



# Staff Report for Administrative Approval

Weber County Planning Division

## Synopsis

### Application Information

**Application Request:** Consideration and action to approve an alternative access that would serve four residential lots.

**Agenda Date:** Wednesday, April 15, 2020

**Applicant:** Jeff Butler, Owner

**File Number:** AAE 2020-01

### Property Information

**Approximate Address:** 2843 S 4700 W, Ogden

**Project Area:** 5.1 acres

**Zoning:** Agricultural Zone (A-1)

**Existing Land Use:** Agriculture/Residential

**Proposed Land Use:** Residential

**Parcel ID:** 15-086-0031, 15-086-0030

**Township, Range, Section:** T6N, R2W, Section 32 NW

### Adjacent Land Use

<b>North:</b> Agricultural/Residential	<b>South:</b> Agricultural
<b>East:</b> Residential	<b>West:</b> Agricultural

### Staff Information

**Report Presenter:** Scott Perkes  
sperkes@co.weber.ut.us  
801-399-8772

**Report Reviewer:** SB

## Applicable Land Use Codes

- Title 101 (General Provisions) Section 7 (Definitions)
- Title 102 (Administration) Chapter 1 (General Provisions) Section 2 (Planning Director Authority)
- Title 104 (Zones) Chapter 5 (Agricultural (A-1) Zone)
- Title 106 (Subdivisions) Chapters 1-8 as applicable
- Title 108 (Standards) Chapter 7 (Supplementary and Qualifying Regulations) Section 29 (Flag lot access strip, private right-of-way, and access easement standards)
- Title 108 (Standards) Chapter 7 (Supplementary and Qualifying Regulations) Section 31 (Access to a lot/parcel using a private right-of-way or access easement)

## Background and Summary

The applicant is requesting approval to create a private access road that will provide access to one existing and three future one-acre residential lots. If this application for an alternative access by private right-of-way is approved, the owner will apply for a four-lot subdivision.

While a minimum of a 66-foot wide public right-of-way is preferred to provide access to all residential development, the alternative access option was created as a means for landowners to provide access over, and across areas that restrict the construction of a standard public road. Alternative access applications should be approved as long as the design standards can be implemented during the subdivision process, and the application meets the criteria in LUC §108-7-31(1)(c) which states:

*Based on substantial evidence, it shall be shown that it is infeasible or impractical to extend a street to serve such lot/parcel. Financial adversity shall not be considered; however, circumstances that may support approval of a private right-of-way/access easement as access to a lot/parcel may include but not be limited to unusual soil, topographic, or property boundary conditions.*

After several meetings with Weber County Staff, it has been determined that at this time it is not feasible or practical to require the owner to construct a 66-foot wide public right-of-way due to a few reasons as listed below:

- 1) The Butlers do not have enough frontage on 4700 W Street due to Utah Power and Light being unresponsive to requests to entertain a land acquisition, land swap, or right-of-way dedication agreement that could allow the Butlers to gain the required frontage.
- 2) The proposed access easement would only be 300' south of the existing 2800 S Street. Traditionally, block separation of 500' minimum is desired. To prevent a jog in east/west connectivity, it may be preferred to allow 2800 S Street to continue directly westward to the north of the subject property.

However as a condition of alternative access exemption approval, staff recommends the following:

- 1) The applicant shall provide written correspondence from Utah Power and Light indicating that Utah Power and Light are unwilling to negotiate a land purchase, land swap, or right-of-way dedication agreement needed to provide the necessary frontage along 4700 S Street to extend a traditional 66-foot wide public right-of-way.

However, should Utah Power and Light indicate that they ARE willing to negotiating a land acquisition, land swap, or right-of-way dedication agreement, the applicant must pursue an agreement that will result in the acquisition or dedication of sufficient frontage along 4700 S Street to extend a 66-foot wide public right-of-way through the proposed future subdivision. This right-of-way will need to allow enough separation to maintain at least a 20-foot side-yard setback with the existing residence and storage structure on the property (a 20-foot side setback with the existing residence assumes that the residence's frontage remains along 4700 S Street, with access being provided via a private access easement along the southern side yard).

