Staff Report

PLANNING DIVISION

DEPARTMENT *of* COMMUNITY *and* NEIGHBORHOODS

To: Salt Lake City Planning Commission

From: Diana Martinez, Senior Planner, diana.martinez@slcgov.com, 801-535-7215

Date: January 10, 2024

Re: PLNPCM2023-00260 Gas Stations Located Near Water Sources and Sensitive Lands (Public Open Space) Text Amendment

Zoning Text Amendment

APPLICATION TYPE: Zoning Text Amendment
MASTER PLAN: All- Citywide
ZONING DISTRICT: All- Citywide
COUNCIL DISTRICT: All Community Councils Citywide

REQUEST:

Mayor Erin Mendenhall has initiated a petition to amend the zoning ordinance to propose minimum distances that any gas station can be from a river, stream, or other water body, a park, or open space area over a certain size and establishes more stringent zoning standards for any gas station that is located in the secondary groundwater recharge area of the city.

The proposed text amendment would prohibit future gas stations that do not meet the proposed standards regardless of being a permitted or conditioned land use as listed in an allowable zoning district. The proposed standards will be listed in the Ordinance under section 21A.36.370, "**Standards for Gas Stations and Facilities with Underground and Above-Ground Fuel Storage Tanks**".

RECOMMENDATION:

Based on the findings listed in this staff report and the standards for zoning text amendments, the Planning Staff recommends that the Planning Commission forward a positive recommendation to the City Council regarding this proposal.

ATTACHMENTS:

A. ATTACHMENT A: Mayor's Memorandum
B. ATTACHMENT B: Proposed Amendments
C. ATTACHMENT C: Analysis of Standards
D. ATTACHMENT D: Public Process & Comments
E. ATTACHMENT E: Department Review Comments

PROJECT DESCRIPTION

This Zoning Text Amendment is being initiated to propose standards for gas stations and facilities with underground and above-ground fuel storage tanks (USTs and ASTs). This includes proposing minimum distances that any gas station or facility (with USTs and/or ASTs) can be from a river, stream, or other water body, a public park, or open space area over one acre in size and more stringent zoning standards for these uses if located in the secondary groundwater recharge area of the city.

Determining the minimum separation and standards has been coordinated with city divisions whose interests are related to these water bodies and sensitive lands. In particular, the planning staff has collaborated with the Salt Lake City Fire Department and the Utah State Division of Environmental Response and Remediation on the standards for the proposed text amendment.

Zoning Ordinance Definitions:

WATER BODY/WATERWAY*: A natural or manmade body of water such as a lake, river, creek, stream, canal, or other channel over which water flows at least periodically.*

PARK*: A noncommercial, not-for-profit facility designed to serve the recreation needs of the residents of the community. Such facilities may include a playground, swimming pool, athletic field, pavilions, turf areas, horticultural gardens, nature center, community gardens, special events areas, concessions, trails, passive and active recreational uses, and other similar uses typically found within a park. This definition is further supplemented by the definitions of section 2.94.030 of this Code.*

OPEN SPACE*: An area of land or water that is improved or unimproved and serves the purposes of preservation of natural resources, recreation, or public health and safety. Open space is land set aside for conservation or recreation purposes. It may include woodlands, play areas, recreation centers, government facilities, walking and riding trails, nature centers, wetlands, and lands in the floodplain, as well as land use for passive or active recreation.*

The planning staff is recommending that all proposed **new construction** gas stations must abide by the newly proposed standards. In addition, all **new construction** of accessory and primary facilities that will have above or underground storage fuel tanks will also be required to follow the proposed standards.

Any land use that is listed in the Land Use Table in section 21A.33 as "gas station" or an accessory or primary facility use that will have above or underground storage tanks will be amended to have an added qualifying provision noted on it to indicate that the use will be required to follow the ordinance standards of section 21A.36.070.

This new ordinance will primarily affect new construction. Existing gas stations and fuel-containing facilities will only be required to comply with the standards listed in F, G, and H of the new ordinance 21A.36.370 (see page 30), which would require the City Zoning Administrator to review and authorize any modification of the fuel tank(s) location, to a location that would have less of a negative impact to the site and surrounding properties.

BACKGROUND:

In April of 2023, an application for a Conditional Use was presented to the Planning Commission. The request was for a gas station and convenience store to be located on the corner parcel adjacent to Sugar House Park. Sugar House Park is the second largest government (county and municipality) collaboratively owned and maintained public park in the Salt Lake Valley/County at 110 acres.

There were almost 600 comments of opposition to the proposal, many concerned with the negative environmental hazards that the gas station could potentially cause the Park.

The Planning Commission voted to deny this conditional use request for a gas station based on the findings listed in the staff report, the information presented, and input received during the public hearing, and because of the potential for detrimental impacts to the environment near the site cannot be mitigated as noted in the Conditional Use Staff Report as Key Considerations (1-8):

- Conditional Use Purpose Statement- Incompatibility with the adjacent uses;
- Sugar House Park's environmental amenities;
- Environmental concerns-underground storage tanks (USTs);
- Environmental concerns- surface water runoff;
- Traffic concerns- vehicular increase to 2100 South/1300 East intersection;
- Traffic concerns- fuel truck route after leaving the subject property
- City plan policies
- Landscaping buffer- for separation and storm drain filtration system

It was because of this application that the planning staff requested that the Mayor initiate a text amendment to consider whether safer standards for gas stations and other fuel-containing facilities should be implemented and required through the zoning ordinance to ensure better environmental safety conditions for the water sources and open spaces near these uses.

KEY CONSIDERATIONS

The key considerations listed below were identified through the analysis of the project:

1. Compatibility with Master Plan Policies and Initiatives
2. The Importance of Standards for Gas Stations and Accessory & Primary Facilities with Above and Underground Storage Fuel Tanks.
3. Impacts of the Proposed Text Amendment on New and Existing Uses
4. Zoning Districts that allow gas stations and accessory/primary facilities with above or underground fuel storage tanks - Use Analysis
5. Secondary Recharge Area and the Groundwater Source Protection Overlay District & Ordinance

Consideration 1: Compatibility with Master Plan Policies and Initiatives

SALT LAKE CITY OPEN SPACE PLAN (1992)

Goals of Open Space Plan:
Given the value of Salt Lake City's natural setting and the importance of open space to the City's future as a special place to live, the following goals were established for the Open Space Plan.

- Conserve the natural environment.
- Enhance open space amenities for all citizens.
- Connect the various parts of the City to natural environments.
- Educate the citizens on proper use of open space.

The Open Space Plan was created to increase awareness of the value of the City's natural resource systems, the mountains, the wetlands, and open space within the City.

The purpose of the Open Space Plan was to address issues with the foothills, lakeshore uplands, and valley landform by creating policies that could ensure these natural amenities will be preserved and enhanced so they continue to be major contributors to improving the quality of life for the community and residents of Salt Lake City.

PLAN SALT LAKE (2015)

The guiding principles of the Plan Salt Lake vision regarding water sources and open space are the following:

- Air that is healthy and clean.
    - Reduce greenhouse gas emissions.
    - Minimize impact of car emissions.
    - Ensure local industries meet stringent environmental standards.
- Minimize our impact on the natural environment.
    - Preserve natural open space and sensitive areas to sustain biodiversity and ecosystem functions through:
        - Increased education regarding stewardship of natural lands;
        - Restoration of natural lands and critical habitat;
        - Support of stewardship of City-owned natural open space;

        - Implementation and promotion of best practices in management and stewardship of natural lands;
        - Restoration of aquatic and riparian corridors and habitats (including day-lighting of streams and water corridors);
        - Reduction in habitat fragmentation.
    - Protect water quality and supply by:
        - Operating facilities to ensure water quality meets regulatory requirements;
        - Promoting and supporting reuse of reclaimed and secondary water sources;
        - Protecting ground water sources.
- Protecting the natural environment while providing access and opportunities to recreate and enjoy nature.
- A beautiful city that is people focused
    - Open space and the natural environment are defining features of Salt Lake City. Our beautiful City parks and open spaces, paired with the dramatic views of and proximity to the Wasatch and Oquirrh mountains, make Salt Lake City a beautiful place to live and visit. These aesthetic and recreational qualities attract new residents, visitors, employers, and investment to our City.

This newly proposed ordinance will help implement the goals of the two plans above by helping to protect the natural environment (water sources and open space) from fuel leaks and surface water contamination with regulated standards. Minimizing the negative impacts on the natural environment is the main objective with this proposed ordinance.

Consideration 2: The Importance of Standards for Gas Stations and Accessory & Primary Facilities with Above and Underground Storage Fuel Tanks

The proposed amendment is intended to promote health and safety to the public by reducing the possibility of air, water, and soil contamination due to gasoline leaks and vapers from gas stations and accessory & primary facilities with above and underground storage fuel tanks by way of fuel tank & equipment "releases" (leaks) and surface runoff.

There are over 769 gas stations in Utah as of 2019 with underground fuel storage tanks (UST).[6] According to the Utah State Department of Environmental Quality -Environmental Response & Remediation, at the end of 2022, there were approximately 3,604 USTs in the state of Utah and 768 facilities inspected. There were 54 confirmed release (leaks) sites reported.

