PERRY CITY PLANNING COMMISSION

REGULAR MEETING AGENDA

September 4, 2025
7:00 pm regular meeting
1950 S Hwy 89 Perry, UT

The meeting will be open to the public.
"Electronic Meeting" Web/Teleconferencing will be used.

The Perry City Planning Commission will hold a meeting on the Thursday identified above, starting at approximately 7:00 PM, at 1950 S Hwy 89. Members of the public may attend the meeting in person or may view the meeting via Zoom at the following link http://www.perrycityut.gov/whats-new.htm.htm. **To participate in the meeting, you must attend in person**. Agenda items may vary depending on length of discussion, cancellation of scheduled items, or agenda alteration.

1. **7:00 p.m. – Call to Order and Opening Ceremonies**
   - **A. Declare Conflicts of Interest, If any**

2. **Action Items**
   - **A. Ordinance 25-N Zone Change Request to add Development Overlay Zone located at 910 S 1600 W & 950 S 1600 W Parcel #'s 03-236-0026 & 03-236-0027 Applicant: Jeremy Whittaker**
   - **B. Public Hearing: Ordinance 25-P Adopting the Highway 89 Transportation Plan as an Element of the General Plan; Severability; and Effective Date**

3. **Approval of the Minutes**
   - **A. August 7, 2025**

4. **Discussion**
   - **A. Future Projects**
   - **B. Report on past-approved Planning Commission Agenda Items**
   - **C. Report from Commissioner regarding previous Council Meetings**
   - **D. Make Assignments for Representative to Attend City Council Meetings (September 11th and 25th)**

5. **Training**
   - **A. Staff**

6. **Review Next Agenda and Adjourn**
   - **A. Items for October agenda (next meeting October 2, 2025)**
   - **B. Motion to Adjourn**

Certificate of Mailing

The undersigned duly appointed official hereby certifies that a copy of the foregoing agenda was sent to each member and alternate member of the Planning Commission and other designated City Officials and was posted in these locations: The Perry City Offices, Centennial Park, Perry City Park; Perry City Website; and State Website; on this 26th Day of August 2025. An individual requiring auxiliary services should contact the City Offices at least 3 days in advance (435-723-6461).

_____

Tyra Bischoff, Planning Secretary

Rules for Public Hearings/Comments:

(1) Please speak only once (maximum of 3 minutes) per agenda item.
(2) Please speak in a courteous and professional manner.
(3) Do not speak to specific member(s) of the Planning Commission, staff, or public (please speak to the Chair or to the Commission as a group).
(4) Please present possible solutions for all problems identified.
(5) Action will not be taken during this meeting if the item is not specifically on the agenda.

Staff Report

August 07, 2025

Perry City Planning Commission

Zone Change Request, Development Overlay District with a Development Agreement – Jeremy Whittaker, located at approximately 950 S 1600 W

Summary

This application includes two adjacent parcels totaling about 4.5 acres. Both properties are in the Interstate Commercial (IC) Zone and are currently vacant. The surrounding zoning is IC. To the west are lands under the jurisdiction of the bird refuge. To the east is the I-15 corridor. Some of the nearby properties have been developed with commercial uses.

The applicant has proposed that the properties be granted the Development Overlay zoning district with a development agreement to align with the included site plan.

Conformance to General Plan and Code Compliance

Zone changes and development agreements are legislative decisions. City Council will be the final land use authority and any information and opinion can be considered when making the decision. Development agreements are completely voluntary for both the applicant and the city. An agreement should be crafted that is beneficial for all parties. The city is under no obligation to approve a proposed agreement. There are many details to finalize with a development agreement and it is common that multiple meetings are required reach final terms.

Development agreements are outlined in section 15.02 of our municipal code. Our Municipal Code says the following regarding Development Agreements:

> *The purpose of this chapter is to provide procedures and minimum standards for the review, consideration, and possible approval of development agreements by the City Council. The purpose of development agreements is to allow exceptions or changes to the current code for a specific development, respond to unique aspects of a property or development, further city priorities, bind the Subdivider to agreed upon Improvements and Infrastructure and other development parameters, and above all, create better developments than what could be had without a development agreement. A development agreement may only be approved, if in the opinion of the City Council, such agreement is found:*
> *To recognize the intended character of the subject property by tailoring development standards and requirements that provide more desirable land use planning and regulatory standards than would be possible under the city's existing ordinances: and to advance the policies and adopted plans of the City.*

This application should only be given a positive recommendation if it meets the standard of being more desirable than following the existing zoning parameters and be better than a development could be without a development agreement.

The applicant submitted a draft agreement with the application. Staff recommends that the agreement be drafted by the city and using the city's own template. The current draft agreement and site plan have many provisions and details that Planning Commission should carefully review and consider.

- 15.19.050.8 requires parking to be in the rear of the buildings. The site plan does not conform to this. It is unclear if the proposed site plan will meet our landscape

requirements. It appears that they are including the large drainage easement around the property as landscape area, although it doesn't appear to indicate any specific landscape improvements. Additionally, we have not received any architectural details regarding the buildings. Unless noted otherwise, the agreement should require full compliance with our landscape and architectural requirements and the rest of the site plan regulations and approval processes.

- Recital 'A': The proposal appears to be conditioned upon the developer purchasing the property, but this is not entirely clear. Development agreements typically run with the land regardless of ownership.
- No expiration provided.
- Recital 'D': This recital should be removed unless it is determined that the city actually desires this.
- 1.1: Update to correct city address
- 3.1: Exhibit B is unclear and no legal description is provided.
- 3.2.1: Allows for broad changes after approval. Changes should be limited to 'de minimis' changes.
- Many references are made to obtaining a zone change when it should refer to approval of the development agreement.
- 3.2.2: Many references are made to what the developer 'intends' to do. This agreement is a contract and should refer to what the developer 'shall' do.
- 3.2.2 'd' and 'e': This section references Pad Site 1 and 2. The site plan does not indicate what areas are Pad Site 1 and 2.
- 3.2.4: Requires the city to record the plat within 30 days of submission. This is not possible to contractually guarantee. They may submit a plat and final drawings that need significant revisions and the time frame for approval is primarily dependent upon the developer's design team, completeness of drawings, and responsiveness to review comments.
- 3.3: Exhibit C is missing. The City cannot commit to approving signage on someone else's property as requested (I-15 sign). This type of signage would be considered a billboard and should go through the standard process for such.
- 4.1: States that the property will change to the M/IL zoning district, which has not been requested. The underlying IC zoning will remain with the overlay district in addition to the base zoning.
- 4.3: Requires the city to schedule special meetings for their applications to meet their deadlines. The developer should take accountability to ensure they have their applications submitted and their drawings complete in time to meet their deadlines. The developer could theoretically force the city into a breach of contract by demanding a special meeting on an infeasible timeline.
- 4.4: States that all interior roads are public. This statement does not apply to the submitted site plan.
- 4.7: Requires that the city be responsible for all possible off-site utility improvements. Staff recommends in the strongest possible manner that no provision like this be considered. All

other developers in the city are responsible for their own off-site improvements to provide utilities. The same should be true in this instance. Perry City should reject any such proposal.

- 4.8: Allows for the improvement guarantee to be in the form of surety bonds, which are nearly impossible for cities to collect on. While the public improvements are likely to be minimal, staff recommends that these by guaranteed by cash escrow.
- 7.2: The city should not commit to paying their attorney fees.
- Overall: Our attorney has not reviewed this document, but will review the development agreement when it is closer to being acceptable. It is recommended that Perry City draft the development agreement utilizing our template and then have our attorney review this document.

