

SOUTH JORDAN CITY CITY COUNCIL REPORT

Meeting Date: 1/2/24

Application: TEXT AMENDMENT - AMENDING SUBSECTIONS 17.04.240 (PUBLIC UTILITIES), 17.18.020 (ALLOWED USES), 17.18.030 (USE REGULATIONS), AND 17.18.060 (USE DEFINITIONS) OF THE SOUTH JORDAN CITY MUNICIPAL CODE TO CHANGE PUBLIC UTILITY AND RESTAURANT USES FROM CONDITIONAL TO PERMITTED.

File No: PLZTA202300054

Applicant: South Jordan City

Submitted By: David Mann, Long Range Planning Analyst

Presented By: Steven Schaefermeyer, Director of Planning

Staff Recommendation (Motion Ready): Based on the staff report and other information presented to the City Council during the public hearing, and the Planning Commission's positive recommendation, I move that the City Council **approve** Ordinance 2024-01.

BACKGROUND:

South Jordan City filed an application to amend sections in Title 17 of the South Jordan City Municipal Code ("City Code") regarding public utility and restaurant uses. The proposed text amendment changes the "Utility Services" use from conditional to permitted, removes unnecessary definitions that distinguish between a "Major Utility Facility" and a "Minor Utility Facility," changes the "Restaurant" use from conditional to permitted in the C-C, C-N, and P-O zones.

Designating a use in a particular zone as "conditional," and requiring a conditional use permit (CUP), is a strategy that cities must use sparingly and carefully. Contrary to popular belief, conditional uses are not a tool that gives cities discretion to deny a use when there is public outcry or there are other objections to a use on a particular property that the city failed to see when it zoned the property. City staff hopes this proposal will continue the discourse about conditional uses, and what uses the City designates as CUPs in the future.

ANALYSIS:

Conditional Use Review:

State law, City Code and noteworthy court rulings have shaped a city's proper application and review of conditional uses. Over the past few decades, it has become increasingly clear that the way cities have historically used and applied conditional uses is no longer defensible or appropriate. In South Jordan, the Planning Commission reviews for approval all proposed conditional uses, and has been trained often by City staff and other sources how to properly

review conditional uses. This has allowed the City to avoid its approval or denial of conditional use permits from being successfully challenged.

The Planning Commission must approve a conditional use permit application if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed conditional use in accordance with applicable standards. While that sounds straight forward, it is not. The Commission cannot find or base a detrimental effect solely on anecdote, public outcry, fear, or a distaste for the particular circumstances or applicant. To say that a use will cause a detrimental effect requires real evidence of anticipated harm. Even if the Commission identifies a detrimental effect backed by real evidence, the Commission must still approve the CUP if reasonable conditions can be imposed to mitigate the harm. Thus it is rare that the Commission could deny a conditional use permit application because there are no reasonable conditions that could be imposed to substantially mitigate—not get rid of—the reasonably anticipated detrimental effect.

Because of the complicated nature of conditional uses, City staff believes it is better simply to designate uses as either allowed or not permitted, and adopt reasonable standards for the establishment and regulation of permitted uses. To that end, in 2015 the City Council adopted “Impact Control Measures” to better manage potential negative impacts on neighboring properties generally caused by certain uses. The impact control measures are found in City Code § 17.18.040 and are a menu of various studies or measures that may apply to particular uses. The impact control measures are in addition to the general zone requirements where a proposed use will be located. The impact control measures that may apply to a use include a traffic study, circulation and access plan, operations plan, sound study, rehabilitation and containment plan, additional public notice requirement and residential protection areas. City staff asserts that impact control measures are more proactive in identifying and mitigating potential harms than the complicated CUP process.

The Utility Services and Restaurant uses are good examples of uses where designating them as conditional and requiring a conditional uses permit has not mitigated potential harms to neighboring properties or changed outcomes for the better.

Utility Services Use:

A 2018 Rocky Mountain Power application for a transmission line upgrade is a good example of why City staff believes that it is necessary to change “Utility Services” from a conditional use to a permitted use. Rocky Mountain Power submitted a CUP application to upgrade a transmission line that ran through South Jordan within recorded easements and that it would not relocate. City staff scheduled a public hearing and sent out notices to all property owners within the required radius from the utility line. Residents shared concerns with City staff and the Planning Commission, which led to extensive review of the project over many months. Ultimately, the Commission approved the CUP due to the lack of evidence that it could legally consider the resident’s as detrimental effects. The Planning Commission also could not regulate the public

utility project through imposing conditions on the CUP more than state and federal law were already regulating the public utility.

Based on this example and others, City staff has proposed changing the designation for the “Utility Services” use from conditional to permitted and removing unnecessary definitions that distinguish between a “Major Utility Facility” and a “Minor Utility Facility.” Even with this proposed change, City Code requires public utility companies to consult with the City Engineer regarding any new or upgraded service lines or facilities, and comply with other requirements of the City Code, including impact control measures.

Restaurant Use:

City staff has also proposed changing the “Restaurant” use from conditional to permitted in the C-C, C-N, and P-O zones. After reviewing numerous restaurant project applications in commercial areas, Staff has found little to no evidence of detrimental impacts in the identified zones that would warrant further analysis. The City Code already contains regulations that limit the impact a restaurant use would have on surrounding properties. Restaurants are also a use that residents consistently ask for more of and are some of the key anchors to modern shopping centers. On the other hand, drive-through facilities, whether or not associated with a restaurant use, will continue to be not permitted in the P-O zone, and to be an accessory use in the C-C and C-N zones that requires a conditional use permit and will be reviewed as such for all future projects. Drive-through are also subject to various impact control measures.

STAFF FINDINGS, CONCLUSIONS & RECOMMENDATIONS:

Findings:

- Utah Code § 10-9a-102 grants the City Council a general land use authority to enact regulations that it considers necessary or appropriate for the use and development of land in the City, including maintaining the aesthetics of the City and protecting the tax base, and the City Council has the power to amend its land use regulations. (See Utah Code § 10-9a-501 et seq.)
- Staff has proposed changes to the municipal code to convert some conditional uses to permitted uses, as outlined in the attached ordinance. These changes are proposed due to the difficulty of effectively regulating these uses as conditional, a lack of necessary evidence of “detrimental effects” on surrounding properties, other effective regulations in City Code that manage harm to neighboring properties, and the necessity or desirability of these uses throughout the City.
- The Planning Commission forwarded a recommendation of approval for the proposed text amendment with a 6-0 vote on April 11, 2023. The Commission did express concern about the length of time between its recommendation and the City Council’s review of the application.

Conclusion:

The proposed text amendment will avoid unnecessary and ineffective CUP review of public utility and restaurant uses, and provide more flexibility in the application and approval for these uses.

ALTERNATIVES:

- Deny the application.
- Propose modification(s) to the application.
- Schedule the application for a decision at some future date.

SUPPORT MATERIALS:

- Redlined draft of proposed text amendment
- Ordinance 2024-01
- Planning Commission packet for file #PLCUP201800742
- Minutes from the Planning Commission meeting held on 4/11/23



David Mann
Long-range Planner

Department Approval:

Steven Schaefermeyer (Dec 28, 2023 09:21 MST)

Steven Schaefermeyer
Director of Planning

17.18.020: ALLOWED USES

- A. Regulations: Development or use of a property for primary uses not specifically allowed in the table in subsection C of this section or approved by the provisions of this chapter and this Code are prohibited, except as otherwise determined by the Planning Director according to subsection 17.18.030.010B of this chapter. Regardless of whether a primary use is allowed as a permitted or conditional use, the regulations of this title shall apply. Allowed uses shall be identified in the allowed uses table in subsection C of this section with a "P" for a permitted use and a "C" for a conditional use. (Ord. 2016-02, 4-19-2016; amd. Ord. 2019-01, 3-5-2019)
- B. Classifications: The classification of uses as agricultural, residential, public, commercial, and industrial, and associated grouping within each category, is for organizational and reference purposes. (Ord. 2016-02, 4-19-2016)
- C. Allowed Uses Table:

P	=	Permitted	C	=	Conditional
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[illegible]

			Uses	Zones										
				A-5 A-1	BH - M U	C- C	C- F	C- I	C- N	I- F	MU -TC MU - TO D	P- O	R- 1. 8	R- 2. 5 R-3 R-4 R-5
		Single-family, detached	P									P	P	P
Public:														
	Civic and community	Cemetery												
		Community services	C	C	C	P	P	C	P	C	C	C	C	C
		Public safety	C	C	C	C	C	C	C	C	C	C	C	C
		Religious assembly and worship	C	C	C	C	C	C	C	C	C	C	C	C
	Education	Elementary/secondary education	C	C	C	C				P	C	C	C	C
		University/college		C	C	C			C	P	C			
		Vocational/professional		C	C	C			C	P	C			
	Open space	Natural open space												
		Park open space		C						C				
	Utility and communication	Energy conversion	C				C		C					
		Telecommunication facility	C		C	C	C	C	C		C	C	C	C
		Utility services	C P		C P	C P	C P	C P	C P		C P	C P	C P	C P
Commercial:														
	Services	Animal services			C	C	C	C						
		Business support		P	C	P	P		P	P	P			
		Daycare	P	P	P	P		P	P	P	C	P	P	P

