



Weber County Planning Division
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2380 Washington Blvd., Suite 240
Ogden, Utah 84401-1473
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Weber County Board of Adjustment
NOTICE OF DECISION

April 17, 2020

Robert Bracken
4243 N Powder Mtn Road
Eden, UT 84310

Case No.: BOA 02-2020

You are hereby notified that your request for 25 foot variance to the 75 foot stream corridor setback was heard by the Weber County Board of Adjustment in a public hearing held on April 16, 2020.

The Board of Adjustment has given consideration to your appeal relative to the merit, circumstances, and conditions affecting said property and hereby renders the following decision:

Your request to the Board of Adjustment was granted based on the staff recommendation and findings listed in the staff report (attached).

Best,
Steve Burton
Weber County Planning
801-399-8766

The approval of a Board of Adjustment Case is issued to the owner of the land as signed on the application and is valid for a period of time not longer than 18 months from the date of the Board decision or until an ordinance amendment changes the conditions upon which the decision was made. The issuance of a building permit for development stated in the Board of Adjustment case application constitutes full use of the variance or other benefit applied for.



Staff Report to the Weber County Board of Adjustment

Weber County Planning Division

Synopsis

Application Information

Application Request: Consideration and action on a request for a 25-foot variance to the 75 foot stream corridor setback.

Agenda Date: Thursday, April 16, 2020

Applicant: Robert Bracken

File Number: BOA 2020-02

Property Information

Approximate Address: 4243 N Powder Mtn Rd

Project Area: 1.07 acres

Zoning: Forest Residential (FR-3)

Existing Land Use: Residential

Proposed Land Use: Residential

Parcel ID: 22-209-0008

Township, Range, Section: T7N, R1E, Section 22

Adjacent Land Use

North:	Residential	South:	Residential
East:	Residential/ Open Space	West:	Residential

Staff Information

Report Presenter: Steve Burton
sburton@webercountyutah.gov
801-399-8766

Report Reviewer: RG

Applicable Codes

- Title 102 (Administration) Chapter 3 (Board of Adjustment)
- Title 104 (Zones) Chapter 17 (Forest Residential (FR-3 Zone)
- Title 104 (Zones) Chapter 28 (Ogden Valley Sensitive Lands) Section 2 (Stream Corridors, Wetlands, and Shorelines)

Background

The applicant is requesting a 25-foot variance to the required 75-foot stream corridor setback for the placement of a single-family dwelling. The parcel on which the variance is sought is Lot 8 of Hidden Oaks at Wolf Creek Subdivision. This subdivision was recorded in September of 2003, and showed a 50 ft stream corridor rather than a 75 ft corridor from the

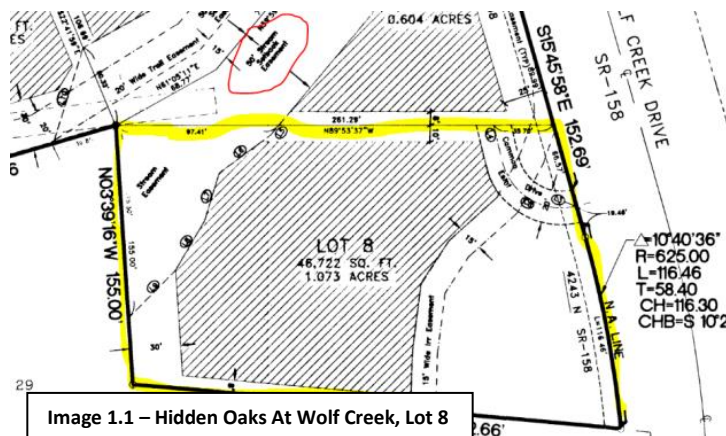


Image 1.1 – Hidden Oaks At Wolf Creek, Lot 8

high-water mark. Upon review of the applicant's building permit, the county has determined this stream to be a 'year-round stream' requiring a 75 ft setback. There is also a 15 ft wide irrigation easement running north/south near the middle of the property. The applicant has cited this irrigation easement as a site specific hardship, restricting where he can place a home on this lot.