The submitted site plan includes two restaurant pads, a car wash, and storage units including a two story storage building with an office. It appears that all of the parking and travel lanes are to be asphalt, although this is not specifically called out. It is unclear if the parking stalls within the storage area are intended for the outdoor storage of recreational vehicles or just for customer loading/unloading. The site plan calls out existing fencing and proposed gates. It appears that most, if not all, of this fencing is actually proposed new fencing, however the type of fence has not be made known. The proposed sidewalk and parkstrip do not meet the dimensions of our current standards (5' sidewalk, 6' parkstrip).

The retail component of the site plan can be done currently without a zone change or development agreement – hence the only purpose of this process is to include the storage units. Planning Commission should consider if this is the best approach. In accordance with our adopted codes and policies, the development agreement should only be recommended for approval if it is clearly in the best interest of the city and better than what a development would be without a development agreement.

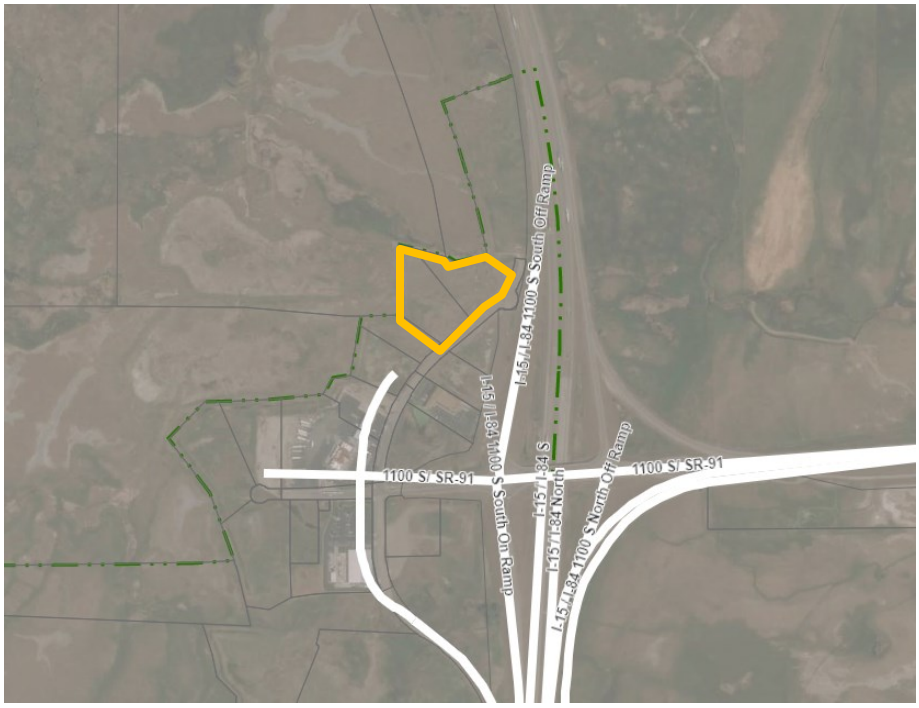
The future land use map shows this area to be commercial and states, *"Primarily commercial, these areas may have retail, service, office, and business uses in general. Light manufacturing may also be allowed in these areas. Multifamily residential uses should be selectively allowed in these areas, especially in areas transitioning between commercial and residential uses."* The General Plan also states the following about Manufacturing and Industrial areas. *"Manufacturing and industrial zoning should be located in the south west area of the City along the freeway."* Overall, the General Plan does not appear to directly and clearly support this request.

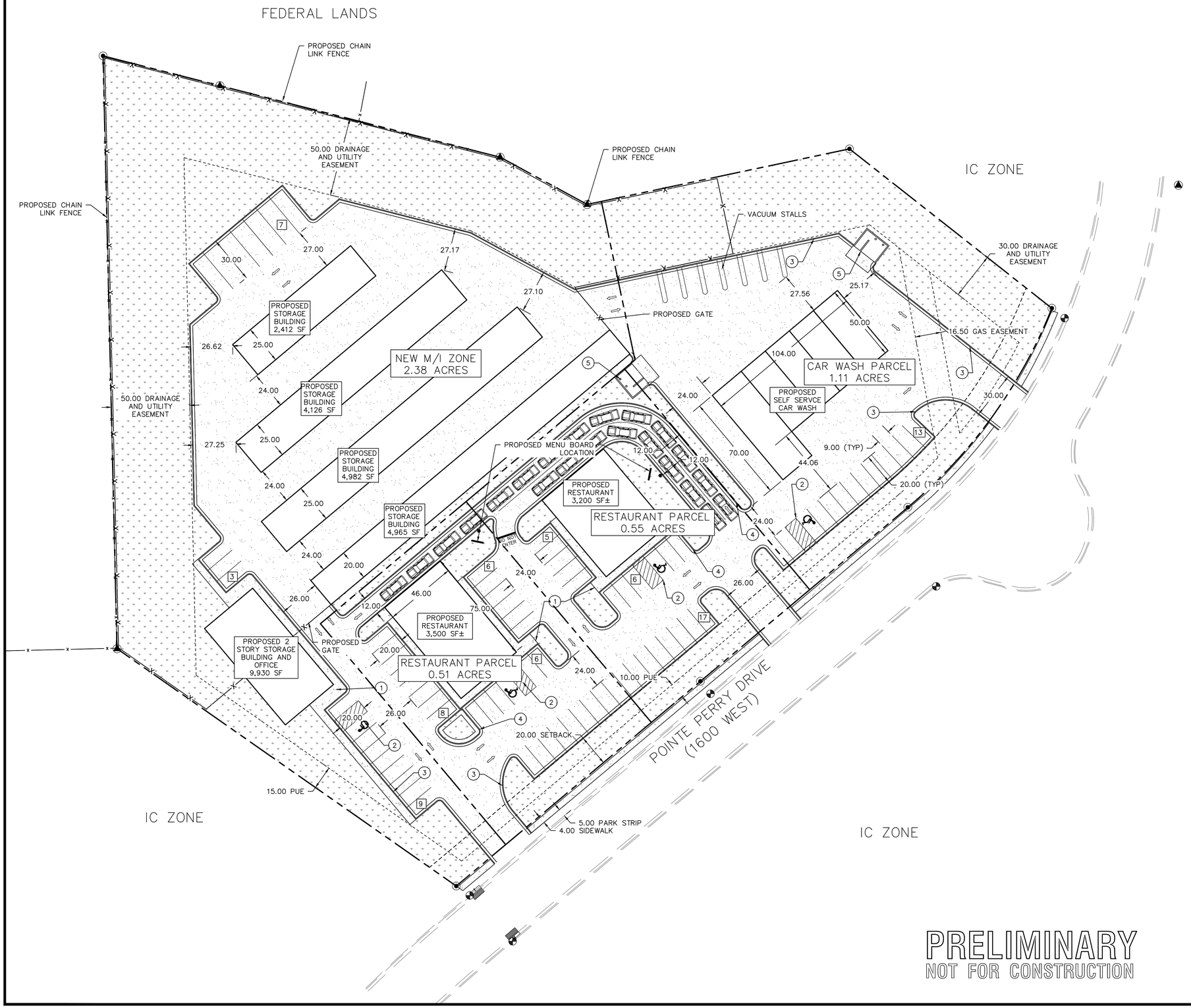
Many past requests for light industrial and/or storage units have been turned down in the Pointe Perry area in the past. Up to this point, City Council has tried to preserve this area for retail development.

Considerations and Recommendations

This is the fifth zone change request of a similar nature that has been made for these specific properties over the past three years. The last request that was considered by City Council was denied in October of 2022.

As a legislative item Planning Commission may take any information or opinion into consideration. City Council will be the final land use authority.