Category	Uses	Zones											
		A-5 A-1	BH - M U	C- C	C- F	C- I	C- N	I- F	MU- TC MU- TO D	P- O	R- 1. 8	R- 2. 5 R- 3 R- 4 R- 5	R- M
		Financial institution		P	P	P		C	P	P	P		
		Hospital		C		C				C			
		Light service and repair		C	C	C	P	C	P				
		Lodging		P	C	P		C	P	P	C		
		Medical/dental office or clinic		P	P	P		P	P	P	P		
		Mortuary/funeral home			C					P			
		Office		P	P	P		P	P	P	P		
		Personal services		P	P	P		P	P	P	P		
		Professional services			P	P		P	P	P	P		
		Restaurant		P	G P	P		G P	P	P	G P		
		Self-storage			C	C	C				C		
		Vehicle repair					C		C				
		Vehicle services		C	C	C	P		P	C			
	Recreation and assembly	Arts and recreation		P	P	P	P		P	P	P		
		Convention/reception center			C	C			C	C	C		
		Instruction and training			P	C	P	P	P		C		
		Outdoor recreation		C	C	C			C				
		Stadium/theater/auditorium		C	C	C			C	C			

Category	Uses	Zones											
		A-5 A-1	BH - M U	C- C	C- F	C- I	C- N	I- F	MU- TC MU- TO D	P- O	R- 1. 8	R- 2. 5 R- 3 R- 4 R- 5	R- M
Retail	Gas station		C	C	C	C	C	C	C				
	General retail		P	P	P	P	P	P	P				
	Kiosk, freestanding		P	C	C					P			
	Shopping center/department store		P	C	C			C	P				
	Vehicle sales and rental		C		C			C					
Industrial:													
Manufactur ing and production	Assembly					P		P					
	Fabrication					C		C					
	Manufacturing					C		C					
	Mining												
Sales and service	Commercial service and repair					C		C					
	Food and drink preparation					C		C					
	Heavy equipment sales and rental					C		C					
	Office/warehouse flexible space					P		P					
	Research and development					P		P		C			
	Storage yards					C							
Wholes ale and wareho use				P		P							

Category	Uses	Zones											
		A-5 A-1	BH - MU	C-C	C-F	C-I	C-N	I-F	MU-TC MU-TO D	P-O	R-1. 8	R-2. 5 R-3 R-4 R-5	R-M
	Transportation												
										C			
				C	C	C		C	C	C			
						C							
	Waste												
						C		C					

17.18.030.040: PUBLIC USE REGULATIONS

A. General Public Use Regulations:

- There shall be no open storage of trash, debris, materials, equipment, goods or inventory, except for the following: those activities specifically allowed in conjunction with an approved use on the premises; temporary displays of products associated with a retail business that are removed daily; outdoor storage of inventory or products such as firewood, water softener salt, landscaping materials, and other building materials in screened areas designated on an approved site plan; and temporary uses consistent with those described in this chapter.
- All public uses shall be conducted within completely enclosed buildings, unless otherwise allowed in this chapter, except those uses defined to allow outdoor activities and those temporary uses customarily conducted in the outdoors, including Christmas tree lots, firework stands and parking lot sales associated with an approved use on the property. Parking lot sales may not be conducted more than four (4) 1-week periods per year.
- Public uses in agricultural or residential zones shall be located on a legal lot or parcel with frontage and access to a collector or arterial street, with the following exceptions:
 - Religious assembly and worship; and
 - Utility service, ~~not including a major utility facility.~~

B. Specific Regulations By Public Use:

- Elementary/Secondary Education, University/College, Vocational/Professional: A conditional use permit is not required in the BH-MU Zone when the use is located on a legal lot or parcel with frontage and access to a collector or arterial street. (Ord. 2017-05, 3-7-2017)
- Utility Service: ~~Minor-u~~Utility facilities that are not considered a primary use ~~and~~ may be allowed in all zones and on all lots or parcels at the discretion of the City Engineer according to section 17.04.240 of this title.

(Ord. 2017-22, 7-18-2017)

17.18.030.050: COMMERCIAL USE REGULATIONS

A. General Commercial Use Regulations:

1. There shall be no open storage of trash, debris, materials, equipment, goods or inventory, except for the following: those activities specifically allowed in conjunction with an approved use on the premises; temporary displays of products associated with a retail business that are removed daily; outdoor storage of inventory or products such as firewood, water softener salt, landscaping materials, and other building materials may be allowed in sales/storage yards as an accessory use according to section 17.18.030.070 of this chapter. No more than twelve (12) small party balloons and six (6) weatherproof placards, each not exceeding two (2) square feet, per business may be attached to temporary displays and shall be removed daily with the displays. Allowed storage and displays shall be located a minimum of five feet (5') from any travel lane, outside of a public right-of-way, and shall allow pedestrian walkways of a minimum width of at least six feet (6') to remain unobstructed.
2. All commercial uses shall be conducted within completely enclosed buildings, except as otherwise allowed in this chapter, including, but not limited to, those uses defined herein that allow outdoor activities or allowed temporary uses per section 17.18.030.080 of this section 17.18.030.
3. No vehicle, boat or trailer, or parts thereof, that is in a wrecked, junked, dismantled, inoperative or abandoned condition, attended or not, may be parked or stored for longer than seventy two (72) hours unless stored within a completely enclosed building or behind an opaque fence enclosure that completely obscures said vehicle or parts from public view. No more than two (2) such vehicles may be so stored on a lot, except in conjunction with approved vehicle repair use.
4. Public address and music systems shall be designed and operated so they are not discernible at the property line of any lot or parcel containing a single-family home.
5. Commercial uses in Agricultural or Residential Zones shall be located on a legal lot or parcel with frontage and access to a collector or arterial street.

B. Specific Regulations By Commercial Use:

1. Animal Services: All commercial uses involving animals shall be conducted within an enclosed facility that is maintained and operated so that neither the sound nor smell of any animals kept on the premises can be discerned on adjacent lots or parcels. Outdoor animal runs may be approved as an accessory use with a conditional use permit and shall meet the following requirements: located a minimum of three hundred feet (300') from the property line of a Residential Zone, educational institution, or place of worship.
2. Arts And Recreation: All gun ranges require a conditional use.
3. Daycare: Daycare use in Residential Zones, excluding those operating as an approved home occupation business, are required to be located on a minimum one acre legal lot or parcel.
4. Financial Institution, Nondepository:
 - a. Establishments shall be located no closer than one mile from other similar establishments.
 - b. Use activities shall be limited to short term title loan and short term consumer installment loan business.
 - c. The following services are specifically prohibited: "cash for gold", "cash for precious metals", and the processing or storage of repossessed vehicles or other repossessed property.
 - d. All business activity, including customer queuing, shall be accommodated inside the building.
5. Gas Station: Where buildings in the MU Zone are built to the street, associated vehicle bays, gas pumps, and vacuums shall be located to the side or rear of the main building.
6. General Retail; C-N Zone: Secondary metals dealer, recycler, and other similar businesses are prohibited in the C-N Zones. (Ord. 2017-05, 3-7-2017)
7. Kiosks, Freestanding: Kiosks, freestanding use may only be conducted with an approved site plan. Kiosks shall not be allowed on parcels less than three (3) acres in size and shall be separated by a minimum distance of four hundred (400) linear feet from all other outdoor kiosks. Kiosks shall not be allowed within required landscaped yard areas, building setbacks, within fifty feet (50') of a building

or within thirty feet (30') of the public right-of-way. Kiosk structures shall not exceed twenty (20) square feet in area nor ten feet (10') in height and shall incorporate materials and colors of surrounding buildings as determined by the Planning Director. Kiosks with drive-up facilities shall be designed to allow for a minimum of two (2) vehicles to be queued at any one given time without obstructing drive aisles or other functionality of other parking stalls as determined by the City Engineer. There shall be multiple twenty four (24) hour video surveillance and adequate illumination as determined by the City's Public Safety Department. All kiosks shall be securely mounted and anchored to the ground as determined by the City building official. (Ord. 2017-05, 3-7-2017; amd. Ord. 2019-01, 3-5-2019)

8. Medical/Dental Office Or Clinic: Medical/dental office or clinic buildings in the C-N Zone shall not exceed five thousand (5,000) square feet.
9. Office: Office buildings in the C-N Zone shall not exceed five thousand (5,000) square feet.
10. Outdoor Recreation: Where facilities are approved within three hundred feet (300') of the property line of a Residential Zone, all outdoor lighting shall be extinguished when the facilities are not operating, or by ten o'clock (10:00) P.M. on Sundays through Thursdays, and by eleven o'clock (11:00) P.M. on Fridays and Saturdays, whichever is earlier.
11. Personal Services: Laundry/dry cleaning activities require a conditional use permit in the BH-MU Zone.
12. Restaurant: ~~The combined site area of restaurant uses shall occupy no more than twenty percent (20%) of the area within any individual P-O Zone area.~~ Drive-through facilities associated with a restaurant use are prohibited in the P-O Zone.
13. Self-Storage:
 - a. C-C Zone: Self-storage uses shall not exceed six (6) total acres in the C-C Zone.
 - b. C-F Zone: Self-storage uses shall not exceed six (6) total acres in the C-F Zone, and shall not be located on any property with a General Plan designation of TOD or on property located east of 250 West Street.
 - c. P-O Zone: Self-storage uses shall not exceed three (3) acres in the P-O Zone.
14. Shopping Center/Department Store: Shopping center/department store uses shall have direct access to a major collector or arterial road. Individual uses in a shopping center/department store use shall each comply with the requirements of this Code.
15. Vehicle Sales And Rental: Uses involving vehicle sales shall include a building of not less than eight thousand (8,000) square feet.
 - a. BH-MU Zone: Vehicle inventory, which includes vehicles kept for sale or rental, shall only be kept within a completely enclosed building. (Ord. 2017-05, 3-7-2017)
16. Vehicle Services:
 - a. Where buildings in the MU Zone are built to the street, vehicle bays and vacuums shall be located to the side or rear of the building.
 - b. Car washes are prohibited as a primary use, except that the use and structure of a car wash that was legally established and complied with this title as of July 18, 2017, shall not be considered non-conforming by this subsection.