As indicated in the following table, 76% of USTs were compliant at the time of inspection, which means that 24% of the USTs were not in compliance. That amounts to 864 USTs, or one of every four, that were not compliant. It is reasonable to expect USTs that are not compliant at the time of inspection create a negative environmental impact that may only be discovered during required inspections.

Utah's Summary Information On Underground Storage Tanks (USTs)

General Information

Public Record Posted Date:	12/5/2022
Total Number Of UST Facilities::	1309
Total Number Of USTs:	3604

Summary Information For On-Site Inspections

Number Of UST Facilities Inspected:	768
Inspection Period Dates:	October 1, 2021 To September 30, 2022
Percent Compliance at Time of Inspection (Combined Measure):	76 %

Note: Tank, facility, and on-site inspection information is based on State of Utah site inspections, and file records. On-site inspections measure compliance with State and Federal UST regulations. Percent Compliance is based on the Technical Compliance Rate (TCR), which is a composite measure of compliance with spill prevention, overfill prevention, corrosion protection, and release detection requirements. The TCR and supporting measures are described in EPA's April 2018 guidance.

Summary Information For Releases

Number Of Confirmed UST Releases:	54
Release Reporting Period Dates:	October 1, 2021 To September 30, 2022

Summary Information For Release Sources And Causes

Source			Cause													
			Spill		Overfill		Damage		Corrosion		Install		Other		Unknown	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
Tank	12	22 %	0	0 %	0	0 %	1	33 %	3	43 %	0	0%	0	0 %	8	28 %
Piping	8	15 %	0	0 %	0	0 %	1	33 %	3	43 %	0	0%	0	0 %	4	14 %
Dispenser	11	20 %	5	63 %	3	60 %	1	33 %	0	0 %	0	0%	0	0 %	2	7 %
STP	2	4 %	0	0 %	0	0 %	0	0 %	1	14 %	0	0%	0	0 %	1	3 %
Delivery Problem	5	9 %	2	25 %	2	40 %	0	0 %	0	0 %	0	0%	1	50 %	0	0 %
Other	4	7 %	1	13 %	0	0 %	0	0 %	0	0 %	0	0%	1	50 %	2	7 %
Unknown	12	22 %	0	0 %	0	0 %	0	0 %	0	0 %	0	0%	0	0 %	12	41 %
Totals	**54**		**8**		**5**		**3**		**7**		**0**		**2**		**29**	

= number, % = percent of total number

Note: Release, source and cause information is based on Federally Regulated Underground Storage Tanks and Federally Regulated Leaking Underground Storage Tanks. Source and cause data were collected using data provided to the State of Utah from Site Inspections and Closure Notices.

The public can obtain site-specific UST information on compliance and releases. In making a request to review files, please call (801) 536-4100, fax (801) 359-8853, or mail the GRAMA Coordinator at: P.O. Box 144840 (195 North 1950 West), Salt Lake City, Utah, 84114-4840. You will be notified when your files are ready to be reviewed. For additional information, please visit our web site at https://deq.utah.gov/ or our interactive map at https://enviro.deq.utah.gov/

The purpose of this report is to comply with the Public Record Provision Of The Energy Policy Act Of 2005

Statistics and other evidence from the Department of Environmental Quality show that releases of petroleum are a frequent occurrence. Since Utah obtains more than 10% of the population's drinking water from groundwater, the Department of Environmental Quality has regulations in place to protect this valuable public resource. "When a UST leaks, it becomes a Leaky Underground Storage Tank (LUST) and poses a risk to human health and the environment. Currently, there are more than 3,000 LUST sites in Utah. These sites have resulted in contaminated groundwater and, in some cases, explosive situations."

In addition to tank leaks, overfilling of the UST from fuel trucks for product delivery periodically happens, and the possibility of surface water runoff from the gas station could contaminate soil and water sources.

Any failure of best management practices would cause a risk of contamination to water sources and open space in the city through the storm drain connection. There are no best management plans that can mitigate the negative impact since spills are caused by human error, and that could lead to a potential failure.

Consideration 3: Impacts of the Proposed Text Amendment on New and Existing Uses

The amendment proposes to add specific standards to proposed new construction gas stations and any accessory or primary facilities that will have above or underground storage fuel tanks on-site. No change is proposed for ***existing*** gas stations or accessory and primary facilities (with existing above or underground storage fuel tanks).

If this amendment is adopted, no business would be allowed to construct a new gas station or a new accessory or primary facility that is proposing to have above or underground storage fuel tanks without implementing the new standards of 21A.36.070.

Under the proposed amendment, existing gas stations and facilities with existing above or underground storage fuel tanks would become legal nonconforming uses and would be allowed to continue.

> Nonconforming uses are defined as *"any building or land legally occupied by a use at the time of passage of the ordinance codified herein or amendment thereto which does not conform after passage of said ordinance or amendment thereto with the use regulations of the district in which located.*"

The provisions of chapter 21A.38 regulate nonconforming uses – Nonconforming Uses and Noncomplying Structures. Nonconforming uses are allowed to continue operating as originally permitted until deemed abandoned or voluntarily removed. Enlargement of a nonconforming use is limited to no more than 25% of the gross floor area, or 1,000 square feet, whichever is less. Remodeling is allowed for energy efficiency, accessibility, or life safety improvements. The proposed amendment will not affect the ability of existing gas stations or facilities with above or underground storage fuel tanks to continue their normal operations.

Consideration 4: Zoning Districts that allow gas stations & accessory/primary facilities with above or underground fuel storage tanks - Use Analysis

Gas Stations are permitted in 14 zoning districts. They are listed as a "Permitted Use" in 13 of the zoning districts, and in the CB (Community Business) zoning district, gas stations are permitted as a "Conditional Use", requiring that the applicant go through the Conditional Use application process.

Zoning District	Permitted Use	Conditional Use	Qualifying Provision
M-1	P	-	None
M-2	P	-	None
BP	P[7]	-	7- when approved as part of a business park planned development pursuant to the provisions of Chapter 21A.55 of this title.
CB	-	C	None
CS[1]	P	-	None
CC	P	-	None
CG	P	-	None
CSHBD[1]	P	-	None
CSHBD[2]	P	-	None
D-2	P	-	None
D-3	P[7]	-	7- subject to conformance with the provisions of Chapter 21A.59 "Design Review" of this title.
D-4	P[7]	-	7- subject to conformance with the provisions of Chapter 21A.59 "Design Review" of this title.
TSA-MUEC-T	P	-	None
TSA-SP-T	P	-	None

Currently, there are no specific zoning standards required for developing a gas station in a zone that permits them. Current adopted Fire and Building Codes are the only specific regulations that a gas station development must follow to get initial approvals (this is in zones where gas stations are "Permitted Uses"). At later stages of development, The State of Utah's Department of Environmental Quality, specifically the Dept of Response and Remediation, will have specific requirements that gas station developments must abide by.

Other Information to Consider:

Are gas stations and accessory and primary facilities with above or underground storage fuel tanks essential?

In the United States today, gas stations and accessory and primary facilities with above or underground storage fuel tanks are considered essential services to most communities. They provide fuel for emergency services, public transportation, necessary work vehicles, and the approximately two million registered vehicles (as of 2021) in Utah alone.