LEGEND

LOT LINES (PROPERTY)	
EXISTING CURB AND GUTTER	
PROPOSED CURB AND GUTTER	
SETBACK LINE	
EXISTING FENCE	
LANDSCAPE AREA	
CONCRETE AREA	
GRAVEL AREA	
GRADE BREAK	GB
INVERT ELEVATION	IE
TOP OF GRATE	TOG
TOP OF ASPHALT	TA
TOP BACK OF CURB	TBC
PROPOSED	PROP
EXISTING	EX
FINISHED GRADE	FG
FINISHED FLOOR ELEVATION	FFE
BACK OF SIDEWALK	BOW

SITE DATA

LOT AREA:	198,661	SF (4.56 ACRES)
BUILDING AREA:	35,130	SF± 15.7%
PAVEMENT AREA:	90,637	SF± 56.1%
LANDSCAPE AREA:	72,893	SF± 28.2%

BUILDING DATA

ZONE: IC (INTERSTATE COMMERCIAL ZONE)

SETBACKS:
FRONT YARD: 20'

PARKING TABULATION

PROVIDED: 79 TOTAL STALLS
13 CAR WASH
19 STORAGE
48 RESTAURANT
4 ADA STALLS

SITE DESIGN NOTES:

1. PROPOSED SIDEWALK PER APWA PLAN 231.
2. ALL ADA STALLS AND RAMPS TO BE INSTALLED PER ADA STANDARDS.
3. PROPOSED CURB & GUTTER PER APWA PLAN 205 TYPE E.
4. PROPOSED REVERSE PAN CURB AND GUTTER PER DETAIL 1.
5. PROPOSED DUMPSTER LOCATION.

GENERAL NOTES:
1. CONTRACTOR SHALL CALL 811 PRIOR TO CONSTRUCTION.
2. CONTRACTOR SHALL VERIFY LOCATION AND ELEVATION OF ALL EXISTING UTILITY LINES AND STRUCTURES PRIOR TO CONSTRUCTION.
3. ALL PROPOSED WATER LINES SHALL HAVE A MINIMUM OF 5' OF COVER.
4. ALL SEWER, WATER AND STORM DRAIN PIPES SHALL BE BACKFILLED WITH SELECT GRANULAR FILL AS PER CITY STANDARDS.
5. ANY OFF SITE DAMAGE TO EXISTING ASPHALT, CURB & GUTTER, LANDSCAPING AND ALL UTILITIES SHALL BE REPLACED IN KIND.
6. SEE UTILITY PLAN FOR CONSTRUCTION OF SEWER AND WATER LINES.
7. ALL WORK SHALL BE ACCORDING TO CITY STANDARDS.

0 30 60 90
1" = 30'
Scale in Feet

PRELIMINARY
NOT FOR CONSTRUCTION

PRELIMINARY

NO.	REVISIONS	BY	DATE

ENGINEER: CJ CHECKED BY: LR

LEGEND ENGINEERING
52 WEST 100 NORTH
HEBER CITY, UT 84032
PHONE: 435-654-4828
www.legendengineering.com

PROMONTORY CROSSING
SITE PLAN
910 S 1600 W BRIGHAM CITY, UT 84302

SHEET: C-1

DATE:

DEVELOPMENT AGREEMENT

This Development Agreement ("**Agreement**") is made and entered into effective as of the 7th day of July, 2025 ("**Effective Date**") by and between Jeremy Whittaker of JKK Management, an individual (the "**Developer**") and Perry City (the "**City**"), a municipality and political subdivision of the State of Utah.

RECITALS

A. The Developer may in the future acquire two adjacent properties, Parcels 03-236-0026 and 03-236-0027, comprising approximately 4.5 acres of land located in the Pointe Perry area at 950 South 1600 West, Perry City, UT 84302 (the "**Site**").

B. The Developer is seeking to build a commercial development on the Site with a two retail/restaurant drive through pad sites, storage units and office for storage units and a car wash. (the "**Project**"). The Developer intends to develop the Project as one or more subdivision(s) consisting of four (4) phases over the course of approximately five (5) years. The Project will be subject to this Agreement as further described below.

C. The City, acting pursuant to its authority under Utah Code Ann. Section 10-9a-101, *et. seq*., in compliance with the Perry City Land Use Ordinance, and in furtherance of its land use policies, goals, objectives, ordinances, and regulations, has made certain determinations with respect to the proposed Project and therefore has elected to approve and enter into this Agreement in order to advance the policies, goals, and objectives of the City, and the health, safety, and general welfare of the public.

D. The City desires that the Project be constructed on an accelerated timeline with the deadlines set forth herein.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Developer and the City hereby agree to the following:

ARTICLE I
DEFINITIONS

Unless the context requires a different meaning, any term or phrase used in this Agreement that has its first letter capitalized shall have that meaning given to it by this Agreement. Certain terms and phrases are referenced below; others are defined where they appear in the text of this Agreement, including its Exhibits.

1.1 "**City**" means Perry City, a body corporate and politic of the State of Utah, with a principal office located at 3005 South 1200 West, Perry, UT 84302. City shall include, unless otherwise provided, any and all of the City's agencies, departments, officials, employees or agents.

1.2 "**City Council**" means the Perry City Council.

1.3 "**City Code**" means the Municipal Code of Perry City, Utah.

1.4 "**Concept Plan**" means the Concept Plan for the Project attached hereto as "**Exhibit A**," and incorporated by this reference.

1.5 "**Developer**" means JKK Management C/O Jeremy Whittaker, with a mailing address of 2110 West 13730 South, Riverton, UT 84065, or any successor-in-interest.

1.6 "**Planning Commission**" means the Perry City Planning Commission.

ARTICLE II
CONDITION PRECEDENT

2.1 City Council Approval Required. This Agreement does not take effect until the City Council has approved this Agreement by ordinance or resolution adopted in an open and public meeting, following a public hearing.

ARTICLE III
PRELIMINARY PROVISIONS

3.1 Property Affected by this Agreement. A map identifying the Site, together with the legal description of the properties to which this Agreement applies, is attached hereto as "**Exhibit B**," and incorporated by this reference.

3.2 Development Rights. The approval of this Agreement will entitle the Developer to develop the Project in conformance with the Concept Plan, subject to Developer following all applicable City Code provisions and processes, including, by way of example and not limitation, site plan approval, site plan amendment, plat approval, etc. The development rights described in this Section 3.2, and Sections 3.3 thru 3.6 constitute the "**Vested Rights of Developer**."

3.2.1 All development of the Project must be in compliance with all applicable City Codes in effect as of the Effective Date. Variations to the Concept Plan such as exact building or parking locations, phasing, and changes to building size or improvement layout, may be effected by the Developer subject to following all applicable City Code requirements relating to City Council or Planning Commission approval.

3.2.2 The City acknowledges and agrees that development of the Project may proceed in the following phases:

a. **Site development for entire site.** Developer will obtain all necessary permits from the City for Site development, including permits for grading and drainage of the Site, installation of all utilities, parking and common area for the entire Project with in 24 months of obtaining a zone change through the Perry City Council. Paving and parking to be completed to include all pavement and parking areas west of Point

perry drive, all parking in the south portion of the project and all paving for access for common areas, storage areas and car wash areas. Parking and paving for the Pad Sites to be completed at the time of construction of the pad sites. Developer intends to complete these improvements within 12 months from obtaining necessary permits.

b. Storage Construction. Developer will obtain all necessary permits from the City of Perry for the completion of any improvement not completed as part of the site development including paving and parking area, the construction of all storage unit facilities including retail office areas within 24 months of obtaining a zone change through the Perry City Council. Developer intends to complete these improvements within 12 months from obtaining necessary permits.

c. Car Wash Construction. Developer will obtain all necessary permits from the City of Perry for the completion of any improvements not completed as part of the site development including paving and parking area, the construction of all car wash areas within 36 months of obtaining a zone change through the Perry City Council. Developer intends to complete these improvements within 12 months from obtaining necessary permits.

d. Build to Suit Pad Site 1 (.55 Acres) Construction. Developer will obtain all necessary permits for the construction of all buildings, structures and amenities on this site within 48 months of obtaining a zone change through the Perry City Council. Developer intends to complete these improvements within 12 months from obtaining necessary permits. Developer intends to market this site as a build to suit and is willing to build on speculation without and intended tenant if an arrangement is not completed within the necessary time frame.

e. Build to Suit Pad Site 2 (.51 Acres). Developer will obtain all necessary permits for the construction of all buildings, structures and amenities in this pad site within 60 months of obtaining a zone change through the Perry City Council. Developer intends to complete these improvements within 12 months from obtaining necessary permits. Developer intends to market this site as a build to suit and is willing to build on speculation without an intended tenant if an arrangement is not completed within the necessary time frame.