The Land Use Code (Sec. 104-28-2(b)), states the following regarding stream corridor setbacks:

No structure, accessory structure, road, or parking area shall be built within the required setback from a river or stream as measured from the high water mark of the

river or stream. The high water mark shall be determined by the Weber County engineer. The areas within the setback shall be maintained in a manner that protects the quality of water in the river or stream and the habitat of native vegetation and wildlife along the river or stream...

b. Structures, accessory structures, roads, or parking areas shall not be developed or located within 75 feet on both sides of year-round streams, as determined from the high water mark of the stream.

The application provided by the applicant is included in this report as Exhibit A. The Hidden Oaks at Wolf Creek Subdivision plat is included as Exhibit B. The site plan submitted by the applicant is included as Exhibit C.

The following is staff's analysis of this request reviewed against the variance criteria outlined in LUC §102-3-4.

Analysis

LUC §102-3-4 states that one of the duties and powers of the Board of Adjustment is to hear and decide variances from the requirements of the Weber County Land Use Code. In order for a variance to be granted it must be shown that all of the following criteria have been met:

- a. *Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Land Use Code.*
 1. *In determining whether or not literal enforcement of the land use code would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship unless the alleged hardship is located on or associated with the property for which the variance is sought, and comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.*
 2. *In determining whether or not literal enforcement of the land use code would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.*
- b. *There are special circumstances attached to the property that do not generally apply to other properties in the same zone.*
 1. *In determining whether or not there are special circumstances attached to the property, the appeal authority may find that special circumstances exist only if the special circumstances relate to the hardship complained of, and deprive the property of privileges granted to other properties in the same zone.*
- c. *Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.*
- d. *The variance will not substantially affect the general plan and will not be contrary to the public interest.*
- e. *The spirit of the land use ordinance is observed and substantial justice done.*

Staff feels that a hardship exists on this property, including the Wolf Creek Stream and the Irrigation easement shown on the subdivision plat. In reviewing the other lots in this subdivision, they are not impacted by the 15 ft irrigation easement as much as this lot. Staff does not feel that the hardship is self-imposed or economic, as irrigation easements are necessary to ensure proper irrigation services to the surrounding area.

The proposed dwelling is a single story, 2,502 square foot living area with an 869 square foot garage, a total footprint area of 3,371 square feet. The other lots within this subdivision have a similar home and garage footprint. Staff feels that the granting of the proposed variance would allow the owner to enjoy the residential property right possessed by other properties in the same zone and neighborhood.

The proposed use is permitted within the existing zoning and the proposed dwelling will remain 50 feet outside of the stream, providing some protection for the stream. Due to these reasons, staff feels that granting the variance would not go against the goals and recommendations of the general plan. After reviewing the proposal, the Weber County Engineering has no concerns with the requested variance.

Staff Recommendation

Staff recommends approval of a 25-foot variance to the 75-foot stream corridor setback, as stated in the application. This recommendation is based on the following findings.

1. The applicant has demonstrated that the proposal meets the variance criteria outlined in LUC §102-3-4

Weber County Board of Adjustment Application

Application submittals will be accepted by appointment only. (801) 399-8791. 2380 Washington Blvd. Suite 240, Ogden, UT 84401