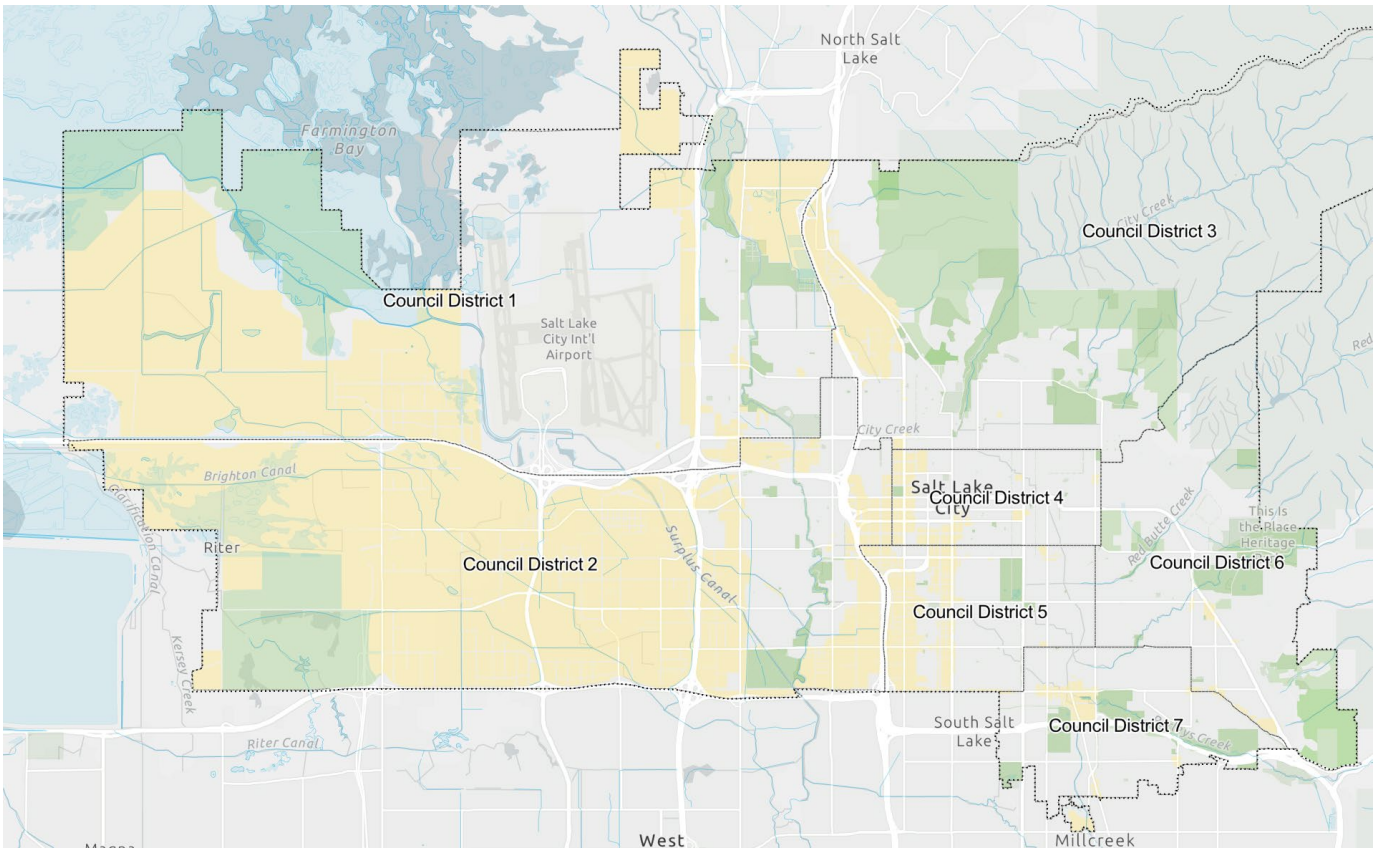
Although there has been a push for more EV or electric vehicle charging locations, the need for gasoline-providing locations is still in greater demand. To date, there are approximately 780 EV charging stations and over 810 gasoline stations. The use of fossil fuels is still very high and will last many more years. The proposed ordinance requires that all new construction gas stations provide one parking space dedicated to electric vehicles for every ten (10) on-site parking spaces.

Example of underground storage fuel tanks

Example of an above ground storage fuel tank

Where are gas stations and accessory & primary facilities with above or underground storage fuel tanks allowed in Salt Lake City?

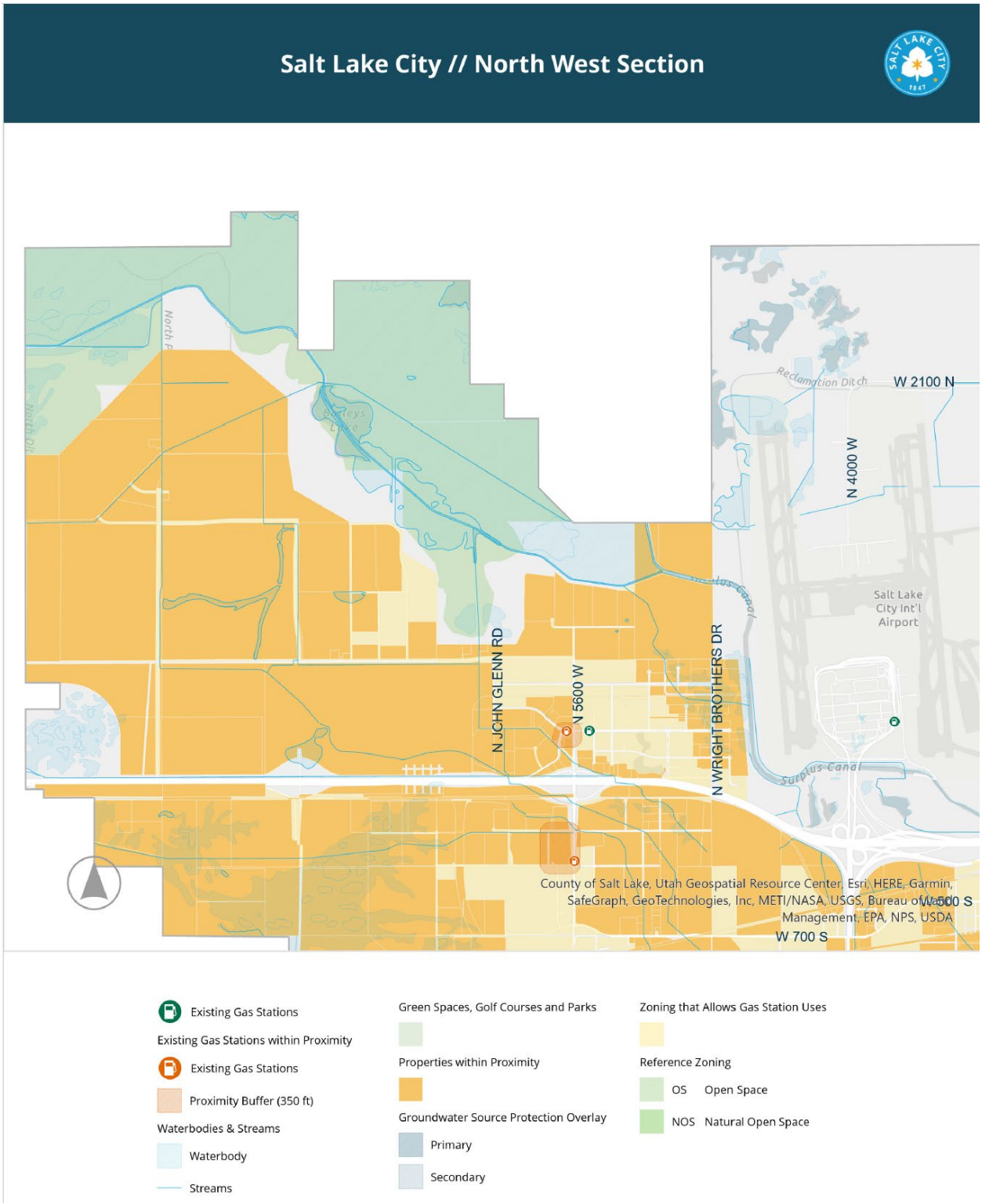
Gas stations and accessory & primary facilities with above or underground storage fuel tanks are allowed in 14 zoning districts as shown in the table above. All but one zone allows gas stations as permitted uses. The CB zone allows gas stations as conditional uses, with the approval of the Planning Commission. Gas stations are **prohibited** in a number of zoning districts, including all residential districts. They are also restricted in the Groundwater Source Protection Overlay District, which is primarily in the eastern part of the City.



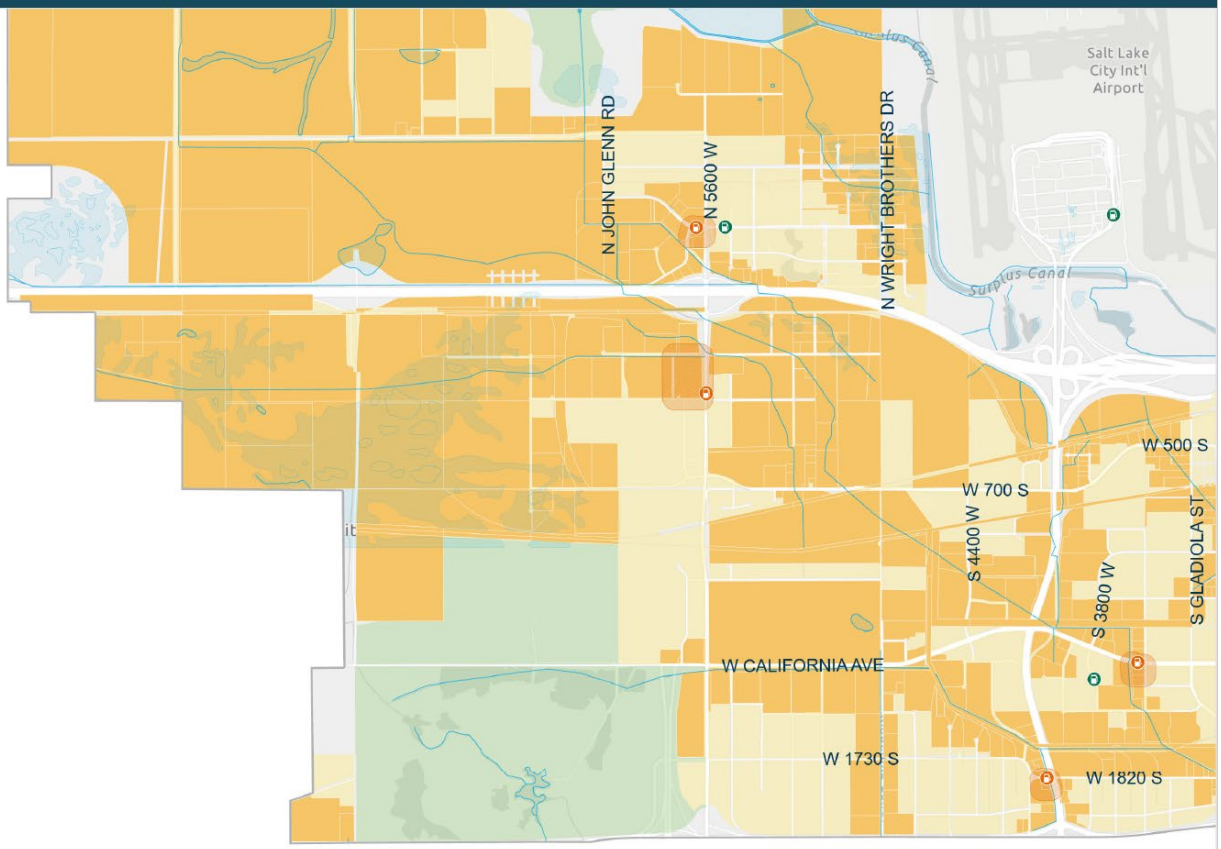
Light Orange Color= Areas that allow Gas Stations and Accessory and primary Facilities with Above and Underground Storage Fuel Tanks