If negotiations are unsuccessful, it will be assumed that the Butlers withdrew on their own accord unless documented proof is submitted to the contrary within 90 days of the discontinued negotiations. In the event the Butlers submit proof that Utah Power and Light withdrew from the negotiations on their own accord prior to reaching a mutually beneficial agreement, then the Butlers may proceed with the installation of a private access easement/roadway to provide access to the four proposed residential lots under an approved alternative access exemption. However, if the Butlers withdraw on their own accord from said negotiations, then a conditionally approved alternative access exemption will become null and void.

Should this alternative access exemption be approved, and based on the County's desire to ensure that all development on the subject property (existing and future) can meet setback requirements from a future public roadway, the County may require the applicant to dedicate a full 66-foot right-of-way through the proposed future subdivision (with exception to the width currently encumbered by property held by Utah Power and Light). This dedication would be exacted by the County at the time of subdivision. However, in this scenario an approved alternative access easement and private roadway may continue to be used to provide access to the four future lots until such a time as the County desires to convert the alternative access easement into a public road using said dedicated right-of-way. See the right-of-way dedication depicted on the concept plan provided as **Exhibit B**.

## Analysis

Following approval from applicable review agencies and after a thorough review by the Planning Division, staff feels that a private right-of-way that will provide access to one existing and three future residential lots is an appropriate use of the alternative access option.

If this proposal is approved, the applicant will be required to ensure that the following design standards are met for the private right of way, as outlined in LUC §108-7-29(1):

*(1) Design standards.*

- a. The flag lot access strip, private right-of-way, or access easement shall be designed and built to a standard approved by the county engineer. The improved road surface does not require hard-surface paving, i.e., concrete or asphalt, but the improvements shall meet the following standards.
- b. The flag lot access strip shall have a minimum width of 20 feet and a maximum width of 30 feet. A private right-of-way or access easement shall have a minimum width of 16 feet and a maximum width of 50 feet. The private right-of-way and access easement width standards may be modified by the Weber Fire District in conjunction with the county engineer on a case-by-case basis.

- c. The improved travel surface of the flag lot access strip, private right-of-way, or access easement shall be a minimum of 12 feet wide if the access serves fewer than five dwellings, and a minimum of 20 feet wide if the access serves five or more dwellings.
- d. The improved road surface of the flag lot access strip, private right-of-way, or access easement shall be capable of supporting a minimum weight of 75,000 pounds.
- e. A turnout measuring at least ten feet by 40 feet shall be provided adjacent to the traveled surface of the flag lot access strip, private right-of-way, or access easement (private access) if the private access is greater than 200 feet in length. The turnout shall be located at the approximate midpoint of the private access if its length is between 200 and 800 feet. If the private access length is greater than 800 feet, turnouts shall be provided at least every 400 feet thereafter. These standards may be modified by the Weber Fire District in conjunction with the county engineer on a case-by-case basis.
- f. The flag lot access strip, private right-of-way, or access easement shall have a maximum grade of ten percent. This standard may be modified by the Weber Fire District in conjunction with the county engineer on a case-by-case basis; however, the maximum grade shall not exceed 15 percent.
- g. The flag lot access strip, private right-of-way, or access easement shall have a minimum vertical clearance of 14.5 feet.
- h. No buildings, structures, or parking areas are allowed within the flag lot access strip, private right-of-way, or access easement.
- i. New bridges, including decking and culverts, shall be capable of supporting a minimum weight of 75,000 pounds. For existing bridges, a currently certified engineer statement of load-bearing capabilities must be submitted to the county engineer and the Weber Fire District for review.
- j. The flag lot access strip, private right-of-way, or access easement shall have a minimum inside travel-way radius of 26 feet, outside travel-way radius of 45 feet, and outside clear zone radius of 50 feet on all curves, particularly switchbacks. The width of the access may need to be increased to accommodate these standards.
- k. Water and sewer lines located within the flag lot access strip, private right-of-way, or access easement require written notification from the agencies providing such services.