3.2.3 Notwithstanding anything herein to the contrary, not later than thirty (30) days prior to the expiration of the time to obtain a building permit for each phase of the Project, Developer may seek to extend the time to obtain a building permit for a period of up to six (6) months by submitting to the City Council a written request for an extension

of time setting forth the reasons why an extension of time is needed. The City Council shall set the request for hearing at the next City Council meeting. Approval of the extension shall not be unreasonably withheld.

3.2.4 The City recognizes that as the land use authority it has ultimate control over the timing of the development of the Project. The City also desires that the Project be constructed on a accelerated timeline, as set forth herein. Accordingly, the City will approve for recordation any final plat for each phase of the Project that is consistent with applicable City ordinance, the Concept Plan, the preliminary plat, and this Agreement within 30 days of its submission by Developer. City approval of the final plat for each phase shall entitle Developer to proceed with the development of individual phases, provided that Developer complies with all City bonding and/or recording requirements.

3.2.5 Developer may provide in each phase the logical extension of the parking and access road system, infrastructure, and utilities considering the Project as a whole, in compliance with the terms of this Agreement and the other applicable City ordinances and regulations. Placement of the utility infrastructure will be specified in the final plat of each phase.

3.3 Signage. The Project shall be permitted to have a sign on the I-15 frontage and a sign on the 1600 West Street frontage, subject to compliance with all applicable City Code provisions, substantially in the locations identified, respectively, in the attached "**Exhibit C**" (the "**Highway Signs**"). Developer shall be solely responsible for acquiring the necessary property rights for the Highway Sign(s), other signage described in the paragraph, and all other aspects of the Project.

3.4 Fees. Developer agrees to pay all applicable development fees of the City, legally in effect uniformly throughout the entire City, as they exist on the applicable date when payment is due. Developer agrees not to challenge, contest, or bring judicial action seeking to avoid payment of or to seek reimbursement of those fees so long as the fees are uniform and calculated accurately according to applicable State law and City ordinance. The City will only assess Developer those fees as are applied uniformly throughout the City and properly assessed under applicable City ordinance and State law.

3.5 Infrastructure and System Improvement Scope and Cost. Developer acknowledges that the Project will require essential infrastructure. Developer is required, at Developer's sole expense and effort, to construct such infrastructure and system improvements in the size, scale, magnitude and capacity required by the Project, applicable provisions of the City Code. If the City requests or requires, as a condition to granting any land use approvals, Developer to construct any improvements to a capacity that exceeds the minimum level required to adequately service the Project, then the City agrees to pay the proportionate cost for the excess capacity.

3.6 Force Majeure. Notwithstanding anything to the contrary contained herein, Developer will not be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, global health crisis, pandemics or

epidemics (it being understood that the parties will use reasonable efforts which are consistent with accepted practices in the real estate industry, and in compliance with applicable heath department regulations, to resume performance as soon as practicable under the circumstances), restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environmental regulations, or similar basis for excused performance which is not within the reasonable control of the Developer to be excused. Upon the request of Developer, an extension of time for such cause will be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

3.7 Third Party Agreements. The City represents and warrants to Developer that the City is not a party to, and that is not aware of, any third-party agreements or understandings that would require Developer to pay to any other person a fee for Developer's utilization for connecting to any infrastructure or improvements existing or under construction or development at the time of this Agreement. If demand is made upon Developer for payment or reimbursement by any such third party, and such third-party claims that such an agreement or understanding exists, the City agrees to pay all such claims and amounts demanded, and the City will be subrogated to all rights of Developer to challenge those claims.

ARTICLE IV
CITY'S UNDERTAKINGS

4.1 Zoning/Concept Plan Approval. The City Council has adopted Ordinance 21-J, approving a zone change of the Site from IC (Interstate Commercial) to M/IL (Light Manufacturing & Industrial). The Site will remain zoned M/IL unless otherwise agreed to by the Developer in the Developer's discretion.

4.2 Concept Plan Approval. By approving this Agreement, the City approves the Concept Plan as attached hereto. The Developer acknowledges that final site plan approval will need to be obtained for each phase of the Project through standard City processes and procedures.

4.3 Timely Consideration and Approval of Phases. The City shall promptly review all materials and applications submitted by Developer in connection with each phase of the Project to allow Developer to meet the phasing deadlines set forth in paragraph 3.2.2 above. In the event that approval at a public meeting is required for an approval for the Project and there is no regularly scheduled meeting that will allow Developer to meet the phasing deadlines imposed by the City, the City agrees to convene special meetings, as necessary, for the specific purpose of considering the approvals. The City will not unreasonably withhold any approval, and with respect to any disapproval, the City must include with each decision of disapproval a clear written statement of the reasons for the disapproval, and recommendations, if any, for remediation.

4.4 Acceptance of Improvements. The City shall timely inspect and accept all improvements which are intended for public use and which have been constructed by Developer or its agents in accordance with the City's standards and as shown on the approved construction drawings. Unless otherwise specifically approved by the City Council and clearly labeled on the final subdivision plat, all roads within the Project will be public roads.

4.5 Provision of Information. The City shall timely provide to the Developer all information, studies, reports, and requirements needed for Developer to properly understand all utility and infrastructure requirements for the Project.

4.6 Infrastructure Participation/Reimbursement. The City shall not require of the Developer any dedications or infrastructure improvements that exceed the demand imposed by the Project. To the extent the City requests, and the Developer agrees, to upsize any infrastructure improvements constructed by the Developer, the City shall reimburse Developer for any upsizing beyond what is required for the Project.

4.7 Offsite Improvements. As provided in Article IV, Developer is responsible for the construction of all onsite infrastructure improvements required for the Project. The City agrees that the Developer is not responsible for any offsite infrastructure improvements. Notwithstanding the foregoing, nothing contained herein may be construed to relieve Developer of its obligations to pay impact fees related to the Project. The City will timely provide all offsite infrastructure improvements for the respective improvements to have adequate capacity to properly serve the Project.

4.8 Bonding. Developer's bonding for the Project shall be in phases consistent with Developer's phasing plan and shall be in the form of a series of surety bonds, cash bonds, or other forms of assurances provided in City Code. The City agrees to provide for partial release of such bond(s) as required by applicable State law.

ARTICLE V
DEVELOPER'S UNDERTAKINGS

5.1 Developer Obligations. Conditioned upon City's performance of its undertakings set forth in Article IV, and provided Developer has not terminated this Agreement pursuant to Section 7.1, Developer agrees to complete the following in general accordance with Developer's Concept Plan:

(A) Water. Developer will be responsible to construct all onsite water lines and related facilities and improvements within the Project, according to applicable City Code.

(B) Sewer. Developer will be responsible to construct all onsite sewer lines and related facilities and improvements within the Project, according to applicable City Code.

(C) Electrical Power. Developer will be responsible to construct all onsite electrical power improvements within the Project, including any re-routing and/or burial of power lines within the Project, according to applicable City Code.

(D) Roads. Developer will be responsible to construct all roads, driveways, curbs, gutter and sidewalks within the Project, according to applicable City Code.

(E) Storm Drain System. The Developer shall design and install a system of positive drainage sufficient to comply with applicable City Code. The Developer shall be responsible to install and maintain all drainage facilities within the Project that are outside the City right-of-way. The City's responsibility for maintenance shall end where any private drain connects to a manhole in the public right-of-way.