The following maps are selection maps of Salt Lake City depicting the zoning areas that allow gas stations and accessory and primary facilities with above and underground storage fuel tanks. The live interaction maps are located here: [Gas Station Uses in Proximity to Waterbodies and Green Spaces (October 18, 2023)]

Breakup of the zoning areas in Salt Lake City that allow Gas Stations and Accessory and primary Facilities with Above and Underground Storage Fuel Tanks:



Salt Lake City // South West Section



County of Salt Lake, Utah Geospatial Resource Center, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, Bureau of Land Management, EPA, NPS, USDA

Existing Gas Stations

Existing Gas Stations within Proximity

Existing Gas Stations

Proximity Buffer (350 ft)

Waterbodies & Streams

Waterbody

Streams

Green Spaces, Golf Courses and Parks

Properties within Proximity

Groundwater Source Protection Overlay

Primary

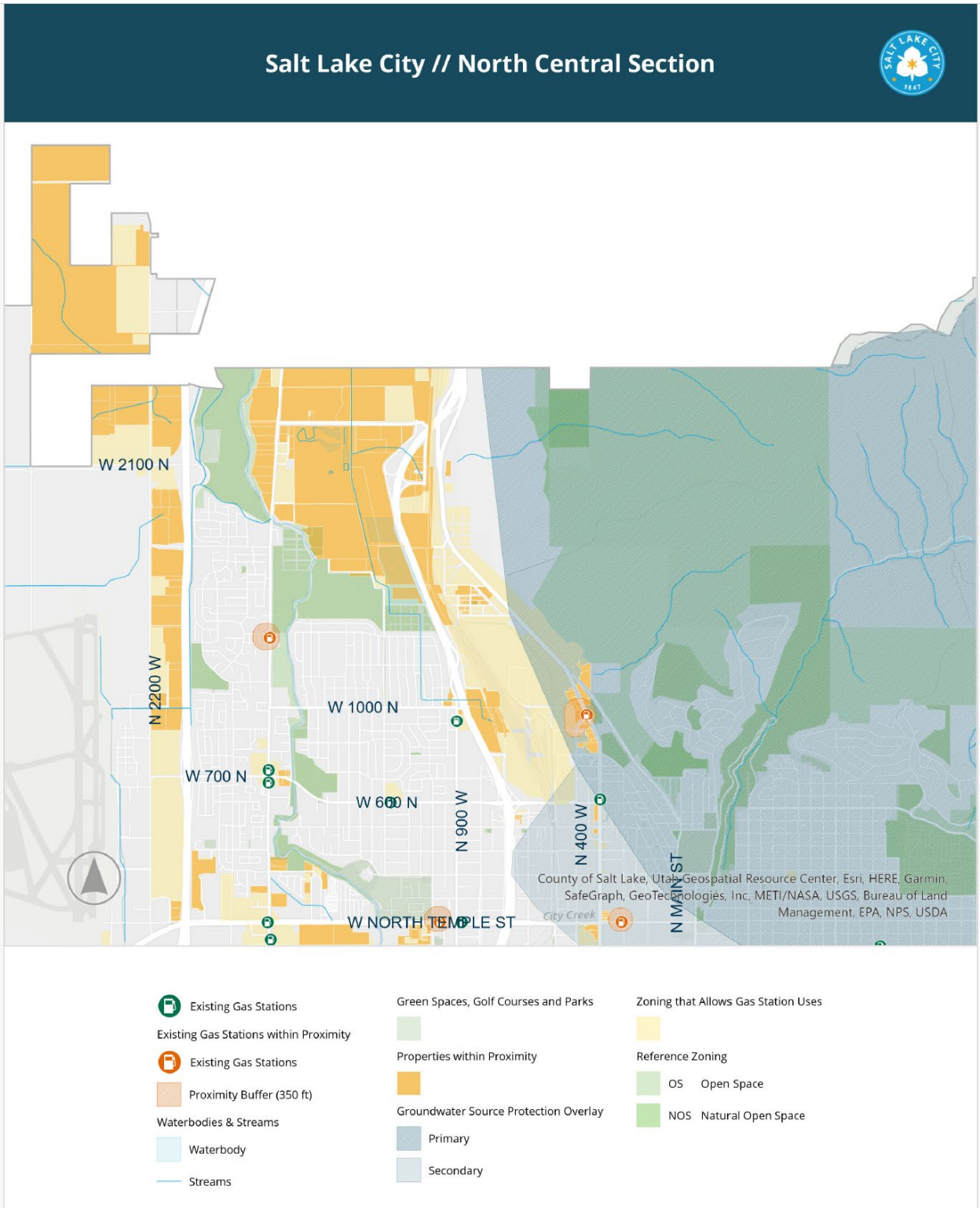
Secondary

Zoning that Allows Gas Station Uses

Reference Zoning

OS Open Space

NOS Natural Open Space


Salt Lake City // North Central Section
W 2100 N
N 2200 W
W 1000 N
W 700 N
W 600 N
N 900 W
N 400 W
N MAIN ST
W NORTH TEMPLE ST
City Creek
County of Salt Lake, Utah, Geospatial Resource Center, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, Bureau of Land Management, EPA, NPS, USDA
Existing Gas Stations
Existing Gas Stations within Proximity
Existing Gas Stations
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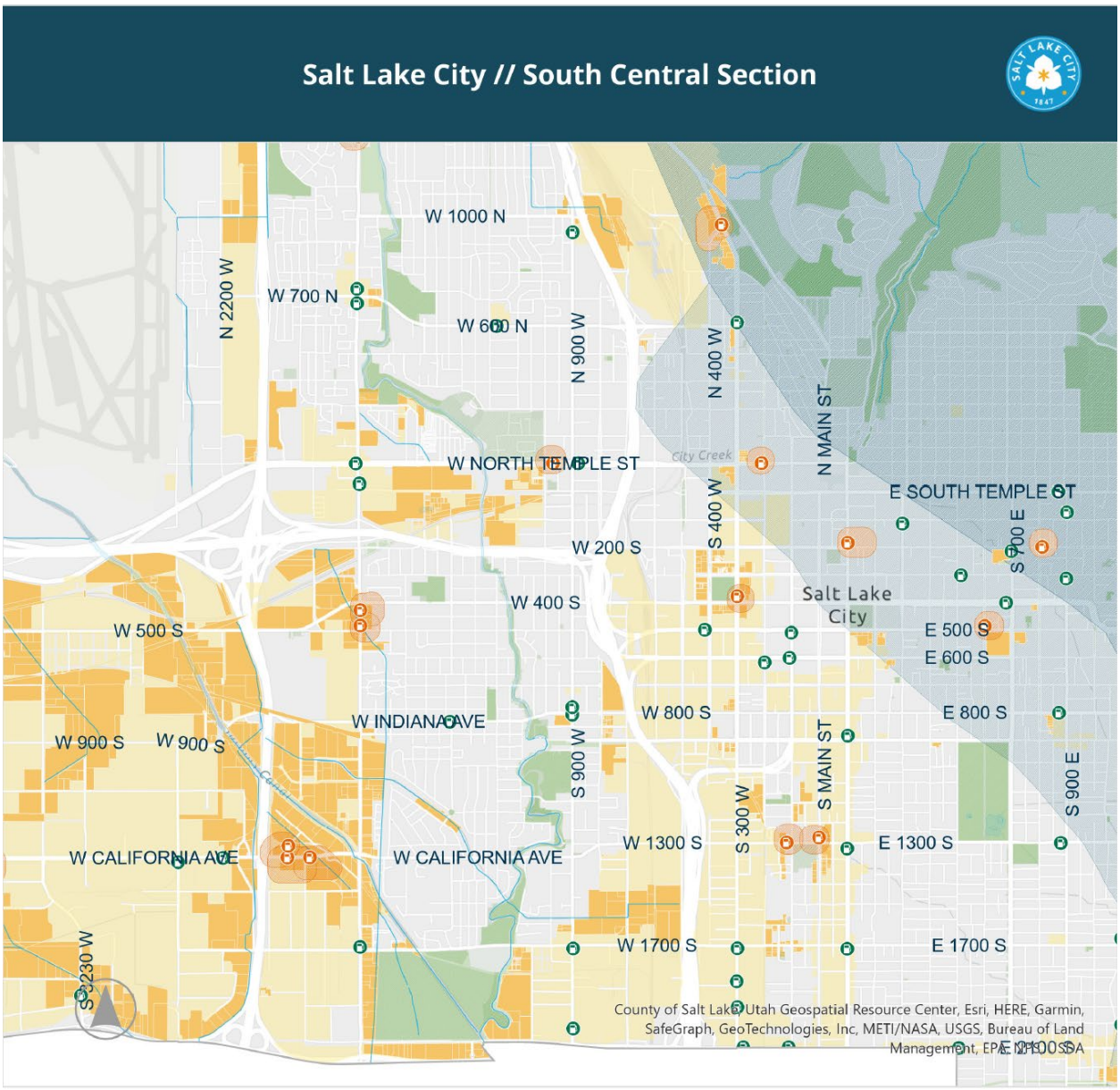