(Ord. 2017-22, 7-18-2017)

17.18.060: USE DEFINITIONS:

C. Public:

4. Utility and communication:

Energy conversion: Facilities and land used or intended to be used for the production of energy from natural forces such as wind, water, sunlight, geothermal heat, or biomass to be utilized beyond on site consumption.

Telecommunication facility: Freestanding buildings, structures and towers primarily intended for transmission or reception of communication signals between and among different points.

Utility services: Facilities engaged in the transmission, distribution or disposal of electricity, gas, sewer, and water. Activities commonly associated with this use include generating plants, substations, storage tanks, towers, treatment plants, pump stations, and water wells.

~~Major utility facility. Facilities that include the following: sewer facilities, other than below grade lines; regional power generation, other than energy conversion; and aboveground facilities on a site exceeding ten thousand (10,000) square feet.~~

~~Minor utility facility. Infrastructure for local distribution and service, such as switch boxes, transformer boxes, and underground water and sewer lines, within established rights of way or public utility easements.~~

17.04.240: PUBLIC UTILITIES:

A. The City Engineer may approve the following public utilities in any zone: (Ord. 2007-02, 1-16-2007; amd. Ord. 2019-01, 3-5-2019)

1. Electric power transmission and distribution lines ~~with a capacity of less than sixty nine (69) kV.~~
2. Gas transmission and distribution lines ~~with a design pressure of less than six hundred (600) psi and pipe diameter of less than sixteen inches (16").~~
3. Canals and water transmission and distribution lines ~~with a capacity of less than two hundred (200) second feet.~~
4. Motor vehicle roads and driveways.
5. Railroad tracks.
6. Telephone lines.
7. Cable television or communication lines.
8. Communication towers (see chapter 17.112 of this title).
9. Easements, rights of way, service driveways or accessory structures which are appurtenant to the above uses.

~~B. The following large scale public utilities may be allowed in all zones subject to the granting of a conditional permit:~~

- ~~1. Electric power transmission lines with a capacity of sixty nine (69) kV or greater.~~
- ~~2. Gas transmission lines with a design pressure of six hundred (600) psi or greater and pipe diameter of sixteen inches (16") or larger.~~
- ~~3. Water transmission lines with a capacity of two hundred (200) second feet or greater.~~
- ~~4. Communication towers (see chapter 17.112 of this title).~~
- ~~5. Any easements, rights of way, service driveways, or accessory structures which are appurtenant to the above uses.~~

ORDINANCE NO. 2024 - 01

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SOUTH JORDAN, UTAH, AMENDING SECTIONS 17.04.240 (PUBLIC UTILITIES), 17.18.030 (USE REGULATIONS), AND 17.18.060 (USE DEFINITIONS) OF THE SOUTH JORDAN CITY MUNICIPAL CODE TO CHANGE PUBLIC UTILITY AND RESTAURANT USES FROM CONDITIONAL USES TO PERMITTED USES.

WHEREAS, Utah Code § 10-9a-102 grants the City of South Jordan (the “City”) authority to enact ordinances that the South Jordan City Council (the “City Council”) considers necessary or appropriate for the use and development of land within the City; and

WHEREAS, the City of South Jordan has submitted an application to amend Sections 17.04.240 (Public Utilities), 17.18.030 (Use Regulations), and 17.18.060 (Use Definitions) of the South Jordan City Municipal Code; and

WHEREAS, the subject text amendments are designed to save time and prevent confusion by changing the “Utility Services” use and the “Restaurant” use from conditional uses to permitted uses; and

WHEREAS, the City Council has held a public hearing and reviewed the subject text amendment; and

WHEREAS, the City Council finds that the subject text amendment will enhance the public health, safety, and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SOUTH JORDAN, UTAH:

SECTION 1. Amendment. Sections 17.04.240 (Public Utilities), 17.18.030 (Use Regulations), and 17.18.060 (Use Definitions) of the South Jordan City Municipal Code, as shown in the attached **Exhibit A**, are hereby amended.

SECTION 2. Severability. If any section, part or provision of this Ordinance is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Ordinance and all sections, parts, provisions and words of this Ordinance shall be severable.

SECTION 3. Effective Date. This Ordinance shall become effective immediately upon publication or posting as required by law.

[SIGNATURE PAGE FOLLOWS]

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SOUTH JORDAN, UTAH, ON THIS _____ DAY OF _____, 2024 BY THE FOLLOWING VOTE:

	YES	NO	ABSTAIN	ABSENT
Patrick Harris	_____	_____	_____	_____
Kathie Johnson	_____	_____	_____	_____
Donald Shelton	_____	_____	_____	_____
Tamara Zander	_____	_____	_____	_____
Jason McGuire	_____	_____	_____	_____

Mayor: _____
Dawn R. Ramsey

Attest: _____
City Recorder

Approved as to form:



Office of the City Attorney

EXHIBIT A

(Additions in **bold underline**, deletions in strikethrough)

17.04.240

A. The City Engineer may approve the following public utilities in any zone:

1. Electric power transmission and distribution lines ~~with a capacity of less than sixty nine (69) kV.~~
2. Gas transmission and distribution lines ~~with a design pressure of less than six hundred (600) psi and pipe diameter of less than sixteen inches (16").~~
3. Canals and water transmission and distribution lines ~~with a capacity of less than two hundred (200) second feet.~~
4. Motor vehicle roads and driveways.
5. Railroad tracks.
6. Telephone lines.
7. Cable television or communication lines.
8. **Communication towers (see chapter 17.112 of this title).**
- 9.** Easements, rights of way, service driveways or accessory structures which are appurtenant to the above uses.

~~B.~~ The following large scale public utilities may be allowed in all zones subject to the granting of a conditional permit:

1. ~~Electric power transmission lines with a capacity of sixty nine (69) kV or greater.~~
2. ~~Gas transmission lines with a design pressure of six hundred (600) psi or greater and pipe diameter of sixteen inches (16") or larger.~~
3. ~~Water transmission lines with a capacity of two hundred (200) second feet or greater.~~
4. ~~Communication towers (see Chapter 17.112 of this title).~~
5. ~~Any easements, rights of way, service driveways, or accessory structures which are appurtenant to the above uses.~~

~~B.~~ Public facilities shall be subject to all of the height, bulk, location and other standards for the zone in which they are located except:

1. There shall be no minimum lot size required.
2. Only walled and/or roofed structures shall be required to meet the yard requirements (setbacks) of the zone. Otherwise, the public facilities listed in this section shall have no minimum yard requirements.

~~D.~~ In new developments, all utility lines and structures shall be installed underground in properly recorded easements according to city engineering and public utility standards. Junction boxes, monitoring and pump stations and other aboveground utility structures not listed above in excess of thirty (30) square feet in area or over four feet (4') in height shall require conditional use permit approval prior to installation.

EXHIBIT A

(Additions in **bold underline**, deletions in strikethrough)

17.08.020 C

Allowed Uses Table:

Key:

P = Permitted

C = Conditional

		Zones											
Category	Uses	A-5 A-1	BH-MU	C-C	C-F	C-I	C-N	I-F	MU-TC MU-TOD	P-O	R-1.8	R-2.5 R-3 R-4 R-5	R-M
Agricultural	Animal husbandry	P											
	Horticulture	P											
	Plant nursery	C	C	C	C						C		
	Public agricultural facility	C									C		
Residential:													
Group living	Community residential facility		C							C			C
	Dormitory												
	Institutional facility												
Household	Live-work		C										
	Multi-family												

EXHIBIT A

(Additions in **bold underline**, deletions in strikethrough)

	Neighborhood residential facility	P									P	P	P
	Single-family, attached												P
	Single-family, detached	P									P	P	P
Public:													
Civic and community	Cemetery												
	Community services	C	C	C	P	P	C	P	C	C	C	C	C
	Public safety	C	C	C	C	C	C	C	C	C	C	C	C
	Religious assembly and worship	C	C	C	C	C	C	C	C	C	C	C	C
Education	Elementary/secondary education	C	C	C	C				P	C	C	C	C
	University/college		C	C	C			C	P	C			
	Vocational/professional		C	C	C			C	P	C			
Open space	Natural open space												
	Park open space		C						C				
Utility and communication	Energy conversion	C				C		C					
	Telecommunication facility	C		C	C	C	C	C		C	C	C	C
	Utility services	<u>€</u> <u>P</u>		<u>€</u> <u>P</u>	<u>€</u> <u>P</u>	<u>€</u> <u>P</u>	<u>€</u> <u>P</u>	<u>€</u> <u>P</u>		<u>€</u> <u>P</u>	<u>€</u> <u>P</u>	<u>€</u> <u>P</u>	<u>€</u> <u>P</u>
Commercial:													
Services	Animal services			C	C	C	C						

EXHIBIT A

(Additions in **bold underline**, deletions in strikethrough)