*(2) Safety standards.*

- a. The lot address shall be displayed in a prominently visible location at the street entrance to the flag lot access strip, private right-of-way, or access easement.
- b. A turnaround area shall be provided at the home location to allow firefighting equipment to turn around. This area shall be a year-round surface capable of supporting fire equipment (a minimum inside turning radius of 30 feet and an outside turning radius of not less than 45 feet).
- c. A fire hydrant or other suppression method may be required by the fire district.
- d. A site plan showing the location of the home, any proposed access roads, and driveways, along with the location of and distance to the nearest fire hydrant (if available) shall be submitted to the fire district for review.
- e. Conditions may be imposed by the land use authority to ensure safety, accessibility, privacy, etc., to maintain or improve the general welfare of the immediate area.

*(3) Lot/parcel standards.*

- a. The lot/parcel shall meet all minimum yard and area requirements of the zone in which it is located.
- b. Buildings shall be set back a minimum of 30 feet from the end of the flag lot access strip, private right-of-way, or access easement.
- c. The lot/parcel shall meet the minimum lot width requirement for the zone in which the lot is located at the end of the access strip.
- d. The lot/parcel shall have a flag lot access strip, private right-of-way, or access easement constructed in conformance with subsections (1), (2), and (3) of this section prior to the issuance of land use permits or building permits.

If approved, compliance with the design, safety standards, and lot/parcel standards has been added as a condition of approval to ensure the standards are met.

In addition to demonstrating compliance with the applicable design and safety standards, the applicant will also be required to file an agreement with the County, in which the applicant agrees to pay a proportionate amount of the costs associated with developing a street if, at any time in the future, the county deems it necessary to have the landowner replace the private right of way/easement with a street that would serve as a required access to additional lots, as outlined in LUC §108-7-31(2)(b).

### Staff Recommendation

Staff recommends approval of the application to create a private right-of-way that will provide access to on existing and three future one-acre residential lots based on the following conditions:

1. All County reviewing agency requirements shall be met.
2. The private road shall comply with the design, safety, and parcel/lot standards of the alternative access.
3. The applicant shall provide written correspondence from Utah Power and Light indicating that Utah Power and Light are unwilling to negotiate a land purchase, land swap, or right-of-way dedication agreement needed to provide the necessary frontage along 4700 S Street to extend a traditional 66-foot wide public right-of-way.

However, should Utah Power and Light indicate that they ARE willing to negotiating a land acquisition, land swap, or right-of-way dedication agreement, the applicant must pursue an agreement that will result in the acquisition or dedication of sufficient frontage along 4700 S Street to extend a 66-foot wide public right-of-way through the proposed future subdivision. This right-of-way will need to allow enough seperation to maintain at least a 20-foot side-yard setback with the existing residence and storage structure on the property (a 20-foot side setback with the existing residence assumes that the residence’s frontage remains along 4700 S Street, with access being provided via a private access easement along the southern side yard).

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4. The applicant will file an agreement with the County, in which the applicant agrees to pay a proportionate amount of the costs associated with developing a street if, at any time in the future, the county deems it necessary to have the landowner replace the private right of way/easement with a street that would serve as a required access to additional lots, as outlined in LUC §108-7-31(2)(b).

Approval is based on the following finding:

1. At this time, it is not feasible or practical to extend a county right-of-way due to the access strip not having sufficient width and a resultant block separation that would be less than 500 feet.

### Administrative Approval

Administrative final approval of Bridger Butler Alternative Access to create a private road that would serve as an access to one existing and three future residential lots.