Existing Gas Stations

Existing Gas Stations within Proximity

Existing Gas Stations

Proximity Buffer (350 ft)

Waterbodies & Streams

Waterbody

Streams

Green Spaces, Golf Courses and Parks

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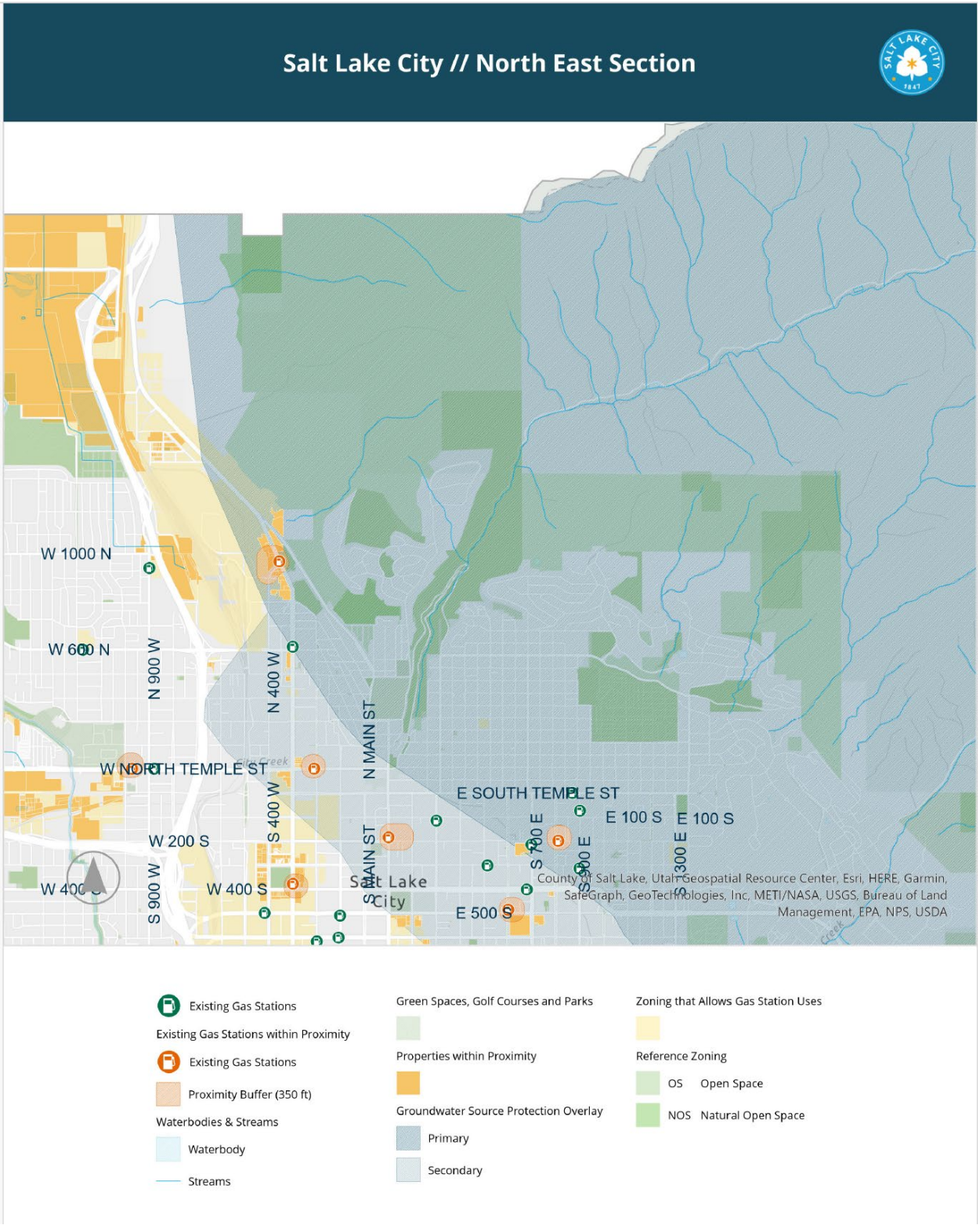
Salt Lake City // North East Section
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County of Salt Lake, Utah, Geospatial Resource Center, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, Bureau of Land Management, EPA, NPS, USDA
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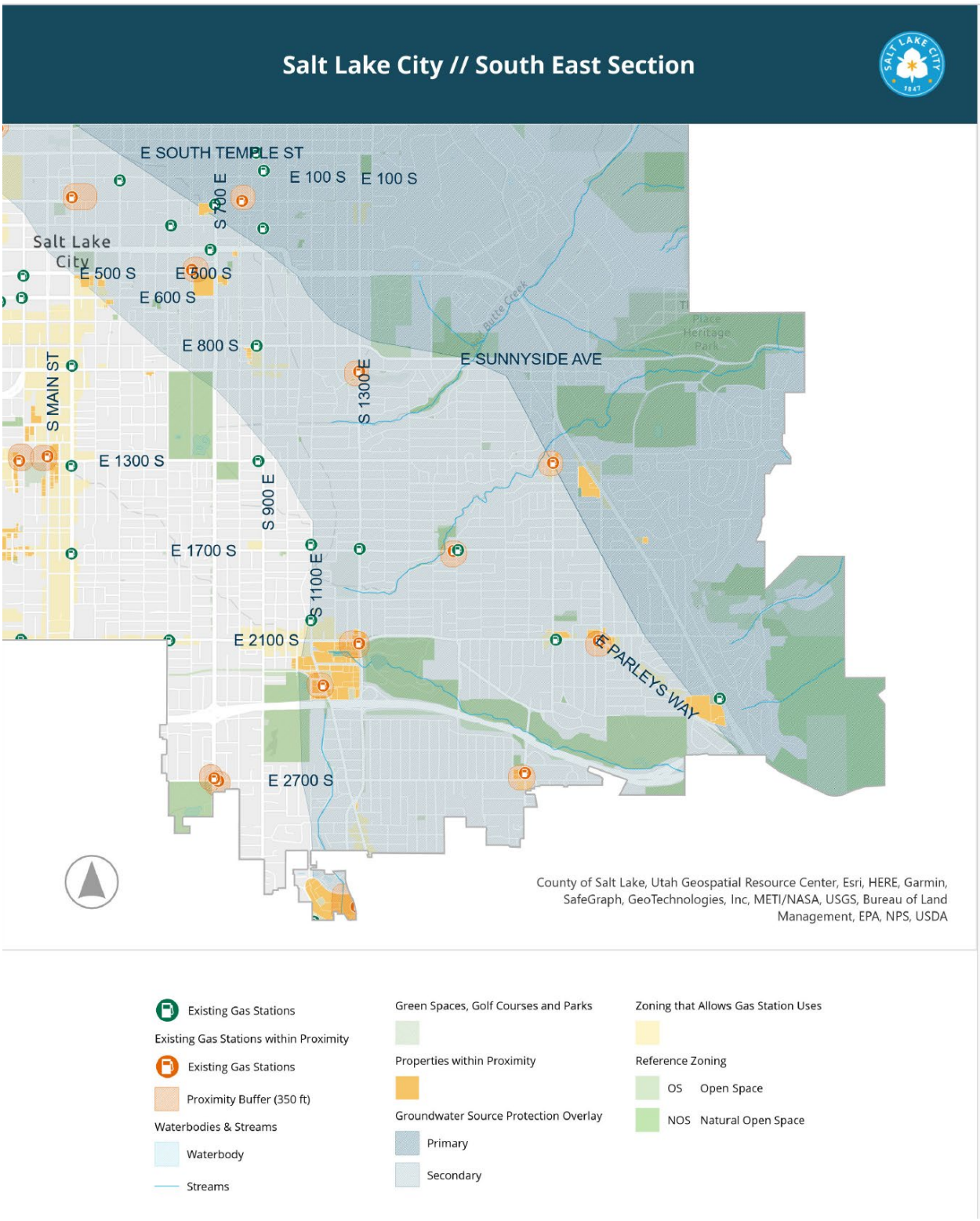
Salt Lake City // South East Section
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S MAIN ST
S 1300 E
E 1300 S
S 900 E
E 1700 S
S 1100 E
E 2100 S
E PARLEYS WAY
E 2700 S
County of Salt Lake, Utah Geospatial Resource Center, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, Bureau of Land Management, EPA, NPS, USDA
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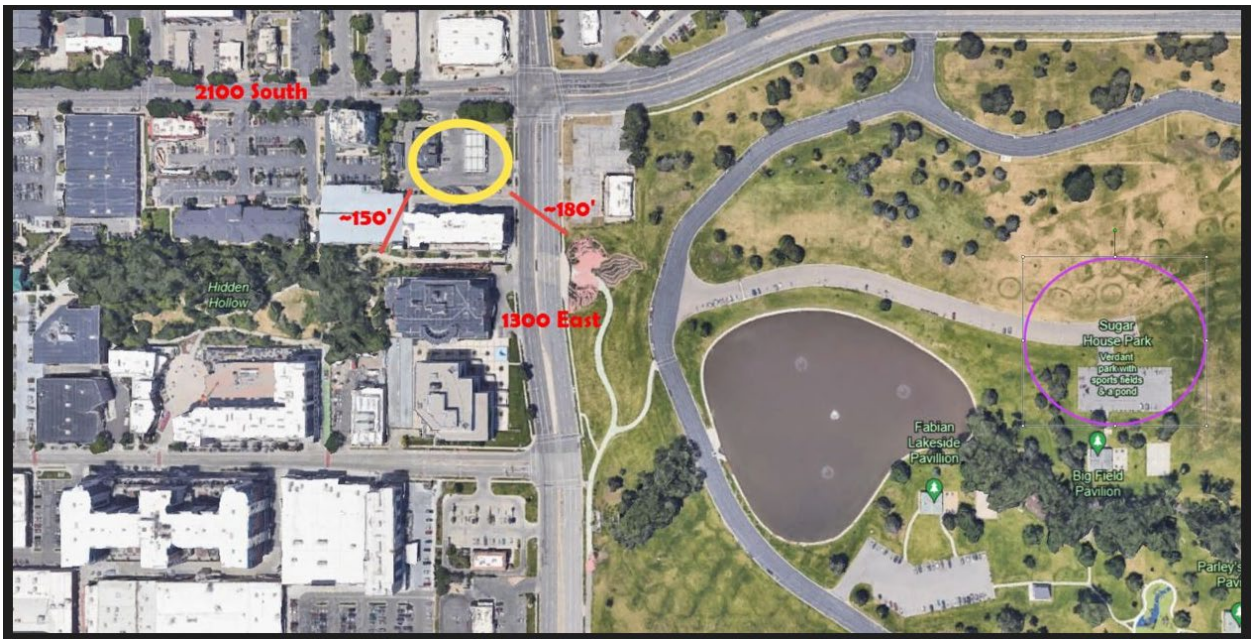
Zoning that Allows Gas Station Uses
Reference Zoning
OS Open Space
NOS Natural Open Space