	Business support		P	C	P	P		P	P	P			
	Daycare	P	P	P	P		P	P	P	C	P	P	P
	Financial institution		P	P	P		C	P	P	P			
	Hospital		C		C					C			
	Light service and repair		C	C	C	P	C	P					
	Lodging		P	C	P		C	P	P	C			
	Medical/dental office or clinic		P	P	P		P	P	P	P			
	Mortuary/funeral home			C						P			
	Office		P	P	P		P	P	P	P			
	Personal services		P	P	P		P	P	P	P			
	Professional services			P	P		P	P	P	P			
	Restaurant		P	C <u>P</u>	P		C <u>P</u>	P	P	C <u>P</u>			
	Self-storage			C	C	C				C			
	Vehicle repair					C		C					
	Vehicle services		C	C	C	P		P	C				
Recreation and assembly	Arts and recreation		P	P	P	P		P	P	P			
	Convention/reception center			C	C			C	C	C			
	Instruction and training			P	C	P	P	P		C			
	Outdoor recreation		C	C	C			C					

EXHIBIT A

(Additions in **bold underline**, deletions in strikethrough)

	Stadium/theater/auditorium		C	C	C			C	C				
Retail	Gas station		C	C	C	C	C	C	C				
	General retail		P	P	P	P	P	P	P				
	Kiosk, freestanding		P	C	C					P			
	Shopping center/department store		P	C	C			C	P				
	Vehicle sales and rental		C		C			C					
Industrial:													
Manufacturing and production	Assembly					P		P					
	Fabrication					C		C					
	Manufacturing					C		C					
	Mining												
Sales service and	Commercial service and repair					C		C					
	Food and drink preparation					C		C					
	Heavy equipment sales and rental					C		C					
	Office /warehouse flexible space					P		P					
	Research and development					P		P		C			
	Storage yards					C							
	Wholesale and warehouse					P		P					

EXHIBIT A

(Additions in **bold underline**, deletions in strikethrough)

Transportation	Aircraft transportation												
	Parking facility									C			
	Passenger terminal/station			C	C	C		C	C	C			
	Railroad facility					C							
Waste	Refuse												
	Salvage					C		C					

17.18.030.040

A. General Public Use Regulations:

1. There shall be no open storage of trash, debris, materials, equipment, goods or inventory, except for the following: those activities specifically allowed in conjunction with an approved use on the premises; temporary displays of products associated with a retail business that are removed daily; outdoor storage of inventory or products such as firewood, water softener salt, landscaping materials, and other building materials in screened areas designated on an approved site plan; and temporary uses consistent with those described in this chapter.
2. All public uses shall be conducted within completely enclosed buildings, unless otherwise allowed in this chapter, except those uses defined to allow outdoor activities and those temporary uses customarily conducted in the outdoors, including Christmas tree lots, firework stands and parking lot sales associated with an approved use on the property. Parking lot sales may not be conducted more than four (4) 1-week periods per year.
3. Public uses in agricultural or residential zones shall be located on a legal lot or parcel with frontage and access to a collector or arterial street, with the following exceptions:
 1. Religious assembly and worship; and
 2. Utility service, ~~not including a major utility facility.~~

B. Specific Regulations By Public Use:

1. Elementary/Secondary Education, University/College, Vocational/Professional: A conditional use permit is not required in the BH-MU Zone when the use is located on a legal lot or parcel with frontage and access to a collector or arterial street. (Ord. 2017-05, 3-7-2017)
2. Utility Service: ~~Minor~~ **Utility** facilities **that** are not considered a primary use ~~and~~ may be allowed in all zones and on all lots or parcels at the discretion of the City Engineer according to section 17.04.240 of this title.

EXHIBIT A

(Additions in **bold underline**, deletions in strikethrough)

17.18.030.050 B.12

Restaurant: ~~The combined site area of restaurant uses shall occupy no more than twenty percent (20%) of the area within any individual P-O Zone area.~~ Drive-through facilities associated with a restaurant use are prohibited in the P-O Zone.

17.18.060 C.4

Utility And Communication:

Energy Conversion: Facilities and land used or intended to be used for the production of energy from natural forces such as wind, water, sunlight, geothermal heat, or biomass to be utilized beyond on site consumption.

Telecommunication Facility: Freestanding buildings, structures and towers primarily intended for transmission or reception of communication signals between and among different points.

Utility Services: Facilities engaged in the transmission, distribution or disposal of electricity, gas, sewer, and water. Activities commonly associated with this use include generating plants, substations, storage tanks, towers, treatment plants, pump stations, and water wells.

~~Major Utility Facility: Facilities that include the following: sewer facilities, other than below grade lines; regional power generation, other than energy conversion; and aboveground facilities on a site exceeding ten thousand (10,000) square feet.~~

~~Minor Utility Facility: Infrastructure for local distribution and service, such as switch boxes, transformer boxes, and underground water and sewer lines, within established rights of way or public utility easements.~~

SOUTH JORDAN CITY PLANNING COMMISSION REPORT

Meeting Date: 3-12-2019

Application: **ROCKY MOUNTAIN POWER
SOUTH JORDAN TO DRAPER LINE UPGRADE
CONDITIONAL USE PERMIT**

File No.: PLCUP201800742
Applicant: Rocky Mountain Power/Lisa Romney

Submitted By: Greg Schindler, City Planner

Staff Recommendation (Motion Ready):

Approve with Conditions file no. PLCUP201800742 as submitted.

I. CONDITIONAL USE REVIEW:

A use is conditional because it may have unique characteristics that detrimentally affect the zone and therefore are not compatible with other uses in the zone, but could be compatible if certain conditions are required that mitigate the detrimental effect.

To impose a condition, the detrimental effect must be identified and be based on substantial evidence, not simply a suspicion or unfounded concern. Any condition must be the least restrictive method to mitigate the detrimental effect.

II. BACKGROUND:¹

Rocky Mountain Power (RMP) filed a Conditional Use Permit (CUP) application proposing to upgrade an existing power line (transmission line) from 46 kV to 138 kV and to upgrade 29 pole structures (generally referred to as “proposed work” or “proposal”).² The location of the proposal will run from the South Jordan substation located at 10735 South Redwood Road to the Draper substation located at approximately 500 West 12300 South.³ The proposal will follow the same path as the existing lines, generally through and adjacent to the rear, side and sometimes front property lines of lots and parcels.⁴ RMP submitted all the recorded easements that show that it has rights to perform the proposed work at the proposed location. This transmission line has already been upgraded from 46 kV to 138 kV north and south of the area designated on the current CUP application.

¹ All support documents that have been received by staff regarding this application, can be viewed on the South Jordan City website at <http://www.sjc.utah.gov/planning-zoning/rmp-south-jordan-to-draper-line-upgrade/>

² See website documents “RMP-Application” and “138 kV Structure.”

³ See website document “Project Fact Sheet.”

⁴ See website documents “Easement Maps-Stamped by Surveyor” and “Structure Scoping Sheet.”

III. **DETRIMENTAL EFFECTS (as raised by the residents or identified by staff.):**⁵

A. *Easements:*

The residents are concerned that the RMP easements are insufficient and/or invalid for RMP to do the proposed work.⁶ Some residents requested mediation from the Office of the Property Rights (Ombudsman) to resolve the easement issue, which was accepted by the Ombudsman.⁷ To date, the outcome of the mediation has yet to be determined.

RMP responded to the residents' concerns by stating that it does have sufficient easements to do the proposed work.⁸ Nonetheless, it is RMP's position that the easement dispute is a dispute between RMP and the residents, not the City. According to RMP, it is outside the scope of the Planning Commission to consider the easement issue. Likewise, RMP believes that the Planning Commission may not condition the CUP on the easement issue.

B. *Electromagnetic Fields:*

The residents are concerned that the proposed work will produce more electrometric fields (EMFs) than the current transmission line. Based on the resident's research, the residents believe that the increase in EMFs will increase health related issues (mainly cancer).⁹

RMP contends that there is not any scientific studies that prove negative health impacts caused by EMFs.¹⁰ RMP submitted documents from the National Cancer Institute (NCI) and the National Institute of Environmental Health Sciences (NIEHS). The NCI studies have stated that no mechanism has been identified by which EMFs, such as power lines, computers, radios or televisions, could cause cancer.¹¹ The NIEHS also states that there is no definitive connection between cancer rates and EMFs.¹² Nonetheless, RMP plans to use "no-cost" measures to reduce EMFs through alternative arrangements and phasing.¹³

C. *Safety and Design:*

The residents are concerned with 'other' safety aspects of the proposed work, including clearances, structure strength, foundation design, power line fires, and stray voltage.¹⁴

RMP provided a letter from Vernon Black, P.E., a registered professional engineer certifying the design of the project meets and/or exceeds all industry and PacifiCorp standards and best practices

⁵ The residents have discussed their concerns during Planning Commission meetings, City Council meeting, City Council work sessions, and individually with elected officials and staff. All comments were uploaded at the website listed above. However, the residents may raise additional concerns at the CUP hearing.

⁶ See generally website documents regarding "Citizen Comment."

⁷ See website document "Official Mediation Letter & Application."

⁸ See website document "Response Letter."

⁹ See generally website document "Citizen Comment"

¹⁰ See website document "Clearance Requirements and EMF Mitigation."

¹¹ See website document "EMF National Cancer Society."

¹² See website document "EMF National Institute of Environmental Health Sciences."