Date of Administrative Approval: \_\_\_\_\_

\_\_\_\_\_  
Rick Grover  
Planning Director

### Exhibits

- A. Application and Narrative
- B. Concept Plan

# Property Map



**Exhibit A: Application and Narrative**

<b>Weber County Alternative Access Application</b>			
Application submittals will be accepted by appointment only. (801) 399-8791, 2380 Washington Blvd. Suite 240, Ogden, UT 84401			
Date Submitted /Completed	Application Fee: <b>\$350.00</b>	Receipt Number (Office Use)	File Number (Office Use)
<b>Application Type</b>			
<input type="checkbox"/> Flag lot access strip <input checked="" type="checkbox"/> Access by Private Right of Way <input type="checkbox"/> Access at a location other than across the front lot line			
<b>Property Owner Contact Information</b>			
Name of Property Owner(s) <i>Jeff Butler</i>		Mailing Address of Property Owner(s) <i>2843 S. 4700 W. Ogden UT 84401</i>	
Phone <i>801-710-9568</i>	Fax		
Email Address (required) <i>Butlergardcare@yahoo.com</i>		Preferred Method of Written Correspondence <input type="checkbox"/> Email <input type="checkbox"/> Fax <input type="checkbox"/> Mail	
<b>Authorized Representative Contact Information</b>			
Name of Person Authorized to Represent the Property Owner(s)		Mailing Address of Authorized Person	
Phone	Fax		
Email Address (required)		Preferred Method of Written Correspondence <input type="checkbox"/> Email <input type="checkbox"/> Fax <input type="checkbox"/> Mail	
<b>Property Information</b>			
Project Name <b>Bridger Butler Subdivision</b>	Total Acreage <b>5.1 acres</b>	Current Zoning <b>A-1</b>	
Approximate Address <b>2843 S. 4700 W. Weber County</b>	Land Serial Number(s) <b>15-086-0030</b>		
Proposed Use <b>4 lot subdivision</b>			
Project Narrative <p>Requesting a private right-of-way access easement due to impractical circumstances listed below:</p> <ol style="list-style-type: none"> <li>1. Adjoining parcel owner, owned by Utah Power &amp; Light, is unwilling to negotiate boundary line adjustments or land swaps.</li> <li>2. 2800 South Street would be a more suitable option for the Weber County future road connectivity.</li> </ol>			



### Basis for Issuance of Flag lot access strip

The land use authority shall determine whether or not it is feasible or desirable to extend a street to serve a parcel(s) or lot(s) at the current time, rather than approving a flag lot.

Sec. 108-7-30. - Flag lots

- (a) Criteria to be used in determining feasibility or desirability of extending a street shall include, but not be limited to topography, boundaries, and whether or not extending a road would open an area of five acres or more in Western Weber County and ten acres or more in the Ogden Valley for development.
- (b) The lot area exclusive of the access strip shall be a minimum of three acres.
- (c) Each lot shall access a street by means of its own fee title access strip. Successive stacking of lots on the same access strip is not permitted.
- (d) No access strip shall exceed 800 feet in length.
- (e) A maximum of two flag lot access strips may be located adjacent to each other.
- (f) No flag lot shall be allowed which proposes to re-subdivide or include within it (including the access strip) any portion of an existing lot in a recorded subdivision. No subdivision shall be vacated, re-subdivided, or changed in order to meet the requirements of this section.

**Please provide information to support your request for a flag lot access strip outlining how the request meets the criteria listed above.**

### Basis for Issuance of Access by Private Right of Way

Lots/parcels which do not have frontage on a street, but which have access by a private right-of-way or access easement may, under certain circumstances, use a private right-of-way or access easement as the primary access. Approval is subject to the applicant demonstrating compliance with the following criteria and conditions:

Sec. 108-7-31. - Access to a lot/parcel using a private right-of-way or access easement;

**Criteria.**

- a. The lot/parcel is a bona fide agricultural parcel that is actively devoted to an agricultural use that is the main use; or
- b. The lot/parcel is a bona fide agricultural parcel that is actively devoted to an agricultural use that is the main use and is the subject parcel of an approved agri-tourism operation; or
- c. Based on substantial evidence, it shall be shown that it is unfeasible or impractical to extend a street to serve such lot/parcel. Financial adversity shall not be considered; however, circumstances that may support an approval of a private right-of-way/access easement as access to a lot/parcel may include but not be limited to unusual soil, topographic, or property boundary conditions.

**Conditions.**

- a. It shall be demonstrated that the agricultural parcel or other lot/parcel has appropriate and legal access due to historic use, court decree, or the execution of an easement, right-of-way, or other instrument capable of conveying or granting such right; and
- b. The landowner of record or authorized representative shall agree to pay a proportionate amount of the costs associated with developing a street if, at any time in the future, the county deems it necessary to have the landowner replace the private right-of-way/easement with a street that would serve as a required access to additional lots. The agreement shall be in the form considered appropriate and acceptable to the office of the Weber County Recorder and shall recite and explain all matters of fact, including a lot/parcel boundary description, which are necessary to make the agreement intelligible and show its successive nature.