Date Submitted / Completed	Fees (Office Use)	Receipt Number (Office Use)	File Number (Office Use)
Property Owner Contact Information			
Name of Property Owner(s) Robert, Tammy Bracken		Mailing Address of Property Owner(s) 2193 n. 500 e. North Ogden, ut 84414	
Phone 801-388-5015	Fax		
Email Address Brackenplace@msn.com		Preferred Method of Written Correspondence <input checked="" type="checkbox"/> Email <input type="checkbox"/> Fax <input type="checkbox"/> Mail	
Authorized Representative Contact Information			
Name of Person Authorized to Represent the Property Owner(s) Self		Mailing Address of Authorized Person	
Phone	Fax		
Email Address		Preferred Method of Written Correspondence <input type="checkbox"/> Email <input type="checkbox"/> Fax <input type="checkbox"/> Mail	
Appeal Request			
<input checked="" type="checkbox"/> A variance request: ___ Lot area ___ Yard setback ___ Frontage width Other: <u>Stream corridor set back</u>			
<input type="checkbox"/> An Interpretation of the Zoning Ordinance <input type="checkbox"/> An interpretation of the Zoning Map <input type="checkbox"/> A hearing to decide appeal where it is alleged by appellant that there is an error in any order, requirement, decision or refusal in enforcing of the Zoning Ordinance <input checked="" type="checkbox"/> Other: <u>Change stream variance from 75' to 50'</u>			
Property Information			
Approximate Address 4243 north Powder Mtn Rd Eden, Utah 84310		Land Serial Number(s) 222090008	
Current Zoning Residential			
Existing Measurements		Required Measurements (Office Use)	
Lot Area 46,686	Lot Frontage/Width 183	Lot Size (Office Use)	Lot Frontage/Width (Office Use)
Front Yard Setback 25'	Rear Yard Setback 30'	Front Yard Setback (Office Use)	Rear Yard Setback (Office Use)
Side Yard Setback 8'	Side Yard Setback 10'	Side Yard Setback (Office Use)	Side Yard Setback (Office Use)

Applicant Narrative

Please explain your request.

To get a variance on the river setback from 75' back to 50', which is what it was understood to be when we purchased the lot, this way we can build the house between river and irrigation setback without disrupting the more mature trees and shrubs

Variance Request

The Board of Adjustment may grant a variance only if the following five criteria are met. Please explain how this variance request meets the following five criteria:

1. Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Zoning Ordinance.
 - a. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship unless the alleged hardship is located on or associated with the property for which the variance is sought, and comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.
 - b. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.

By following the ordinance we have to remove more of the natural look and vegetation, which is in direct conflict with the bylaws that request it to be left as natural as possible.

Variance Request (continued...)

2. There are special circumstances attached to the property that do not generally apply to the other properties in the same zone.

a. In determining whether there are special circumstances attached to the property, the appeal authority may find that special circumstances exist only if the special circumstances relate to the hardship complained of, and deprive the property of privileges granted to other properties in the same zone.

Please describe the special circumstances attached to the property that do not generally apply to the other properties in the same zone:

We have both a river and irrigation setback with the buildable area between them. The irrigation shows arching away from the house, but actually arches towards the house. our lot is 20 feet above the high water mark of the river, higher than any of our neighbors. The plat is correct but the irrigation is not actual and does not allow us to place the house where it is shown on the plat. To make the house fit would require us to move a lot of the mature trees and large boulders, plus making a larger foundation for the house.

3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.

If we can be granted the variance, we will be able to keep the grounds more natural and abide to the bylaws of the community. Other property owners in the subdivision are within the 50' variance and are much lower than our lot. So granting us the 25' variance brings us more in line with them.

Variance Request (continued...)

4. The variance will not substantially affect the general plan and will not be contrary to the public interest.

If we can be granted the variance we will be able to keep the grounds more natural and abide to the bylaws of the community.

5. The spirit of the land use ordinance is observed and substantial justice done.

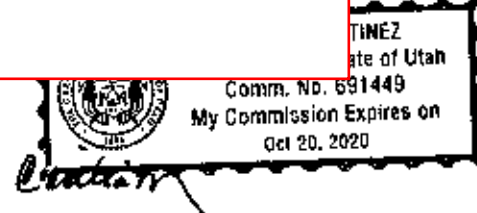
We have a lot that is 20 feet above the high water mark of the river, it has barren spots on it that if allowed the 25 variance would prevent us from taking down more trees.

Property Owner Affidavit

I (We), Robert & Tammy Bracken 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.