¹³ *Id.*

¹⁴ See website document from Lyman Moulton.

for ensuring public safety.¹⁵ The letter also stated that project design also included adherence to the 2017 National Electrical Safety Code (NESC).¹⁶ RMP also provided information regarding stray voltage.¹⁷ The document references several sources including the Institute of Electrical and Electronics Engineers (IEEE), the U.S. Department of Agriculture (USDA) and the Public Service Commission of Wisconsin. The key statement included in the RMP document states: “Stray voltage is not related to power system faults, and is generally not considered hazardous.”

D. *Property Values:*

The residents are concerned that (1) the proposed work will decrease their property values and/or (2) prohibit new buyers from purchasing their properties because lenders will not lend on properties adjacent to the increased voltage line.¹⁸

RMP responded to the residents’ first concern by submitting a letter from Troy Lunt of Integra Realty Resource, wherein Mr. Lunt provided his opinion that the upgrade in the line from 46 kV to 138 kV, would have “no impact or very nominal impact” on the value of the homes proximate to the line.¹⁹ Mr. Lunt based his opinion on a study he and two co-authors undertook where they analyzed 350,000 homes and 100,000 sales in Salt Lake County that occurred between 2001 and 2014. The Study itself does state that homes “within 50 meters of these lines [138kV]see a 5.1% decrease in value....”²⁰ Further there is a decrease of 2.9 % to a home located 50 to 100 meters.”²¹ Finally that there is no decrease in value to a home within 50 to 100 meters of the 46 kV line but that there is a 2.5% decrease in value for a home located 50 to 100 meters from a 46 kV line.²²

RMP has not responded to the residents’ second concern but this concern was only recently submitted to RMP. It is anticipated that RMP will address this concern at the CUP hearing.

E. *Other Issues - Alternative Routes and Non-Compliance with RMP’s Guidelines:*

The residents have requested that the City demand the “alternative routes” or “scorecards” that RMP considered before submitting their CUP application.²³ The residents are also concerned that RMP has not followed its own policies and guidelines.²⁴

RMP has not formally responded to the City’s request on behalf of the residents, but has informally stated that RMP did not conduct an “alternative route study” and is compliant with applicable policies and guidelines.

¹⁵ See website document “Line Safety and Design Requirements;” see also website document “Horizontal and Vertical Clearance for Wires.”

¹⁶ *Id.*; see also website document “Clearance Requirements and EMF Mitigation.”

¹⁷ See website document “Stray Voltage Explanation.”

¹⁸ See website document from Paula Gordon, Kish North, Dave Kowallis, and Camie Hodlmair.

¹⁹ See website document “Real Estate Impact Letter.”

²⁰ See website document “Real Estate Impact Letter. P 213 under “Results Summary”

²¹ See website document “Real Estate Impact Letter. P 213 under “Results Summary”

²² See website document “Real Estate Impact Letter. P 213 under “Results Summary”

²³ See website documents “02-05-2019 Citizen Comment Jana Fullmer,” “CC 12-04-2018 Citizen Comment Chris Nelson,” and “CC 12-04-2018 Citizen Comment Rynda Clyde.”

²⁴ See website document “PC 10-09-2018 Citizen Comment Jana Fullmer Attachment C.”

STAFF FINDINGS, CONCLUSIONS & RECOMMENDATIONS:

Findings:

- *Easements.* After thorough review, staff agrees that the Planning Commission may not determine the validity of the recorded easements. However, as with any person or entity proposing to do work in the City, the City needs assurances that the person or entity has legal authority to do that work. This case is no different. Even though RMP submitted all the recorded easement documents with an associated location map, the residents have raised concerns that the easements are not sufficient for RMP to perform its proposed work. To resolve this concern, the residents requested that the Ombudsman resolve the easement dispute. Because there is a pending dispute with a body that has statutory authority to address and opine on such disputes (recognizing that the Ombudsman decision is not binding), the pending easement dispute does not give the City assurance that RMP has the proper easements to do its proposed work. Accordingly, if the Planning Commission approves the CUP, staff recommends that the Planning Commission attached the following condition to mitigate the anticipated detrimental effect:

Before RMP commences its proposed work, this conditional use permit is conditioned on:

1. *The Ombudsman finding that the easements are legally sufficient to do the proposed work; or*
 2. *RMP acquiring easements that are legally sufficient to do the proposed work. "Acquiring" may include, among other things, RMP's statutory right of condemnation or through negotiated agreements with the property owners.*
- *EMFs.* Even though both parties have submitted some form of documentation that states their position on the EMF issue, neither party has submitted expert testimony validates their statements. The evidence submitted seems to conflict or is inconclusive. Additionally, there is no federal or state agency that regulates EMFs. Based on the lack of regulation, it is unlikely that EMF may be a detrimental effect that could be upheld in court.
 - *Safety and Design.* Staff recommends the Planning Commission weigh the evidence presented.
 - *Property Values.* Staff recommends that if a devaluation of property is shown to be a valid anticipated detrimental effect, staff proposes the following condition be attached to mitigate that detrimental effect:

Before RMP commences its proposed work, this permit is conditioned on RMP completing appropriate property value analysis and mitigation.

- *Other Issues - Alternative Routes and Non-Compliance with RMP's Guidelines.* The alternative route issue is not an issue that the Planning Commission can consider because it is a legislative issue.

Conclusion:

Based on the application materials and the findings listed above, if substantial evidence is presented at the hearing, the proposal may have at least two reasonably anticipated detrimental effects: (1) sufficient easement scope; and (2) decreased property values. Notwithstanding, any condition imposed must be the least restrictive method to mitigate the detrimental effect.

Recommendation:

Staff recommends that the Planning Commission take comments at the public hearing and approve (with the conditions stated herein and other necessary conditions) the Conditional Use Permit Application File No. PLCUP201800742 for the installation of an upgraded 138 kV power line and associated replacement power line support structures between the South Jordan power substation located at 10735 South Redwood Road and the Draper power substation located at approximately 500 West 12300 South, unless during the hearing, facts are presented that contradict these findings or new facts are presented, either of which would warrant further investigation by staff.

ALTERNATIVES:

- Deny the Conditional Use Permit.
- Modify the conditions for approval.
- Schedule the decision for a later date not to exceed the allowed timeframe.

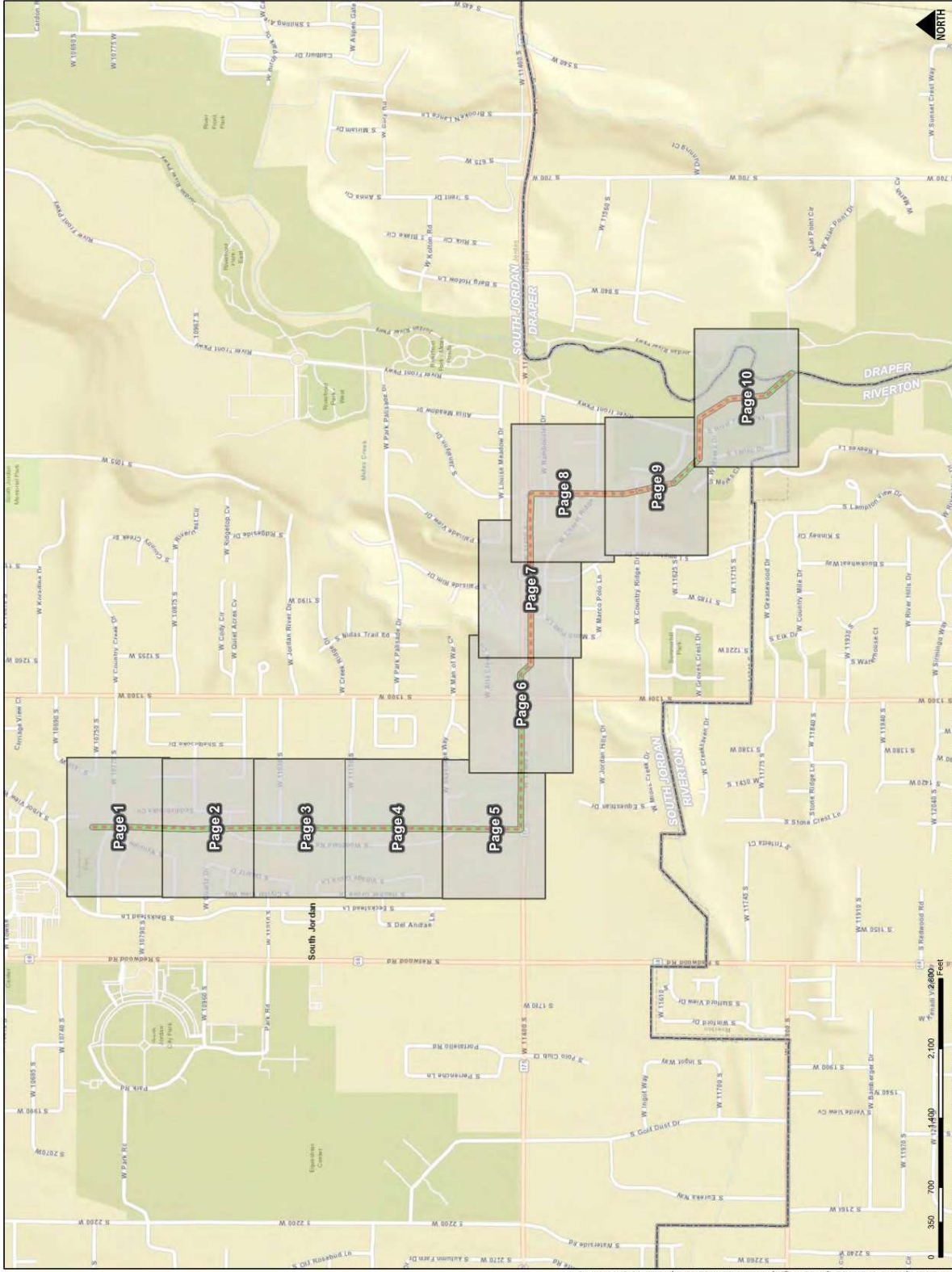
SUPPORT MATERIALS:

- Location Map
- Easement Location Maps

Legend

- Proposed Transmission Centerline Rebuild
- Existing Right-of-Way
- No Set Width
- Set Width
- Municipal Boundaries

Coordinate System:
NAD 1983 StatePlane Utah Central FIPS 4302 Feet
Projection: Lambert Conformal Conic
Datum: North American 1983
Units: Foot US



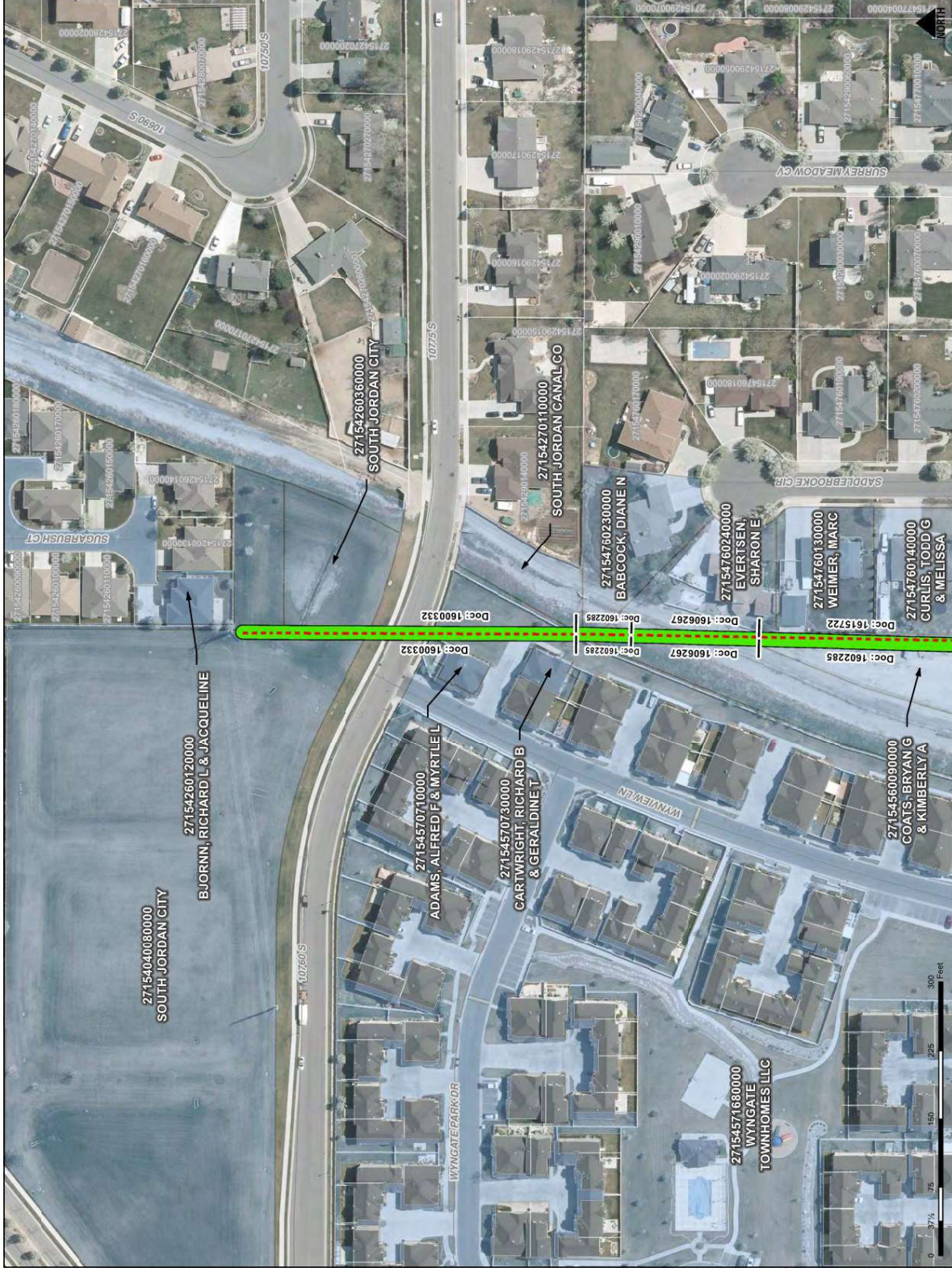
South Jordan - Draper Rebuild



Legend

- Proposed Transmission Centerline Rebuild
- Existing Right-of-Way
- No Set Width
- Set Width
- Parcels on Project
- Municipal Boundaries
- Interstates
- Highways
- State Roads
- Major Roads
- Surface Streets

Coordinate System:
NAD 1983 StatePlane Utah Central FIPS 4302 Feet
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Datum: North American 1983
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Source: ECI, SDG&E, InSight, USGS, Sources: Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Swis (Thailand), Mapbox, © OpenStreetMap contributors, and the GIS User Community

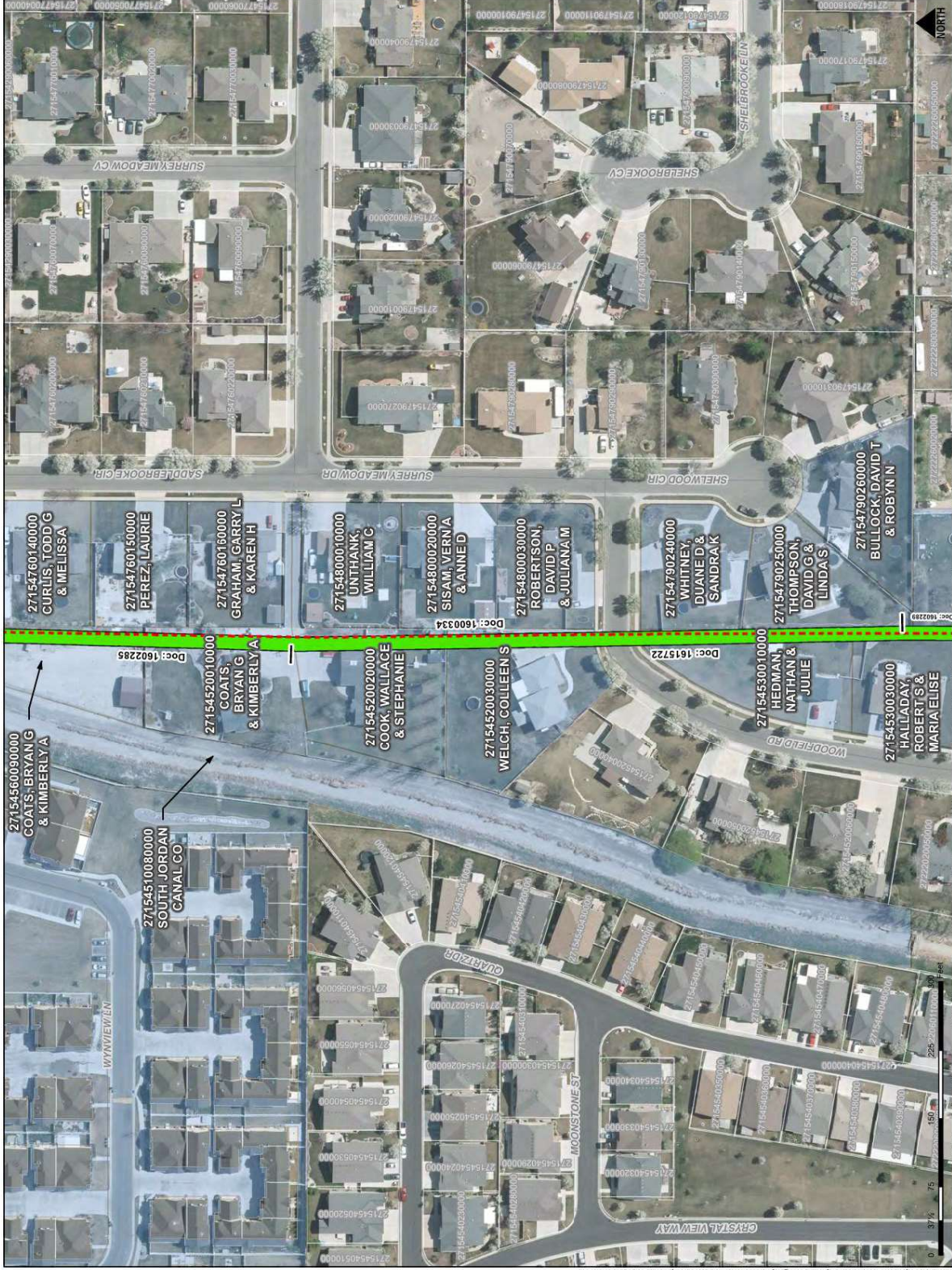
South Jordan - Draper Rebuild



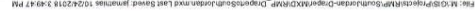
Legend

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- Existing Right-of-Way
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- Set Width
- Parcels on Project
- Municipal Boundaries
- Interstates
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Source: ECI, SOG&E, InSight, USGS, Sources: Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Swis (Taiwan), Mapbox, © OpenStreetMap contributors, and the GIS User Community