**Please provide the following information to support your request for access to a lot/parcel using a private right-of-way or access easement:**

- Attach proof to this application that the agricultural parcel or other lot/parcel has appropriate and legal access due to historic use, court decree, or the execution of an easement, right-of-way, or other instrument capable of conveying or granting such right.
- The landowner of record or authorized representative agrees to pay a proportionate amount of the costs associated with developing a street if, at any time in the future, the County deems it necessary to have the landowner replace the private right-of-way/easement with a street that would serve as a required access to additional lots. The agreement shall be in the form considered appropriate and acceptable to the office of the Weber County Recorder and shall recite and explain all matters of fact, including a lot/parcel boundary description, which are necessary to make the agreement intelligible and show its successive nature.

**Basis for Issuance of Access to a lot/parcel at a location other than across the front lot line**

Access to lots/parcels at a location other than across the front lot line may be approved as the primary access, subject to the following criteria:

Sec. 108-7-32. - Access to a lot/parcel at a location other than across the front lot line.

- (1) The applicant demonstrates that special or unique boundary, topographic, or other physical conditions exist which would cause an undesirable or dangerous condition to be created for property access across the front lot line.
- (2) It shall be demonstrated that appropriate and legal access exists due to historic use, court decree, or the execution of an easement, right-of-way, or other instrument capable of conveying or granting such right.

**Please provide the following information to support your request for Access to a lot/parcel at a location other than across the front lot line:**

- Attach proof that appropriate and legal access exists due to historic use, court decree, or the execution of an easement, right-of-way, or other instrument capable of conveying or granting such right.
- The landowner of record or authorized representative agrees to pay a proportionate amount of the costs associated with developing a street if, at any time in the future, the County deems it necessary to have the landowner replace the private right-of-way/easement with a street that would serve as a required access to additional lots. The agreement shall be in the form considered appropriate and acceptable to the office of the Weber County Recorder and shall recite and explain all matters of fact, including a lot/parcel boundary description, which are necessary to make the agreement intelligible and show its successive nature.

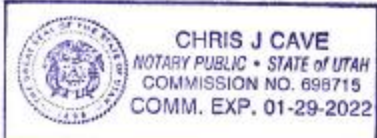
**Property Owner Affidavit**

I (We), Chris Butler Ysai Butler, depose and say that I (we) am (are) the owner(s) of the property identified in this application and that the statements herein contained, the information provided in the attached plans and other exhibits are in all respects true and correct to the best of my (our) knowledge. I (We) understand that an approval of an alternative access application does not grant a legal right to access property that I(we) currently do not own.

Chris Butler Property Owner      Ysai Butler Property Owner

Subscribed and sworn to me this 26 day of March, 2020

[Signature] Notary



**Authorized Representative Affidavit**

I (We), \_\_\_\_\_, the owner(s) of the real property described in the attached application, do authorized as my (our) representative(s), \_\_\_\_\_, to represent me (us) regarding the attached application and to appear on my (our) behalf before any administrative or legislative body in the County considering this application and to act in all respects as our agent in matters pertaining to the attached application.