Subscribed and sworn to me this 25 day of March, 2020



(Notary)

Authorized Representative Affidavit

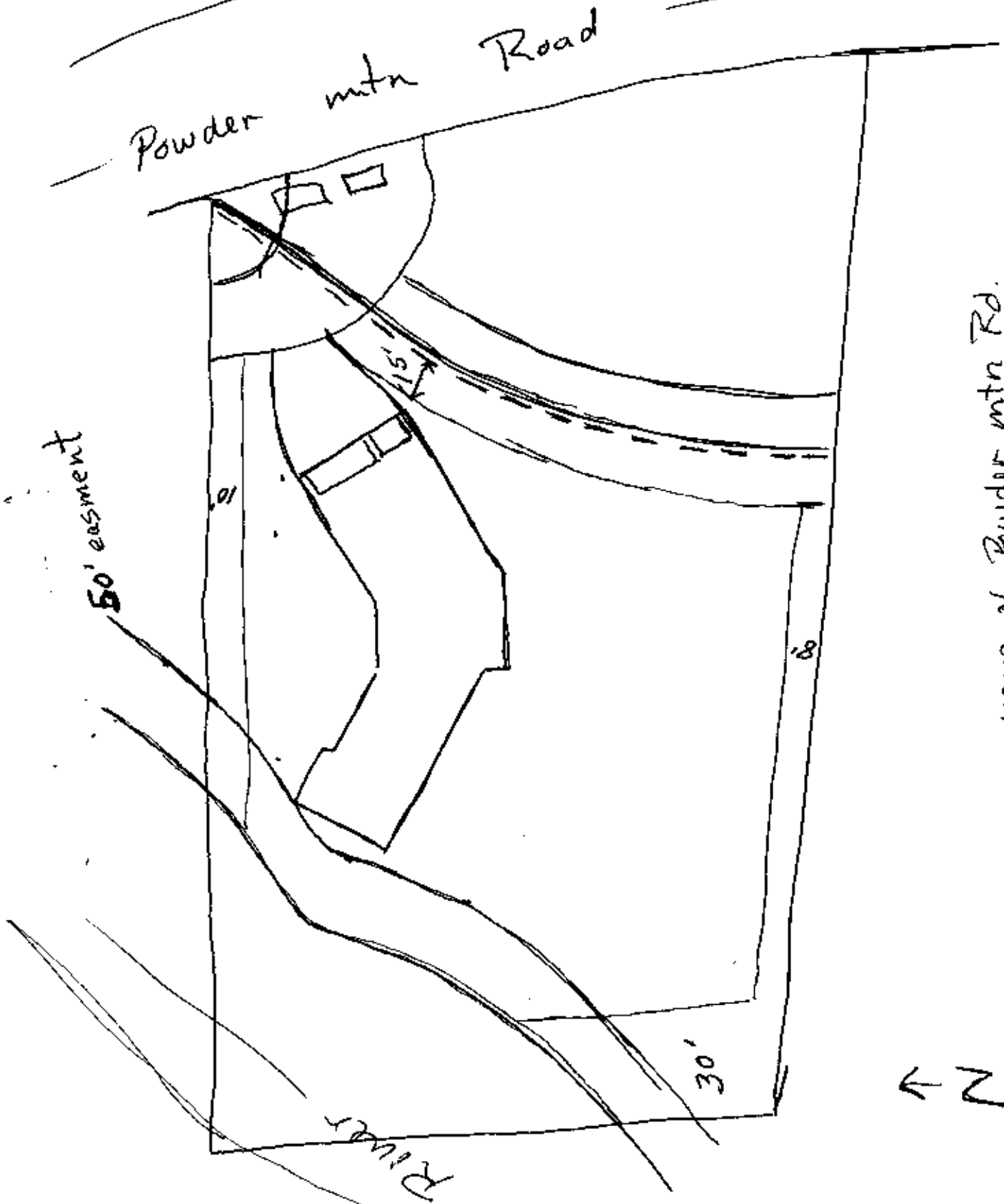
I (We), _____, the owner(s) of the real property described in the attached application, do authorized as my (our) representative(s), _____, to represent me (us) regarding the attached application and to appear on my (our) behalf before any administrative or legislative body in the County considering 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)



Bracken 4243 N. Powder mtn Rd.

Powder mtn Road

50' easement

10'

15'

House

60'

30'

River

Bracken 4243 N. Powder mtn Rd.