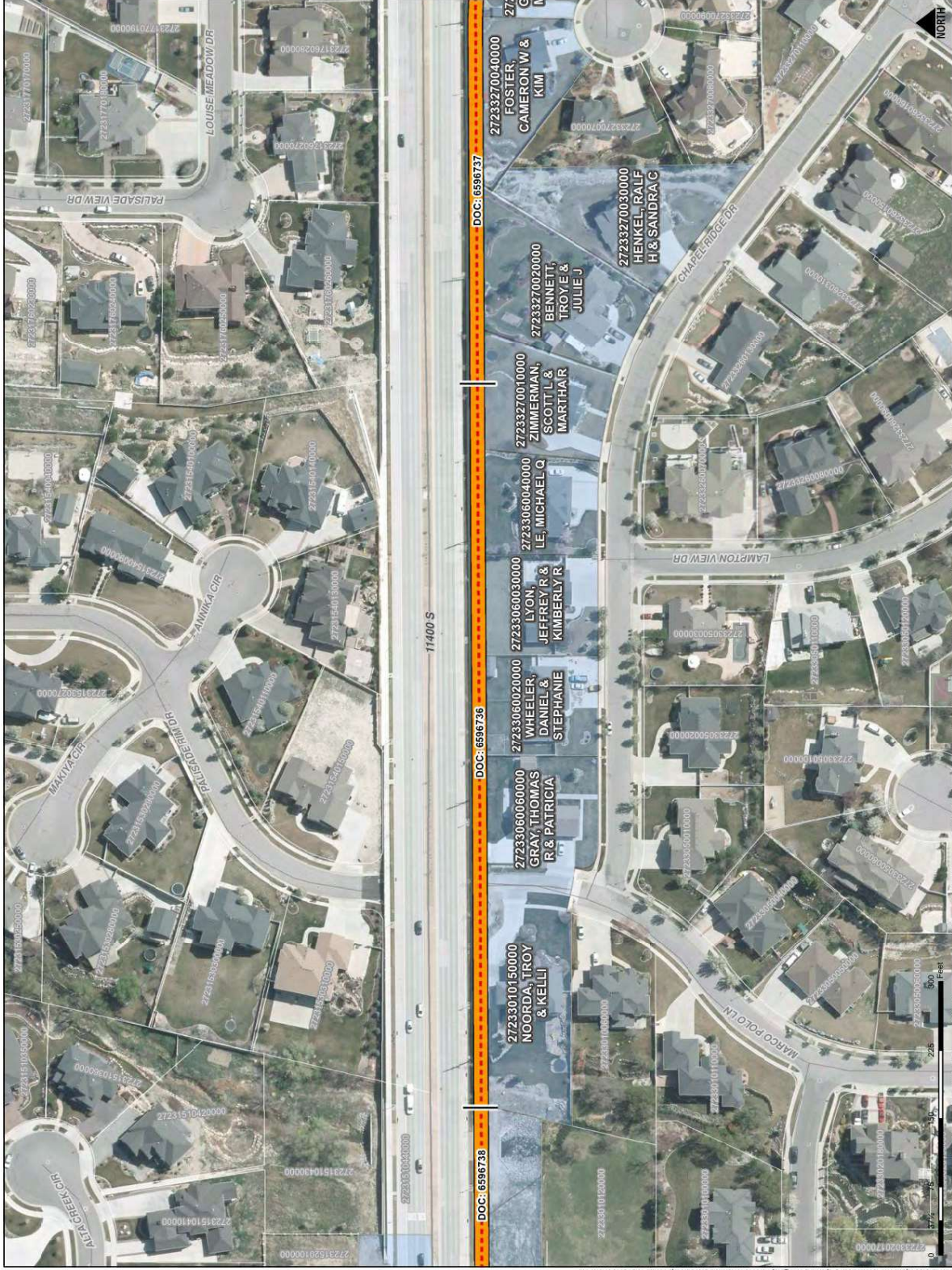




Legend

- Proposed Transmission
Centerline Rebuild**
- Existing Right-of-Way**
- No Set Width
Set Width
- Parcels on Project
- Municipal Boundaries
- Interstates
Highways
State Roads
Major Roads
Surface Streets

Coordinate System:
NAD 1983 StatePlane Utah Central FIPS 4302 Foot
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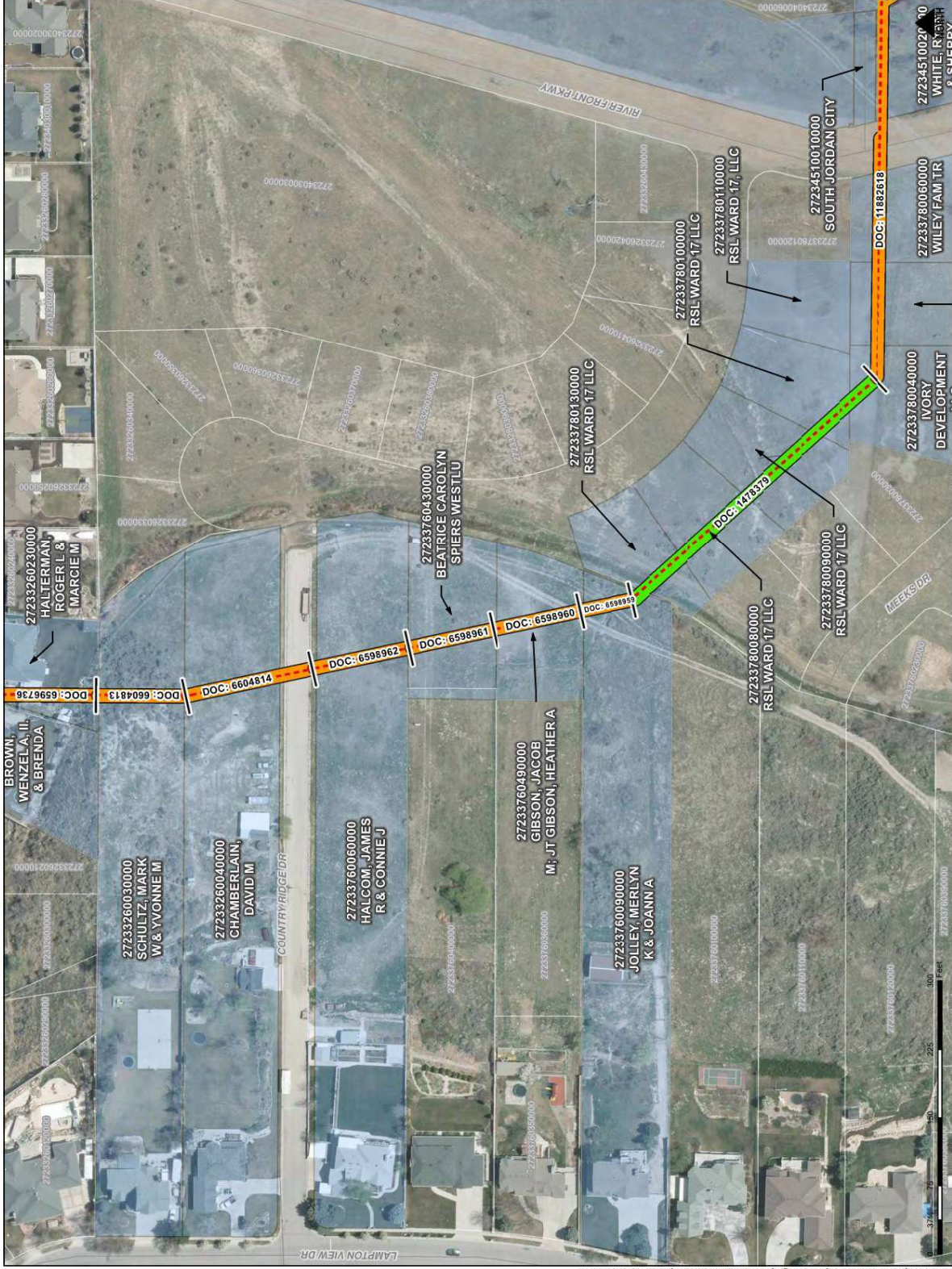
South Jordan - Draper Rebuild