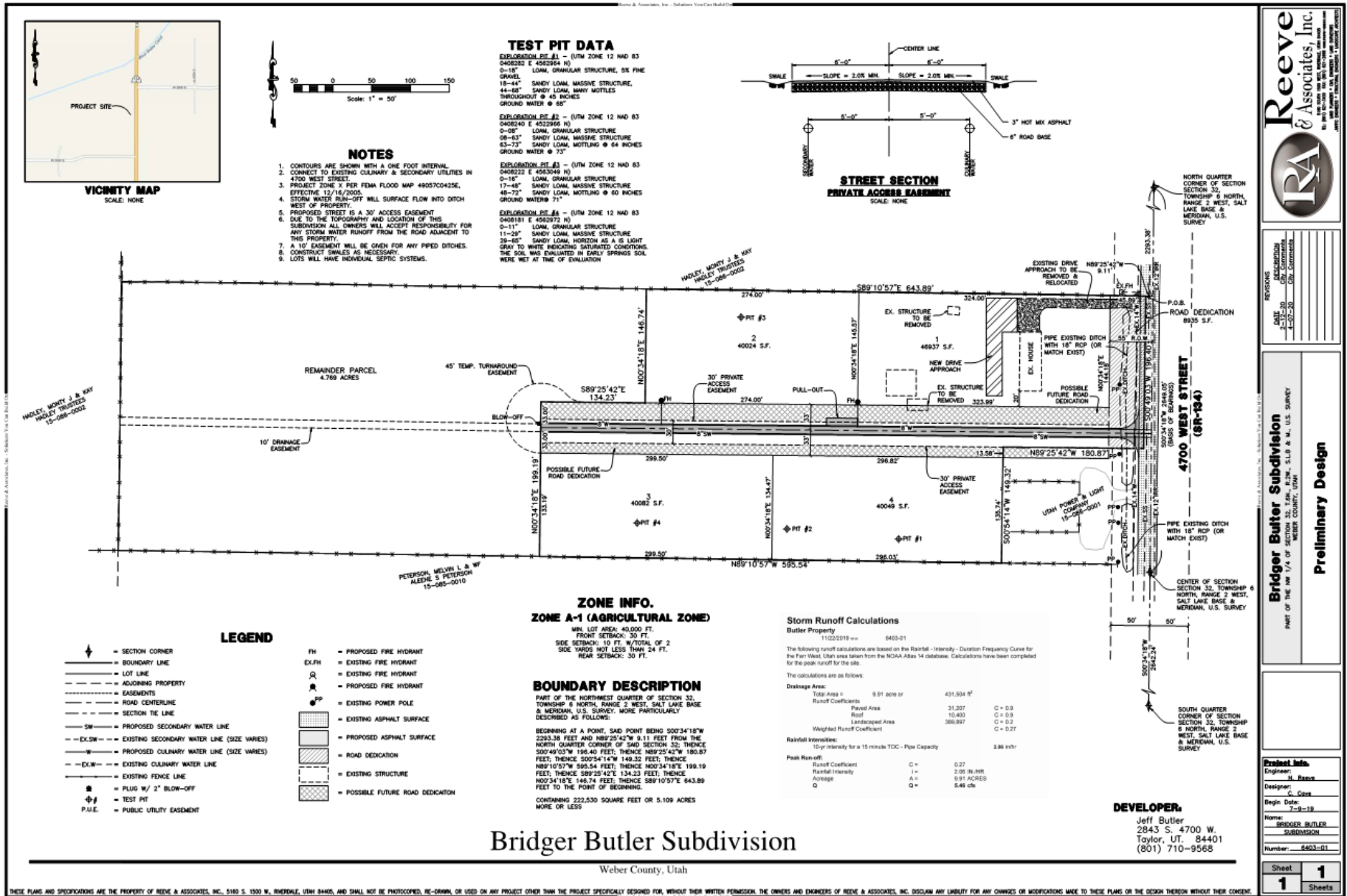
\_\_\_\_\_ Property Owner      \_\_\_\_\_ Property Owner

Dated this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, personally appeared before me \_\_\_\_\_, the signer(s) of the Representative Authorization Affidavit who duly acknowledged to me that they executed the same.

\_\_\_\_\_ Notary



# Exhibit B: Concept Plan



**Reeve & Associates, Inc.**  
 1000 N. 1000 W., STE. 200, OGDEN, UT 84403  
 TEL: 468-1111 FAX: 468-1112  
 WWW.REEVE-ASSOCIATES.COM

**IRA**

**Revealing the Hidden**  
 DATE: 11-22-19  
 CITY: OGDEN  
 CO: COCONINO

**Bridger Butler Subdivision**  
 PART OF THE NW 1/4 OF SECTION 32, T6N, R2W, S1B & 4L, U.S. SURVEY  
 WEBER COUNTY, UTAH

**Preliminary Design**

**Project Info.**  
 Engineer: **A. Reese**  
 Designer: **C. Cass**  
 Begin Date: **7-28-19**  
 Name: **BRIDGER BUTLER SUBDIVISION**  
 Number: **4602-01**

Sheet **1** of **1** Sheets