Existing gas stations in Salt Lake City:

According to the City Licensing Division, there are approximately 80 existing, licensed, active gas stations throughout Salt Lake City. Most of these existing gas stations are not located near water sources or open space; however, a few are located within proximity of water sources or open space. Here are six gas stations that are within 450' of a water source or open space:



Yellow circle = Chevron at 2110 S. 1300 E.
This gas station is within 180' of Sugar House Park
and within 150' of Hidden Hollow Natural Area

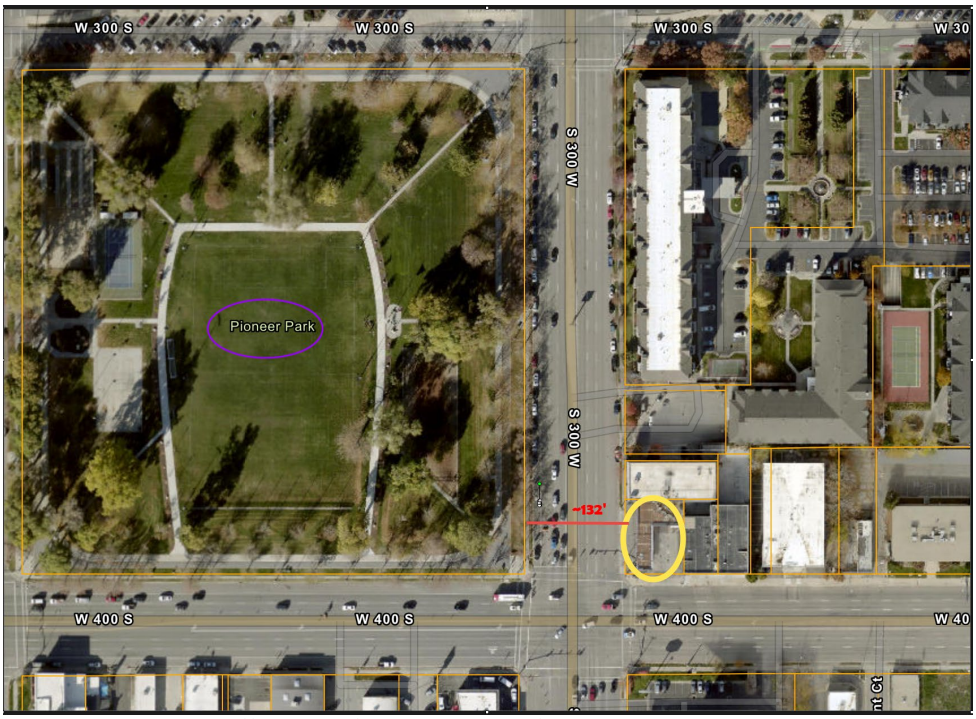
Yellow Circle= Speedway at 2280 Highland Drive
This gas station is within 272' of Fairmont Park

Top yellow circle = Sinclair at 2690 S. 700 E.
This gas station is within 60' of Nibley public golf course.

Right yellow circle = Maverik at 710 E. 2700 S.
This gas station is within 140' of Nibley public golf course.

Yellow circle = Dave's Shop and Go at 1702 E. 1700 S.
This gas station is within 428' of and uphill from Wasatch Hollow Preserve.

Yellow circle = 7 Eleven at 1386 N. Redwood Road
This gas station is within 100' of Rose Park public golf course.



Yellow circle = Fast Break at 379 S. 300 W.
This gas station is within 132' of Pioneer Park.

Consideration 5: 1. Secondary Recharge Area and the Groundwater Source Protection Overlay District & Ordinance

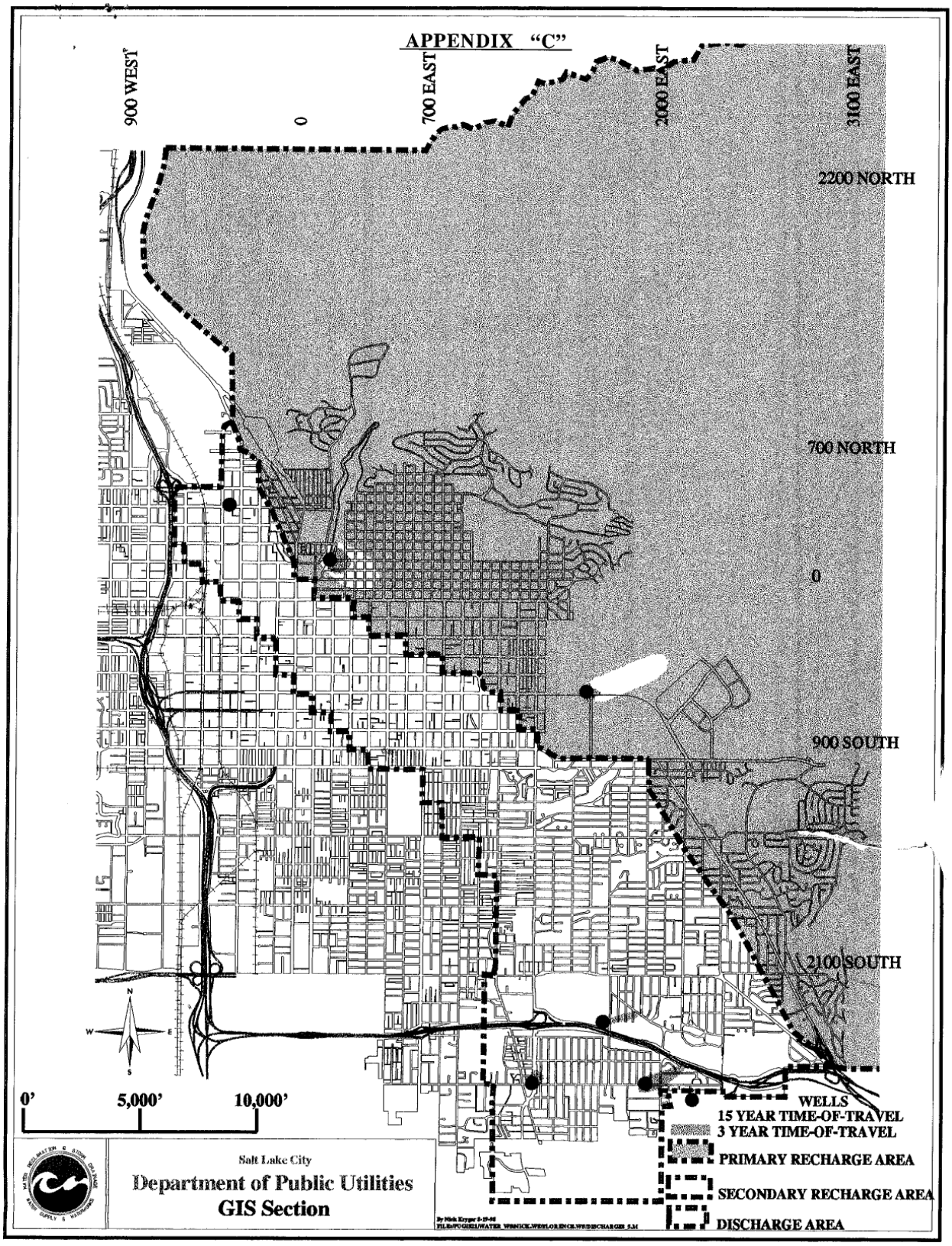
The State of Utah obtains more than 10% of the population's drinking water from groundwater. A large percentage of that groundwater is filtered through recharge areas that are mainly located along the east bench & east areas of the City.