Legend

- Proposed Transmission Centerline Rebuild
- Existing Right-of-Way
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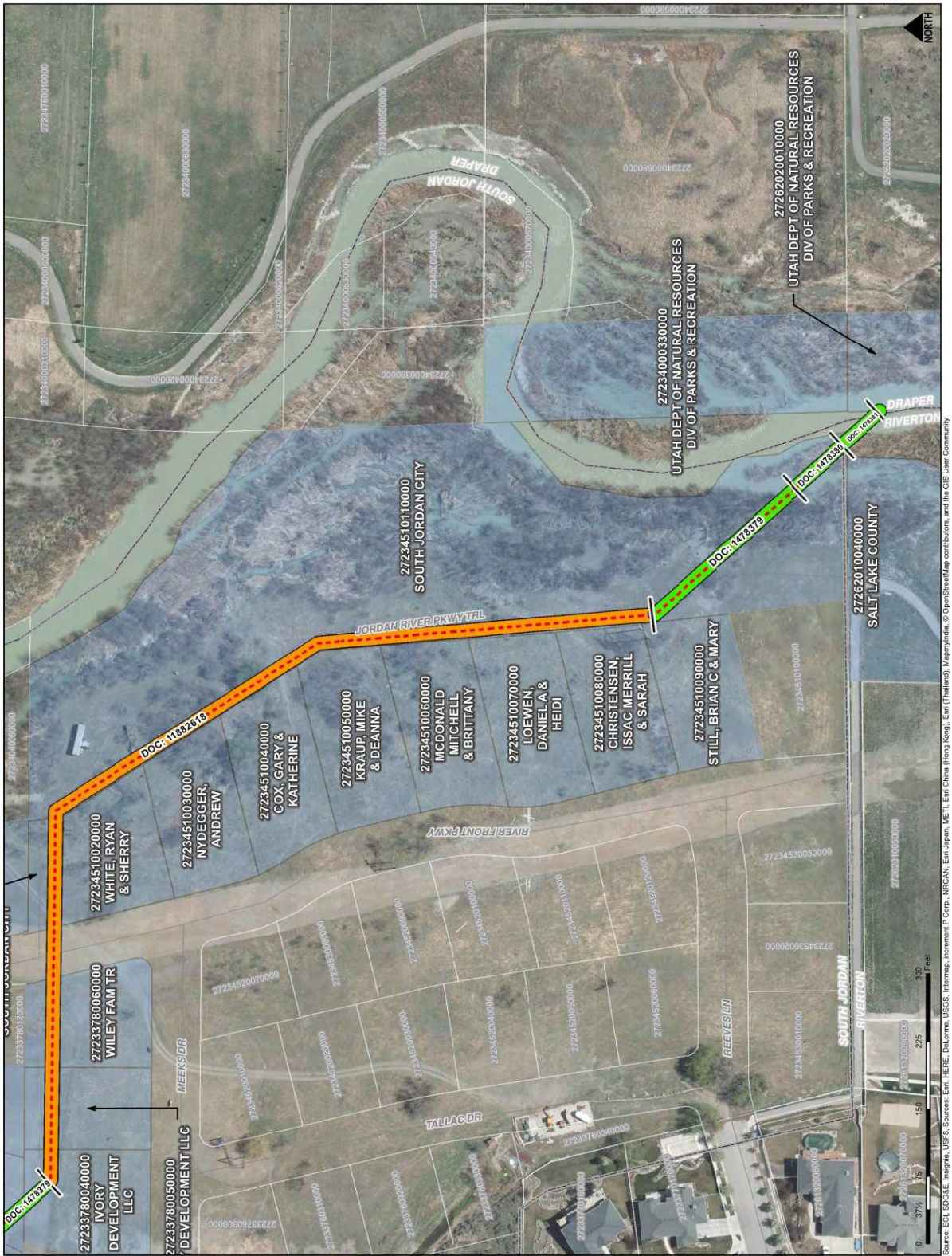
South Jordan - Draper Rebuild



Legend

- Proposed Transmission Centerline Rebuild
- Existing Right-of-Way
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Commissioner Darby motioned to approve File No. PLCUP202300047, Conditional Use Permit application, without conditions. Chair Hollist seconded the motion. Roll Call Vote was 6-0, unanimous in favor.

I. LEGISLATIVE PUBLIC HEARINGS

I.1. CUP Utilities Text Amendment

Planner David Mann reviewed background information from the Staff Report.

Commissioner Nathan Gedge reviewed the uses that would require permits, asking if a restaurant would include any business selling a food product, or if it had additional requirements like seating on the premises.

Planner Mann responded that typically there would be seating involved, and as noted in the Staff Report it is separate from review of a drive-thru, even it's an accessory use to the business.

Chair Hollist opened the public hearing for comments. There were no comments and the hearing was closed. Chair Hollist noted that the Rocky Mountain Power item was addressed right before she joined the commission, so she didn't hear about or vote on the item. She knows they want to save time and save residents from aggravation when things are legally allowed but those residents think getting enough people against it can stop it. She discussed a communication tower located in the Jordan Ridge Park, from about 15 years ago. She said that was the first time she ever came to a City Council meeting here, and a giant tower was being proposed where the layers would be sublet out to different companies. She doesn't know if the public turnout was what changed the decision on that, but ultimately the neighborhood didn't end up having to give up the basketball court or make exceptions to the offset rules, and something significantly smaller was installed. It appeared that allowing the public to weigh-in did have an impact in that situation.

City Planner Greg Schindler noted that at that time, it could have possibly also been that the code was changed with a limit on the height of the towers. That will never change, and if a company wants a tower to reach that maximum height, they will get that maximum height because of more Federal Regulations limiting what cities can do. Even if the city limits the height, the applicant is allowed to increase that height 10% each time. That has not happened yet here, as they just add more antennas to the existing tower until they are forced to erect a new tower nearby. Again, a site plan still comes to the planning commission for review with a public hearing, but unlike a conditional use permit, they are not discussing conditions of approval. In regards to the tower discussed earlier, it would not be allowed under the current code, and if proposed the applicant would have to apply for a variance.

Assistant City Attorney Greg Simonsen added that this subject was taken to the US Congress, which resulted in The Spectrum Act, and was especially applicable to cell phone towers. The industry basically convinced congress that local entities were taking too much time and giving them too hard of a time, especially allowing the co-location of different arrays on the towers. Ultimately, as indicated on 17.04.240 A8, Communication Towers, that was taken right out of

even city councils' hands. Our City Council enacted an ordinance saying that will be decided by staff, because this is so specialized and heavily regulated. Those tower applications will have to be addressed and approved or denied by staff, as that has to be done within 90 days or it's automatically granted. He recently read the latest FCC ruling interpreting part of the statute, which was 45 pages long, single spaced and small print. In general, this goes back to the discussion at the joint meeting, that there are some areas that where a conditional use permit is required, but they are ultimately deceiving people by implying that there is a chance for the democratic process to stop the application.

Chair Hollist asked if Attorney Simonsen felt that the categories outlined in the amendment are appropriate and represent areas that are defined, to the extent they can be, in our ordinances and appropriate to cease holding public hearings on.

Attorney Simonsen responded that he believes the ones before the commission tonight are, but he also thinks the commission should expect, as well as participate in and encourage the process in choosing the ones they don't want to see anymore or ones that they really want to continue seeing.

Commissioner Steve Catmull said that utilities are highly regulated in terms of noise, well-known harmful effects, etc. In addition, we have excellent staff and a well-functioning City Council, and anything that pops up will be addressed through the code. He just doesn't know what detrimental effects they might find that wouldn't already be covered.

Chair Hollist asked if these restrictions would apply to where easements exist, or if at city staffer can enact eminent domain as they see fit.

Planner Mann shared a few things to be aware of. In that section, where there are specific things crossed off, it does say at the very top that the City Engineer may approve. The City Engineer is the professional that would be familiar with what is necessary, in conversation with the utility companies, to make sure that things are suitable, meet the Federal and State Guidelines, etc. There are also separate chapters dealing with wireless and wind facilities, with specific guidelines laid out for staff to review with those applications. Regarding easements, if it's something where the utility company did need to enlarge an easement, they would have to go through that same process to purchase the property according to the law, and to reimburse the residents based on those laws.

Chair Hollist mentioned a section that mentioned only percentage of an area could be a restaurant zone and asked for more details.

Planner Mann doesn't know why there was a specific percentage noted in the office zone, whether it was due to a concern about restaurants taking over office zones and limiting office construction, but in the C-C zone offices are a permitted use. Offices or restaurants can be built there without any conditional use, but in the office zone for some reason conditional uses are applied to restaurants. He believes there have been enough examples with limited concerns in regards to solely restaurant uses to warrant that additional review with a conditional use.

Commissioner Gedge motioned to forward a recommendation of approval to City Council for the proposed Text Amendment. Chair Hollist seconded the motion. Roll Call Vote was 6-0, unanimous in favor.

Chair Hollist asked if this will be presented in the next City Council Meeting.

Planner Mann said no, they are holding off on taking this to City Council as there are still ongoing discussions between the city and Rocky Mountain Power regarding that project. Once that is finalized completely they can move forward. If any changes need to be made to this amendment, that would be brought back before the planning commission again.

Commissioner Gedge asked how long their recommendation on this will last, as their term ends at the end of the year and he wonders if that would change or end the recommendation with new commissioners potentially joining.

Attorney Simonsen responded that he doesn't know the answer at this time.

Planner Schindler doesn't believe there is an expiration date on recommendations, but he noted there is a CUP for the new substation coming to the commission and he's not sure how that would affect that approval either.

Commissioner Gedge motioned to add an addendum to the motion for File No. PLZTA202300054, that the recommendation of approval from the Planning Commission only stays valid until December 31, 2023, when the current commission's term ends.

Attorney Simonsen noted that he isn't sure of the commission's ability or right to cause their recommendation to expire by a certain date.

Commissioner Gedge withdrew his motion, but noted that it will still be in the minutes for City Council to review.

Planner Mann said this gives staff an opportunity for additional research, and added that staff would probably feel uncomfortable if there were six months to a year between the recommendation and going to the City Council. They would probably look into it before proceeding with the presentation, and the council might also ask for it to be reviewed by the commission again if it has been a while.

J. OTHER BUSINESS

City Planner Greg Schindler said the next meeting currently has two items scheduled, with one of those items potentially being related to the Rise Development.

Commissioner Aaron Starks will be out of the country for the next meeting and unable to attend.

ADJOURNMENT