(F) Maintenance of Items Outside of Public Right-of-Way. Unless located on City property, the Developer shall be responsible for the maintenance of parking lots, landscaping, walkways, light fixtures, or any other improvement or amenity located outside of the City's right-of-way.

ARTICLE VI
GENERAL REQUIREMENTS AND RIGHTS OF THE CITY

6.1 Issuance of Permits. Developer, or its assignee, shall have the sole responsibility for obtaining all necessary building permits in connection with Developer's undertakings and shall make application for such permits directly to the applicable City department(s) having authority to issue such permits in connection with the performance of Developer's undertakings. The City, including its departments and agencies, shall not unreasonably withhold or delay the issuance of its permits.

6.3 Impact on Vested Rights. The exercise of the City's police and/or legislative powers may only be applied to modify the Vested Rights of Developer under the terms of this Agreement based upon policies, facts, and circumstances that meet the compelling, countervailing public interest exception to the vested rights doctrine as required under Utah law. Any such proposed change affecting the Vested Rights of Developer must be of general application to all development activity within the City; and unless in good faith the City declares an emergency, Developer will be entitled to prior written notice and an opportunity to be heard with respect to any such proposed change and its applicability to the Project under the compelling, countervailing public interest exception to the vested rights doctrine.

ARTICLE VII
REMEDIES

7.1 Remedies for Breach. Unless otherwise provided in this Agreement, in the event of any default or breach of this Agreement or any of its terms or conditions, the defaulting party or any permitted successor to such party shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach, and in any event cure or remedy the breach within thirty (30) days after receipt of such notice. In the event that such default or breach cannot reasonably be cured within the 30-day period, the party receiving such notice shall, within the 30-day period, take reasonable steps to commence the cure or remedy of such default or breach, and shall continue diligently thereafter to cure or remedy such default or breach in a timely manner. In case such action is not taken or diligently pursued, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to:

7.1.1 Cure or remedy such default or breach, such as proceedings for injunctive relief, to compel specific performance by the party in default or breach of its obligations, or declaring a material breach by the party. However, such relief shall exclude the award or recovery of any damages by either party.

7.1.2 In the case of a material uncured breach by Developer, the City may change zoning and general plan map designation for the Project to alternate zoning but only as to any portions of the Project for which preliminary plat approval has not been granted, at the time of such material uncured breach by Developer.

7.2 Attorney Fees. Each party agrees that should it default in any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including reasonable attorneys fee which may arise or accrue from enforcing this Agreement, or in pursuing any remedy provided hereunder or by the statutes or other laws of the State of Utah, whether such remedy is pursued by filing a lawsuit or otherwise, and whether such costs and expenses are incurred with or without suit or before or after judgment.

ARTICLE VIII
GENERAL PROVISIONS

8.1 Transferability. Developer is entitled to assign its rights, in whole or in part, under this Agreement to any other person. In the event of an assignment of this Agreement or any interest in this Agreement, the transferee will succeed to all Developer's rights under this Agreement as to the interest transferred. Notwithstanding the foregoing, Developer's selling or conveying the Project or individual lots or parcels of land to builders, individuals or others will not be deemed to be an "assignment of this Agreement as collateral" subject to the above requirement for approval unless specifically designated as such by Developer.

8.2 Hypothecation of Rights. Developer is entitled to assign as collateral all or any portion of its rights under this agreement to one or more of Developer's lenders, on any terms that Developer and its lender or lenders deem necessary or proper. If requested by Developer, the City will execute and deliver to any lender of Developer one or more consents to assignment of this Agreement as collateral and/or estoppel certificates that confirm the City's agreement with any assignment of this Agreement as collateral by Developer and that provides customary assurances to Developer's lenders.

8.3 Agreement to Run with the Land. This Agreement or a summary notice of this Agreement may be recorded against the Project by Developer, and is be deemed to run with the land and will be binding on all successors and assigns of the Developer in the ownership and development of any portion of the Project.

8.4 Integration. This Agreement, including the Recitals, exhibits and attachments, each of which are incorporated into and made an integral part of this Agreement, contains the entire agreement of the parties hereto with respect to the subject matter hereof and integrates all prior conversations, discussions or understandings of whatever kind or nature and may only be modified by a subsequent writing duly executed by the parties hereto.

8.5 Severability. If any part or provision of this Agreement shall be adjudged unconstitutional, invalid or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision of this Agreement except that specific part or provision determined to be unconstitutional, invalid or unenforceable. If any condition, covenant or other provision of this Agreement shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

8.6 Notices. Any notices, requests and demands required or desired to be given hereunder shall be in writing and shall be served personally upon the party for whom intended, or if mailed, be by certified mail, return receipt requested, postage prepaid, to such party at its address identified in the Definitions *above*. Any party may change its address or notice by giving written notice to the other party in accordance with the provisions of this section.

8.7 Amendment. The parties or their successors in interest may mutually, by written agreement, choose to amend this Agreement at any time. Any material amendment of this Agreement shall require the prior approval of the City Council; otherwise, minor modifications

shall not require prior approval of the City Council but rather shall only require the approval or consent of applicable City staff.

8.8 Further Assurances. City and Developer each agree to perform such other acts, and to execute, acknowledge and deliver such other instruments, documents and other materials as the other may reasonably request and as shall be necessary in order to effect this Agreement.

8.9 Non-liability of Officers, Representatives, Agents, or Employees. No officer, representative, agent, or employee of either party shall be personally liable to the other party or any successor-in-interest or assignee of the other party, in the event of any default or breach by such party or for any amount which may become due such party or its successors or assignee, for any obligation arising out of the terms of this Agreement.

8.10 Ethical Standards. The Developer represents that it has not: (a) provided an illegal gift or payoff to any officer or employee of the City, or former officer or employee of the City, or to any relative or business entity of an officer or employee of the City; (b) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees of bona fide commercial agencies established for the purpose of securing business; (c) breached any of the ethical standards set forth in Utah Code Ann. § 10-3-1301 et seq. and 67-16-3 et seq.; or (d) knowingly influenced, and hereby promises that it will not knowingly influence, any officer or employee of the City or former officer or employee of the City to breach any of the ethical standards set forth in State of Utah statute or City ordinances.

8.11 No Officer or Employee Interest. It is understood and agreed that no officer or employee of the City has or shall have any pecuniary interest, direct or indirect, in this Agreement or the proceeds resulting from the performance of this Agreement. No officer, manager, employee or member of the Developer, or any member of any such persons' families shall serve on any City board or committee or hold any such position which either by rule, practice, or action nominates, recommends, or supervises the Developer's operations, or authorizes funding or payments to the Developer. This section does not apply to elected offices.

8.12 Governing Law & Venue. This Agreement and the performance hereunder shall be governed by the laws of the State of Utah. Any action taken to enforce the provisions of this Agreement shall have exclusive venue in the First District Court of the State of Utah, Box Elder County, Utah.

8.13 Joint Preparation of Agreement. This is an arm's-length Agreement. Each party is represented by counsel, has cooperated in the drafting and preparation of this Agreement, has read this Agreement, and has executed this Agreement voluntarily after having been apprised of all relevant information and the risks involved. Consequently, no provision of this Agreement shall be strictly construed against either party.

[End of Terms – Signature Pages Follow]

[Signature Pages to Development Agreement]

This Development Agreement is agreed to by:

JEREMY WHITTAKER
JKK MANAGEMENT

By: _____
Developer

STATE OF UTAH)
§
COUNTY OF _____)

On this _____ day of _____, in the year 2025, before me, _____ a notary public, personally appeared Jeremy Whittaker, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that he executed the same.

Witness my hand and official seal.

