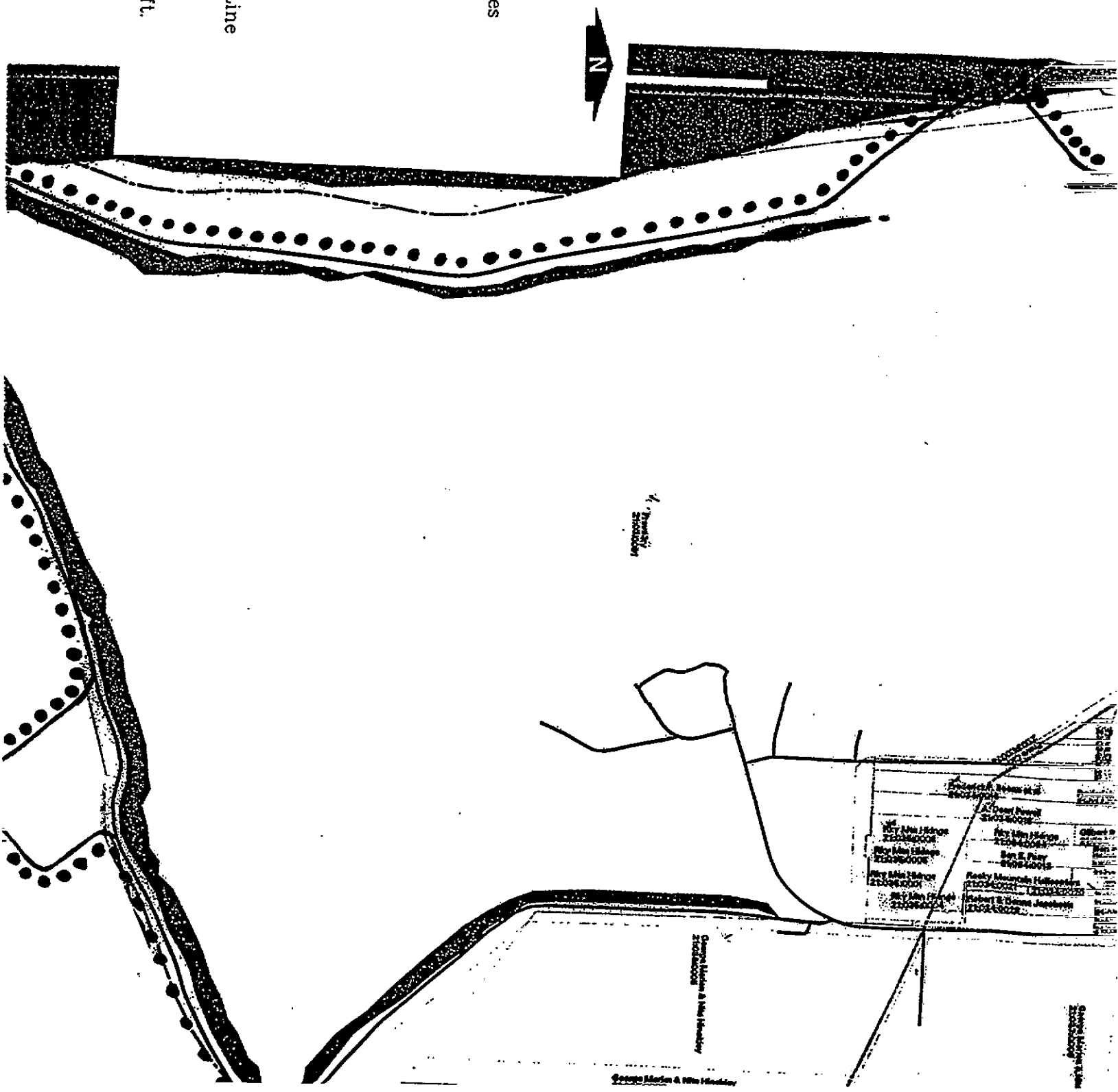


EXHIBIT C

AGREEMENT OF STIPULATION AND COMPROMISE

DRAFT

DRAFT

ENT 30077 BK 5009 PG 774

AGREEMENT

OF

STIPULATION AND COMPROMISE

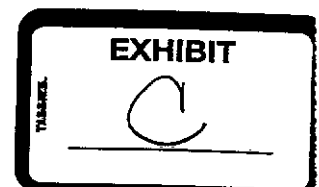
REGARDING UTAH LAKE BOUNDARY

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 CORPORATION, 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:

<u>PARCEL</u>	<u>OWNER</u>	<u>INTEREST</u>	<u>SOURCE/DATE</u>
TAX ID # 21:032:0001	PROVO CITY CORPORATION	[INFORMATION TO BE PROVIDED BY THE UPLAND LANDOWNER]	

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. 041, 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 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 northward of the outer toe of the airport dike, as it existed on February 20, 1998, as described on Exhibit 1 attached hereto and as shown on Exhibit B to the attached Record of Decision No. 041 (Exhibit 2), 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 lakeward of the outer toe of the western airport dike and southern airport dike, as it existed on February 20, 1998, as described on Exhibit 1 hereto and as shown on Exhibit B to the attached Record of Decision No. 041 (Exhibit 2), subject to the limitations and reservations as set forth in this Agreement.

3. The lands released and compromised by PROV0 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. Access to the sovereign lands along the described boundary is available from the lake and from the road which traverses the entire length of the airport dike. Access from the dike road to the interior of the dike is prohibited except for designated access points.

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 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.

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 Salt
Lake.

UPLAND LANDOWNER:

PROVO CITY CORPORATION

BY

STATE OF UTAH)

ss.

COUNTY OF _____)

On this _____ day of _____, 1998, 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/she executed the same on behalf of PROVO CITY CORPORATION.

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

**PROVO CITY AIRPORT BOUNDARY
LEGAL DESCRIPTION**

(To be provided by the Provo City Engineers Office)

EXHIBIT D
PHOTOGRAPHS



East side of the Provo Airport looking south, the dike/road extends southward from the bend in the paved road.



West airport dike looking southward, the ground-water collection canal is located on the inward side of the dike



Dike and inward canal located on the southwest corner of the airport property.



Wetland vegetation on the outer side of the Airport dike. The outer-toe of the dike is the proposed boundary.



Provo Bay with wetland vegetation outside of the airport dike, photo taken from the south dike looking eastward. The proposed boundary is the outer-toe of the dike.



Outer side of the south airport dike looking northeast. The photo was taken from the dike on the recently completed southern runway extension.