Primary recharge areas are composed of rock and boulders without confining clay layers. Anything spilled on the surface of this area can easily make its way into the groundwater without the time and natural soil filtration necessary to clean it. Compounds that easily mix with water and can be drawn down into the water supply are of particular concern.

Secondary recharge areas are similar to primary recharge areas but have sporadic clay layers so that some surface contamination can be contained. However, these layers aren't continuous, and the level of safety is low. These two overlay areas cover the foothills and the front-facing mountain ranges. The Secondary Recharge Area provides the primary means of replenishing groundwater as a secondary drinking water source, which can be up to 10% of the city's water supply.

The Groundwater Source Protection Ordinance (GSPO) was adopted in 1998. The purpose of the ordinance was to establish certain standards and restrictions intended to prevent contamination of the public drinking water supply as a result of toxic substances entering the groundwater. The GSPO serves "*to protect, preserve, and maintain existing and potential public drinking groundwater sources in order to safeguard the public health, safety, and welfare of customers and other users of the City's public drinking water supply, distribution, and delivery system.*" The ordinance establishes criteria for regulating the storage, handling, use, and production of hazardous waste like petroleum products.

Under the Groundwater Source Protection Overlay District, underground Storage Tanks are listed as "**Restricted Uses**" in the Secondary Recharge Area and, therefore, represent a "**potential contamination source**" (See the Groundwater Source Protection Overlay District Ordinance - attached at the end of the staff report). Having a gas station or accessory or primary facility use with above or underground fuel tanks within this overlay district jeopardizes the purpose of the overlay district to protect the Secondary Recharge Area, as it is in conflict with city policies and environmental considerations.



Recharge area map

Potential Contamination Source	Protection Zone					Related Regulations	Best Management Practice(s)
	Primary Recharge	Secondary Recharge	Zone 1	Zone 2	Zone 3 & 4		
Junk and salvage yards							BMP - Salt Lake City/County Health Department
Laundromats	R	R	X	R	R	Pretreatment	
Machine shops, metal plating, heat treating, smelting, annealing, and descaling facilities	X	R	X	R	R	Pretreatment, RCRA Subtitled C	
Mortuaries	R	R	X	R	R	Pretreatment	
Photo processing & print shops	R	R	X	R	R	Pretreatment	
Residential pesticide, herbicide, and fertilizer storage, use, filling, and mixing areas (except as excluded under Section 8.2)	R	R	X	R	R		Follow manufacturer's directions for use and storage.
RV waste disposal stations	R	R	X	X	R	UAC R392	
Salt and salt/sand piles	R	R	X	R	R		DEQ / UDOT BMP
Sand & gravel excavation and processing	R	R	X	R	R	UAC GW R317-6, UAC R313-25	
Septic tank drain fields systems	X	R	X	X	R	UDWQ, Individual Wastewater Disposal Systems, UAC R317-501 through R317-513, State Department of Health Code of Waste Disposal Regulations - Parts IV and V	
Stormwater impoundment and snow storage sites	R	R	X	R	R	UPDES	
Toxic chemical and oil pipelines	X	X	X	X	X		
Underground storage tanks	X	R	X	R	R	UAC R311-203, 205, 206	
Veterinary clinics	R	R	X	R	R	Solid & Hazardous Waste	

CFR Code of Federal Regulations
DEQ Utah Division of Air Quality
FIFRA
GWR
RCRA Resource Conservation and Recovery Act
UAC Utah Administrative Code
UDSW Utah Division of Solid Waste
UDWQ Utah Division of Water Quality
UIC
UPDES Utah Pollution Discharge Elimination System
UST Underground Storage Tanks

This is a list of uses which may constitute potential contamination sources.

Designation of Recharge Areas and Protection Zones. The following recharge areas and protection zones are hereby designated within the City:

a. Primary Recharge Area, as determined by the USGS (see Appendix "C").

b. Secondary Recharge Area, as determined by the USGS (see Appendix "C").

c. Protection Zone 1 shall be the area within a 100-foot radius from the margin of the collection area.

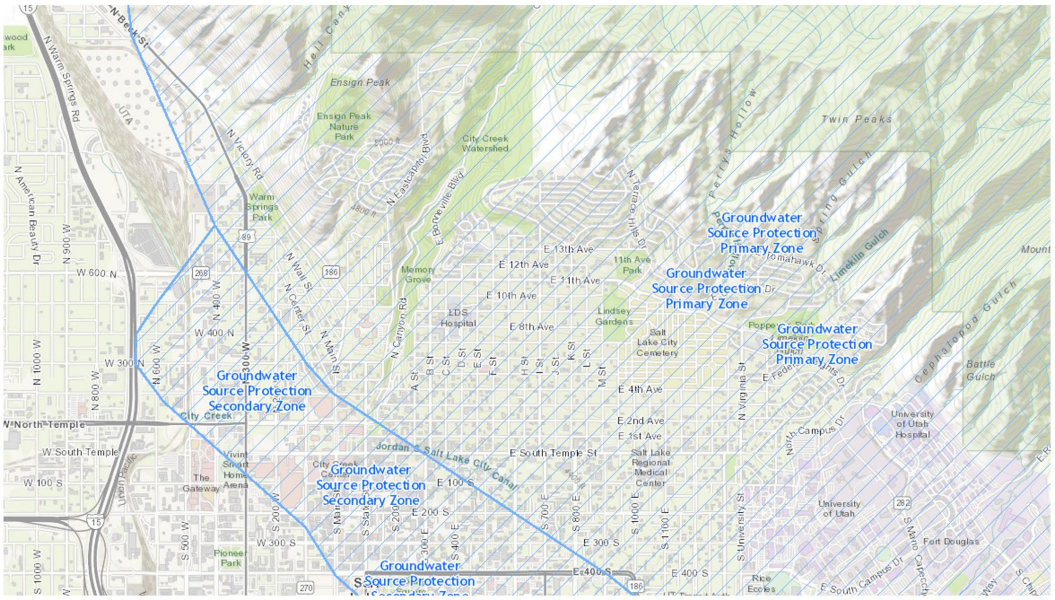
d. Protection Zone 2 shall be area within a 250-day groundwater TOT to the margin of the collection area, the boundary of the aquifer(s) which supplies water to the groundwater source, or the groundwater divide, whichever is closer.