_____
(notary signature)

(seal)

[Signatures Continue]

PERRY CITY

By: _____
Kevin Jeppsen, Mayor

Attest:

_____
City Recorder

Approved as to Form:

_____
City Attorney

STATE OF UTAH)
§
COUNTY OF BOX ELDER)

On this _____ day of _____, in the year 2025, before me, _____ a notary public, personally appeared Kevin Jeppsen, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that he executed the same in his capacity as Mayor of Riverdale City, Utah.

Witness my hand and official seal.

_____
(notary signature)

(seal)

EXHIBIT A

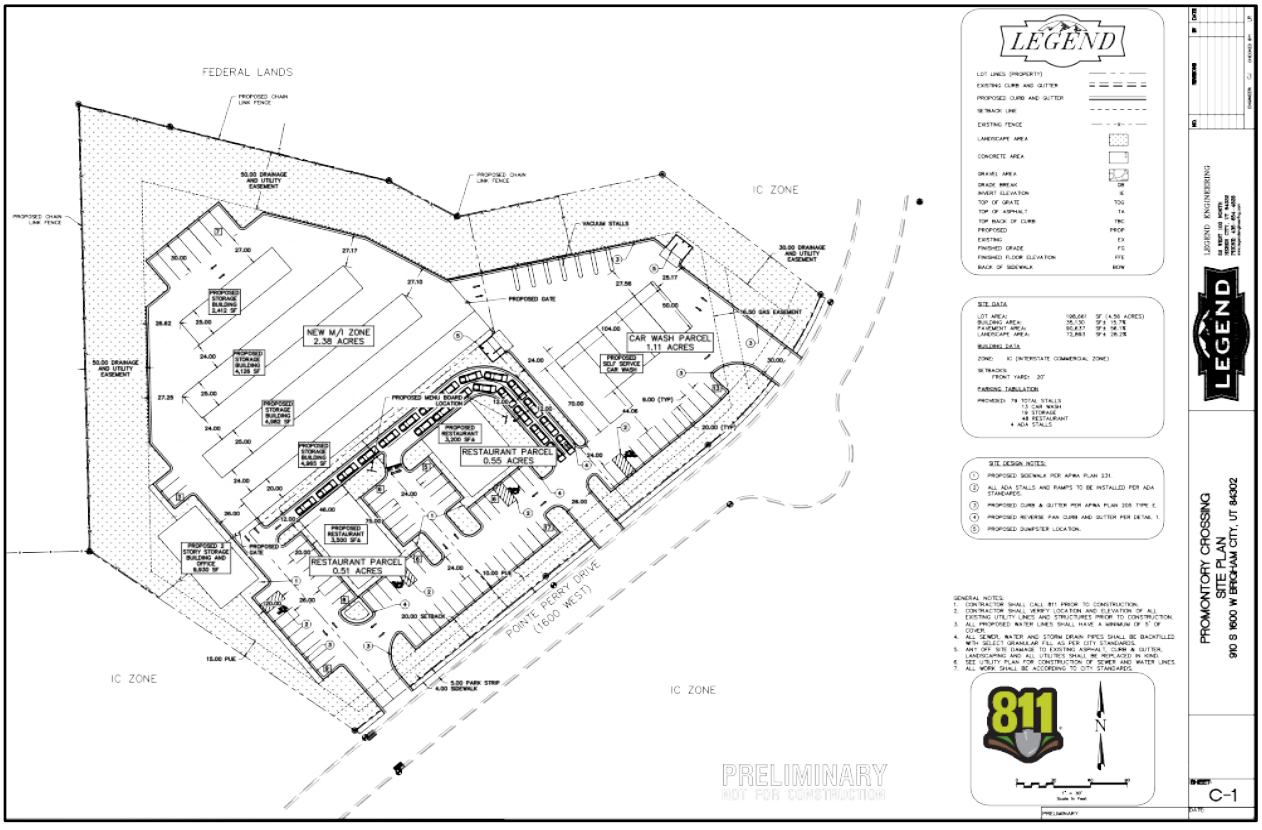

FEDERAL LANDS
PROPOSED CHAIN LINK FENCE
50.00 DRAINAGE AND UTILITY EASEMENT
IC ZONE
VACUUM STALLS
30.00 DRAINAGE AND UTILITY EASEMENT
PROPOSED DATE
16.50 GAS EASEMENT
NEW M/I ZONE 2.38 ACRES
CAR WASH PARCEL 1.11 ACRES
PROPOSED STORAGE BUILDING 2,412 SF
PROPOSED STORAGE BUILDING 4,139 SF
PROPOSED STORAGE BUILDING 4,063 SF
PROPOSED STORAGE BUILDING 4,995 SF
PROPOSED MDIU BOARD LOCATION
PROPOSED RESTAURANT 3,200 SF±
RESTAURANT PARCEL 0.55 ACRES
PROPOSED SELF SERVICE CAR WASH
PROPOSED RESTAURANT 3,500 SF±
RESTAURANT PARCEL 0.51 ACRES
PROPOSED 2 STORY STORAGE BUILDING AND OFFICE 9,930 SF
POINTE PERRY DRIVE (1600 WEST)
30.00 SETBACK
15.00 PUE
5.00 PARK STRIP
4.00 SIDEWALK
IC ZONE
IC ZONE
PRELIMINARY
NOT FOR CONSTRUCTION
LEGEND
LOT LINES (PROPERTY)
EXISTING CURB AND GUTTER
PROPOSED CURB AND GUTTER
SETBACK LINE
EXISTING FENCE
LANDSCAPE AREA
CONCRETE AREA
DRAINS AREA
GRADE BREAK
INVERT ELEVATION
TOP OF GRATE
TOP OF ASPHALT
TOP BACK OF CURB
PROPOSED
EXISTING
FINISHED GRADE
FINISHED FLOOR ELEVATION
BACK OF SIDEWALK
SITE DATA
LOT AREA: 108,661 SF (4.56 ACRES)
BUILDING AREA: 35,130 SF± 15.7%
PAVEMENT AREA: 80,637 SF± 56.1%
LANDSCAPE AREA: 72,883 SF± 28.2%
BUILDING DATA
ZONE: IC (INTERSTATE COMMERCIAL ZONE)
SETBACKS:
FRONT YARD: 20'
PARKING TABULATION
PROVIDED: 78 TOTAL STALLS
13 CAR WASH
19 STORAGE
48 RESTAURANT
4 ADA STALLS
SITE DESIGN NOTES:
1 PROPOSED SIDEWALK PER APWA PLAN 231.
2 ALL ADA STALLS AND RAMPS TO BE INSTALLED PER ADA STANDARDS.
3 PROPOSED CURB & GUTTER PER APWA PLAN 205 TYPE E.
4 PROPOSED REVERSE PAN CURB AND GUTTER PER DETAIL 1.
5 PROPOSED DUMPSTER LOCATION.
GENERAL NOTES:
1. CONTRACTOR SHALL CALL 811 PRIOR TO CONSTRUCTION.
2. CONTRACTOR SHALL VERIFY LOCATION AND ELEVATION OF ALL EXISTING UTILITY LINES AND STRUCTURES PRIOR TO CONSTRUCTION.
3. ALL PROPOSED WATER LINES SHALL HAVE A MINIMUM OF 5' OF COVER.
4. ALL SEWER, WATER AND STORM DRAIN PIPES SHALL BE BACKFILLED WITH SELECT GRANULAR FILL AS PER CITY STANDARDS.
5. ANY OFF SITE DAMAGE TO EXISTING ASPHALT, CURB & GUTTER, LANDSCAPING AND ALL UTILITIES SHALL BE REPLACED IN KIND.
6. SEE UTILITY PLAN FOR CONSTRUCTION OF SEWER AND WATER LINES.
7. ALL WORK SHALL BE ACCORDING TO CITY STANDARDS.
811
N
LEGEND ENGINEERING
LEGEND
PROMONTORY CROSSING
SITE PLAN
910 S 1600 W BRIGHAM CITY, UT 84302
SHEET
C-1