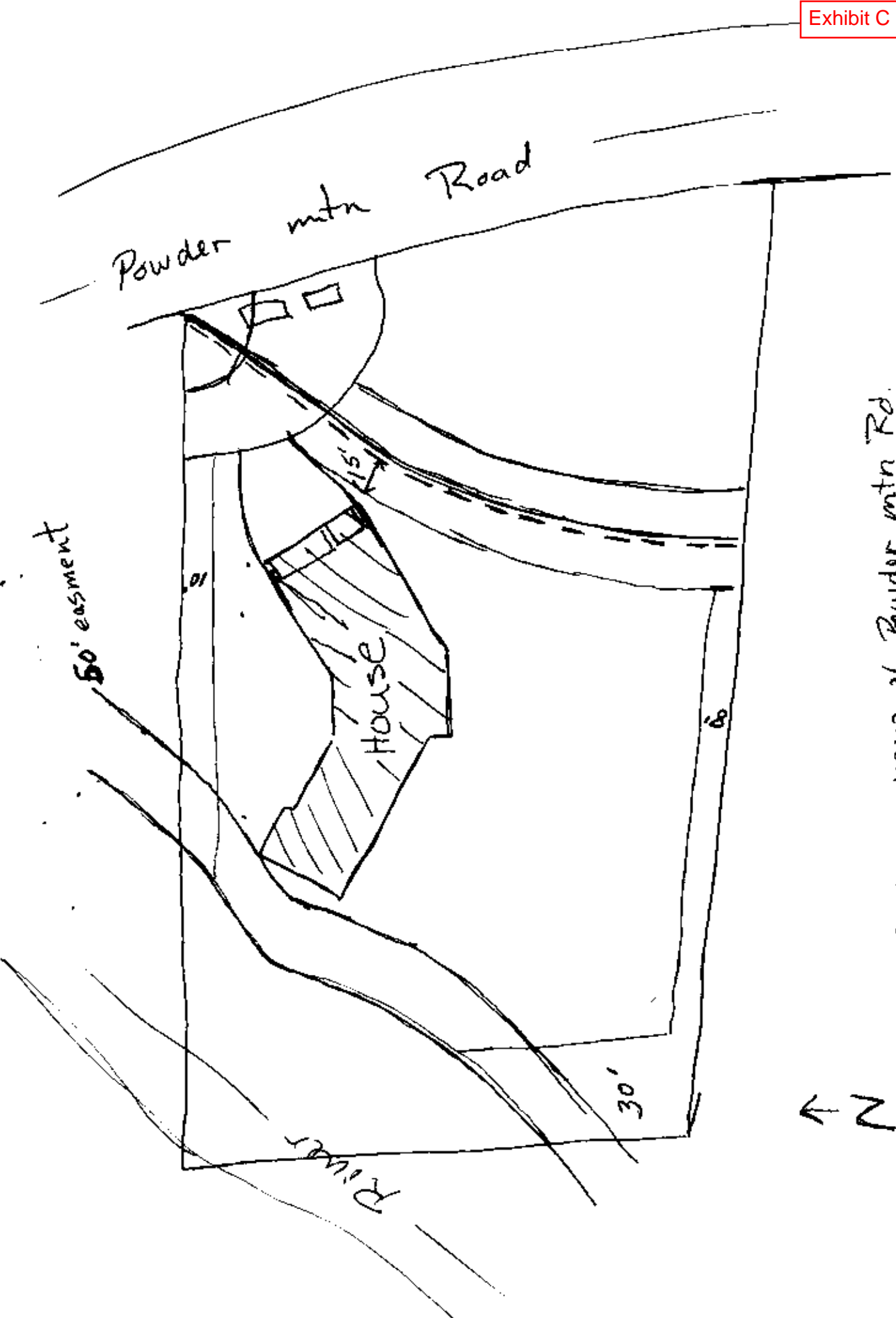
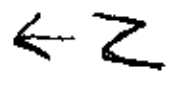
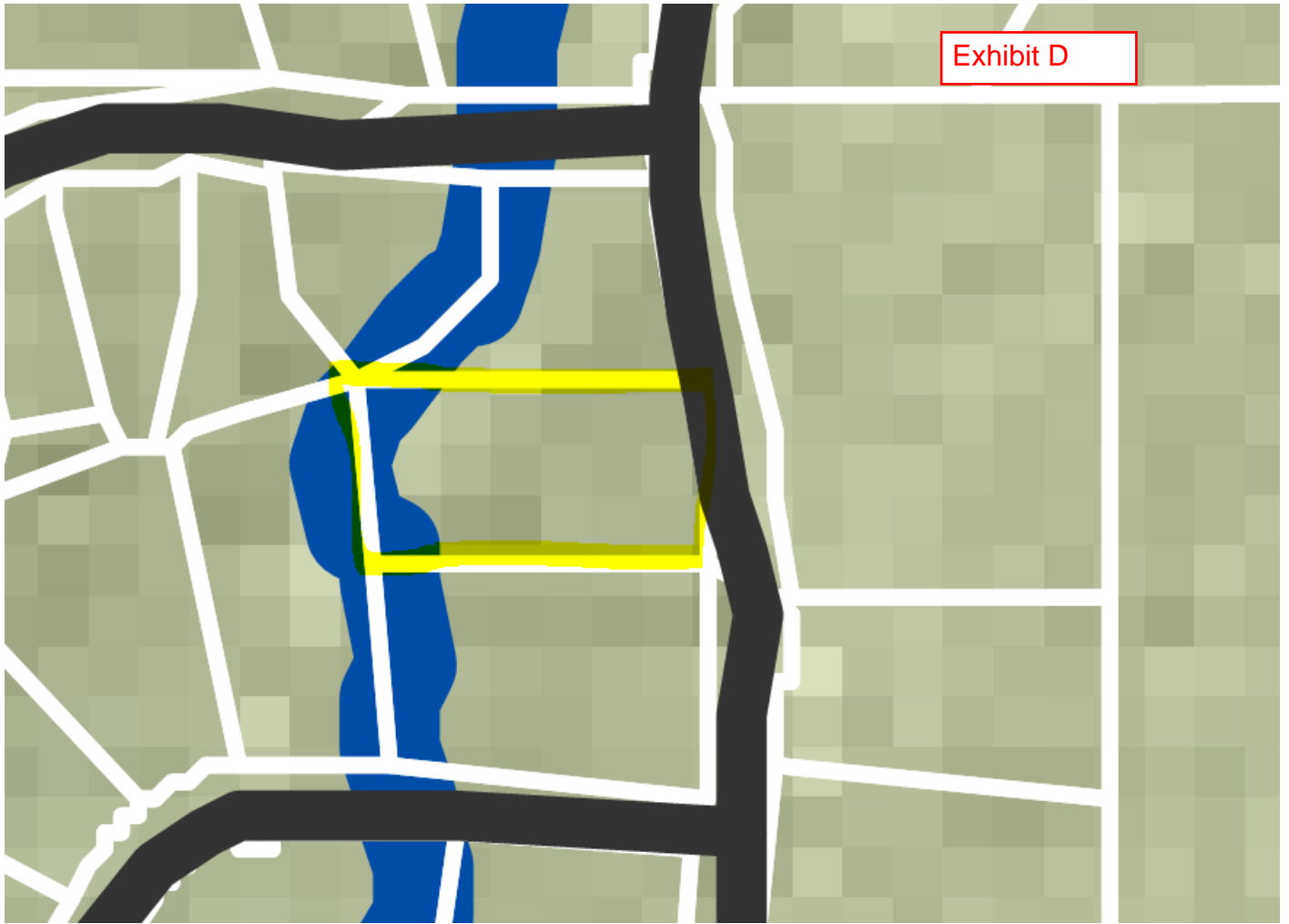


Exhibit D



Roads



Intermittent stream



Stream or braided stream



Ogden Valley Boundary



Lakes, Ponds



Elevation



9700 ft

4075 ft

State F