EXHIBIT B

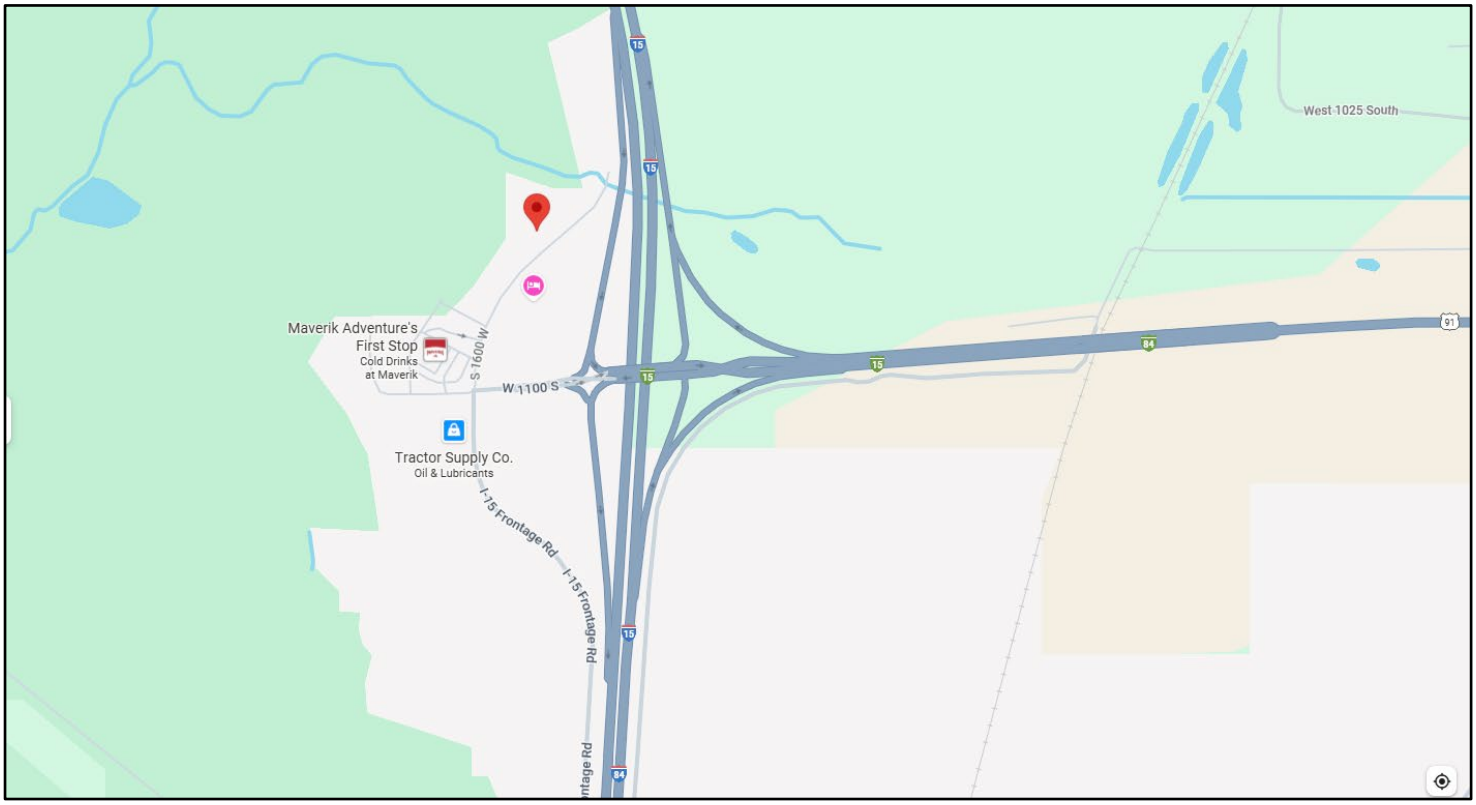

West 1025 South
Maverik Adventure's
First Stop
Cold Drinks
at Maverik
S 1600 W
W 1100 S
Tractor Supply Co.
Oil & Lubricants
I-15 Frontage Rd
I-15 Frontage Rd
15
84
91

EXHIBIT C

Signage to be determined at time of construction for each parcel.

NOTICE OF PERRY PLANNING COMMISSION PUBLIC HEARING

Notice is hereby given that the Perry Planning Commission will hold, in the City Council Chambers at 1950 S Hwy 89 in Perry a public hearing to receive public comment regarding Ordinance 25-P Adopting the Highway 89 Transportation Plan as an Element of the General Plan; Severability; and Effective Date. Members of the public may view the meeting via Zoom using a link at https://www.perrycityut.gov/whats-new.htm.htm. To participate in the meeting, you must attend in person. The public hearing will be held in conjunction with the Perry City Planning Commission Meeting, which starts at 7:00 p.m. on Thursday, September 4, 2025. All interested persons shall be given the opportunity to be heard. Written concerns are welcome. Any Individual requiring auxiliary services should contact the City Offices at least 3 days in advance (435-723-6461). By: Tyra Bischoff, Planning Secretary.

PERRY CITY PLANNING COMMISSION MEETING
PERRY CITY OFFICES
August 7, 2025 7:00 PM

COMMISSIONERS PRESENT:	Chairman Ryan Vaughn, Vice-Chairman Paul White, Commissioner Blake Broadhead, Commissioner Jan Kerr, Commissioner Beth Thompson and Commissioner Stephen Moss
COMMISSIONERS ABSENT:	Commissioner Marcus Wager
CITY STAFF PRESENT:	City Administrator Bob Barnhill, Planning Secretary Tyra Bischoff, Deputy Recorder Misty Moesser and Attorney Chris Crockett
OTHERS PRESENT:	Chad Sokol, Nathan Erickson, Lex Obray and Mardi Obray
ONLINE:	None

ITEM 1: CALL TO ORDER AND OPENING CEREMONIES

Chairman Ryan Vaughn called the meeting to order at 7:00 PM.

A. Declare Conflict of Interest, if any

None.

ITEM 2: ACTION ITEMS

A. Ordinance 25-F Zone Change request from NC-2 to R1 located at approximately 405 W 1850 S; Parcel #03-157-0115; Applicant: Irv Maddox

City Administrator Bob Barnhill provided background on the zone change request, explaining that the property is adjacent to the Maddox restaurant on Highway 89. The applicant provided a site plan showing that they want the zone change to apply to two existing homes on the property. He shared that currently, the property is zoned Neighborhood Commercial 2 (NC2) and the request is to change to Residential 1 (R1) zoning, which allows for 10,000 square foot lots.

Mr. Barnhill noted that there are four residential structures on the property, with the two on the north being the focus of this request. He clarified that the Planning Commission would only be approving the zone change, not the subdivision layout that was submitted, as several aspects of that layout would need to be adjusted when a formal subdivision application is made. He reminded the commission the request is a legislative item and they would be making a recommendation to the City Council, who would make the final decision.

The request had previously come before the Commission a few months ago, and they had asked for clarification on the exact area to be changed, which was now provided. Mr. Barnhill showed the future land use map, which indicated the area was split between residential to the west and commercial along the highway, with these homes situated on that border.

Commissioner White asked about the reason for the zone change request. Mr. Barnhill explained that the property owners want to subdivide the lots, and in order to process a subdivision for residential properties, they need the appropriate residential zoning to establish parameters such as setbacks, lot sizes, and frontages. Commissioner Moss added that this would allow the owners to potentially sell or gift individual homes separately rather than selling the entire property together.

MOTION: Commissioner Moss made a motion to recommend approval of Ordinance 25-F. Commissioner Kerr seconded the motion.

Roll Call Vote: Commissioner Vaughn, Yes
Commissioner White, Yes
Commissioner Broadhead, Yes
Commissioner Kerr, Yes
Commissioner Moss, Yes
Commissioner Thompson, Yes
Commissioner Wager, Absent

Motion Approved. 6 Yes, 0 No

B. Public Hearing: Ordinance 25-M Zone Change Request from NC3 to R 1/3 located at 989 W 3450 S; Parcel #02-077-0006; Applicant: Nathan Erickson

Mr. Barnhill presented the zone change request for a property at the south end of Perry City on Highway 89, near 3450 South. He shared that the property is a flag lot with an accessory building in the back and a driveway that comes up from the front. It was part of an approved subdivision from many years ago.

He explained that the current zoning is Neighborhood Commercial 3 (NC3), which the city's general plan has directed to move away from as it has very few permitted uses. Mr. Barnhill explained that the NC3 zoning essentially tells property owners to request a zone change that fits their intended use. The applicant is requesting R1/3 zoning, which is similar to R1 but requires a third-acre lot instead of a quarter-acre.

He shared that the property owner would like to convert the existing accessory building into a residence, which requires residential zoning instead of commercial zoning. The property has access to water but not sewer, so it would need to use a septic system, which the city engineer determined was feasible given the property's location.

Commissioner Kerr raised concerns about access, noting that the flag lot appears to also serve as access for two other residential properties in front of it. Nathan Erickson, representing the property owner (his father Wallace Erickson), explained that the property to the left is a fourplex with only the top two units finished, while the property on the right has storage units and a two-car garage. He confirmed that they had water connected to their building and approval for septic installation.

Commissioner Kerr recommended that they get an access agreement in writing to secure everyone's right to access their properties in case of future conflicts.

The public hearing was opened at 7:16PM.

No public comments were made.

The public hearing was closed at 7:17PM.

MOTION: Commissioner Kerr made a motion to recommend approval of Ordinance 25-M. Commissioner Moss seconded the motion.

Roll Call Vote:
Commissioner Vaughn, Yes
Commissioner White, Yes
Commissioner Broadhead, Yes
Commissioner Kerr, Yes
Commissioner Moss, Yes
Commissioner Thompson, Yes
Commissioner Wager, Absent

Motion Approved. 6 Yes, 0 No

C. Public Hearing: Ordinance 25-N Zone Change Request to add Development Overlay Zone located at 910 W 1600 N & 950 W 1600 N; Parcel #03-236-0026 & #03-236-0027; Applicant: Jeremy Whittaker

Mr. Barnhill presented information about two adjacent properties totaling about 4.5 acres located on the north end of the city at Pointe Perry, near the I-15 interchange. The properties are currently zoned Interstate Commercial (IC), which allows for retail or office commercial uses.

Unlike previous requests for manufacturing/industrial zoning, this application proposes keeping the underlying IC zone but adding a development agreement to allow storage units, which aren't typically permitted in the IC zone. Mr. Barnhill showed the applicant's site plan, which included a car wash and two restaurant parcels in the front portion of the property, with storage units in the back. He noted that the front commercial portion could be built today under current zoning, but the development agreement would be needed specifically for the storage units.

Mr. Barnhill expressed several concerns with the applicant's submitted development agreement document:

- It referenced what the developer "intends" to do rather than contractual "shall" language
- It placed requirements on the city such as recording plats within 30 days of submission
- It mentioned I-15 signage without specifying location or details

- It required the city to hold special meetings to accommodate developer timelines
- The surfacing material for the development wasn't specified
- The landscaping details were vague
- The building placement with parking in front contradicted city code preferences

He also noted concerns with the proposed phasing, which would build storage units first (within 24 months), followed by the car wash (36 months), and then the restaurant pads (48 and 60 months respectively). This phasing appeared to prioritize the less desirable component first, with no guarantees that the more desirable commercial development would follow.

The commission discussed several concerns:

- Commissioner Moss pointed out that they had previously turned down a similar request for storage units on this property
- Questions arose about whether restaurants would be interested in leasing rather than owning their buildings
- Commissioner White expressed concern that the agreement primarily benefited the developer without clear benefits to the city
- The Commission noted access and safety issues with the phasing plan as proposed
- There were questions about how the drive-throughs would work if built a year apart

The public hearing was opened at 7:29PM.

No public comments were made.

The public hearing was closed at 7:29PM.

The commission agreed they had numerous questions for the applicant, who had requested the item be tabled until the next meeting. They asked Mr. Barnhill to relay their concerns to the applicant, including:

- The need to better align with city code
- Provide specific landscaping design details
- Use the city's development agreement template
- Clarify signage details
- Specify surface materials
- Reconsider the phasing plan

ITEM 3: APPROVAL OF THE MINUTES

A. June 5, 2025, Regular Planning Meeting

Commissioner Kerr and Commissioner Thompson pointed out some changes that were needed on lines 10, 121 and 214 of the June 5, 2025 minutes.

MOTION: Commissioner Broadhead made a motion to approve the minutes with the noted corrections for the June 5, 2025, Planning Commission meeting. Commissioner Moss seconded the motion.

Roll Call Vote: Commissioner Vaughn, Yes
Commissioner White, Yes

Commissioner Broadhead, Yes
Commissioner Kerr, Yes
Commissioner Moss, Yes
Commissioner Thompson, Yes
Commissioner Wager, Absent

Motion Approved. 6 Yes, 0 No

ITEM 4: DISCUSSION

A. Future Projects

Mr. Barnhill mentioned he was working on code amendments required by the state, though they were "perpetually on the back burner." These would include adjustments to parking requirements and changes to how parcels and lots in subdivisions are amended, combined, or split. He anticipated bringing these to the commission at some point in the future.

B. Report on past-approved Planning Commission Items

Nothing to report.

C. Report from Commissioners regarding previous Council Meetings

Mr. Barnhill noted that the last council meeting wasn't particularly noteworthy, with the main action being approval of the budget in June for the fiscal year that started July 1.

D. Make assignments for representative(s) to attend City Council (August 14th and 28th)

The commission made the following assignments for upcoming city council meetings:

- August 14, 2025: Commissioner Moss
- August 28, 2025: Commissioner White

ITEM 5: TRAINING

A. Staff

Planning Commission Attorney Chris Crockett provided the first part of a two-part training on development agreements. He explained that next month, Charlie Ewer (who had previously given a Night Sky presentation) would join them to provide concrete examples of development agreements from Weber County.

Mr. Crockett discussed the difference between legislative and administrative development agreements. He explained that most development agreements are legislative because they waive or modify existing land use regulations, while administrative agreements implement existing regulations without modification.

Key points from the training included:

- Development agreements typically run simultaneously with ordinance changes
- They cannot limit a land use authority's ability to modify code in the future
- They cannot require a municipality to change zoning designations in the future
- Typical items included in development agreements are height exemptions, parking modifications, setback exceptions, density bonuses, and zone changes
- There are ongoing legal debates about how far cities can go in negotiating benefits through development agreements

Commissioner Moss asked about examples of creative benefits cities could negotiate for that don't consume developers' land space. Mr. Crockett mentioned requirements for specific building materials, fencing standards, and solar requirements as examples.

Commissioner White asked about limits to what cities can request in development agreements. Mr. Crockett explained that while there are legal boundaries, developers always have the option to develop under existing code if they feel demands are excessive.

The Commission discussed how they sometimes feel they don't ask for enough in return when granting concessions to developers. Mr. Crockett suggested that a good sign of a balanced agreement is when "nobody is walking away with everything they want."

ITEM 6: REVIEW NEXT ADGENDA AND ADJOURN

A. Items for September agenda (next meeting September 4, 2025)

Mr. Barnhill indicated that the September meeting would include the tabled development agreement item and likely a Highway 89 master plan for recommendation to the City Council.

B. Motion to Adjourn

Motion: Commissioner Moss made a motion to adjourn the meeting.

All In Favor

The meeting was adjourned at 8:06PM.