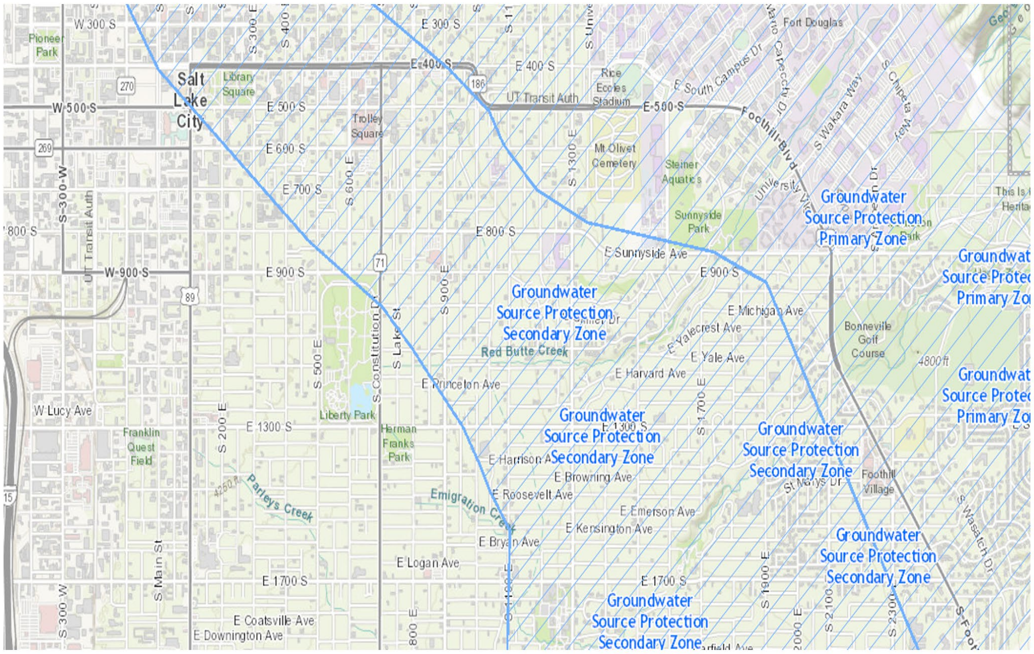
e. Protection Zone 3 shall be the area within a 3-year TOT to the margin of the collection area, the boundary of the aquifer(s) which supplies water to the groundwater source, or the groundwater divide, whichever is closer.

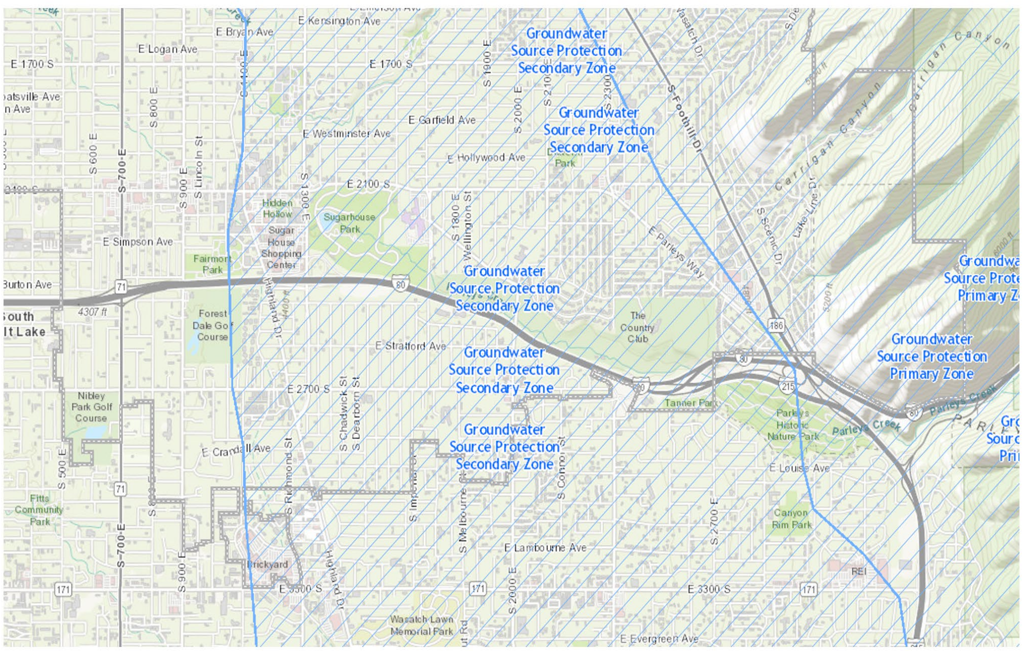
f. Protection Zone 4 shall be the area within a 15-year TOT to the margin of the collection area, the boundary of the aquifer(s) which supplies water to the groundwater source, or the groundwater divide, whichever is closer.

Having underground fuel storage tanks is restricted in the Secondary Recharge area, meaning that with the best management practices, can be permitted to be in that area, however, in the Primary Recharge area gas stations are not allowed.

Groundwater Source Protection Secondary Zone Area within the eastern part of Salt Lake City shown on the following maps:







Gas stations proposed in the Groundwater Source Protection Secondary Zone are subject to the regulations of the Groundwater Source Protection Ordinance 21A.34.060.

STAFF RECOMMENDATION

The proposed ordinance amendments have been reviewed against the Zoning Amendment consideration criteria in Attachment C. The proposed amendment implements professional best practices, does not conflict with other applicable State or City Code, and aligns with the City's zoning purposes. The proposed amendment also furthers the purpose of the city's policies and goals, including those in the applicable master plans.

Due to these considerations, **staff recommends that the Commission forward a favorable recommendation on this request to the City Council**.

NEXT STEPS

The Planning Commission can provide a positive or negative recommendation for the proposed text amendment. The recommendation will be sent to the City Council, which will hold a briefing and additional public hearing on the proposed amendments. The City Council may modify the proposal and approve or decline to approve the proposed amendments.

If ultimately approved by the City Council, the changes would be incorporated into the Salt Lake City Zoning Ordinance, and new development would be required to follow the new regulations. If it is denied, gas stations and facilities with above and underground fuel tanks will be allowed in designated zones as the Ordinance currently allows, with restrictions and regulations required within those particular zones.

ATTACHMENT A: Mayor's Memorandum

MEMORANDUM

PLANNING DIVISION
DEPARTMENT *of* COMMUNITY *and* NEIGHBORHOODS

To: Mayor Erin Mendenhall

Cc: Lisa Shaffer, Chief Administrative Officer; Blake Thomas, Department of Community and Neighborhoods Director; Michaela Oktay, Deputy Planning Director

From: Nick Norris, Planning Director

Date: April 10, 2023

Re: Amendments related to gas stations located near water sources and sensitive lands

---

The Planning Division is requesting that you initiate a zoning text amendment to analyze the zoning districts where gas stations are allowed in the city and prohibit the use when in close proximity to water bodies, water resources, ground water recharge areas, and public parks. This action is necessary to further the legitimate government interest in protecting rivers, creeks, streams and other water bodies in the city and increasing the protection of the ground water protection areas. This action will also further the role that parks and open spaces provide in creating large areas where ground water can be recharged.

This proposal will propose minimum distances that any gas station can be from a river, stream, or other water body, a park or open space area over a certain size, and establish more stringent zoning standards for any gas station that is located in the secondary ground water recharge area of the city. Determining the minimum separation and standards will be coordinated with Public Utilities to ensure that best practices for managing water impacts from gas stations can be included in the city's zoning code.

The public process will include a minimum 45-day public input period before the Planning Commission holds a public hearing. All registered recognized organizations will be notified of the proposal.

This memo includes a signature block to initiate the petition if that is the decided course of action. If the decided course of action is to not initiate the application, the signature block can remain blank. Please notify the Planning Division when the memo is signed or if the decision is made to not initiate the petition.

Please contact me at ext. 6173 or nick.norris@slcgov.com if you have any questions. Thank you.

Concurrence to initiate the zoning text amendment petition as noted above.

Erin Mendenhall (Apr 11, 2023 10:33 MDT)

Erin Mendenhall, Mayor

04/11/2023

Date

SALT LAKE CITY CORPORATION
451 SOUTH STATE STREET, ROOM 406
PO BOX 145480 SALT LAKE CITY, UT 84114-5480

WWW.SLC.GOV
TEL 801-535-7757 FAX 801-535-6174

ATTACHMENT B: Proposed Amendments

PROPOSED ORDINANCE TEXT:

21A.36.370 -Regulations for Gas Stations and Fuel Dispensing Facilities with Underground and Above-Ground Fuel Storage Tanks

Gas Stations and Accessory Uses that have fuel tanks on-site such as: Fuel Centers, Truck Stop, Fuel Distribution, and Storage uses, as defined in Chapter 21A.62 of this title, shall be allowed in zoning districts provided in Chapter 21A.33 "Land Use Tables", and are subject to the following provisions:

A. Gas stations: All fuel dispensers and fuel storage tanks (above or underground) shall comply with all requirements of this code, the current adopted version of the International Fire Code (IFC) and applicable reference standards, and any applicable regulations of the state of Utah and federal regulations. In case of conflicting provisions in any of the above-listed rules, the strictest restrictions shall apply.

B. Location: All underground and above-ground fuel storage tanks and gas vents must be no less than 350 feet from the nearest existing water bodies (pond, river, stream, canal, etc.), water resources, and public parks or open space -over one acre in size.

C. Standards for Gas Stations:

1. Lot size: The lot size for a proposed gas station site must be a minimum of 30,000 square feet. A gas station may be located on a lot with another principal use. For the purposes of this regulation, a lot shall include a site that consists of multiple lots or parcels within a single development when the parking lot and circulation elements are shared across the boundaries of the lots or parcels.
2. Lot Frontage: Lot frontage for a gas station must be at least 150 feet wide along all public streets. For sites described in 21.36.070.C.1, the lot frontage shall be measured for all lots or parcels.
3. All underground fuel storage tanks and gas vents must have a minimum 30-foot setback from any property line. This setback is in addition to the distance indicated in section B of this ordinance from water bodies and groundwater recharge areas, parks, and open space.
4. All gas vents must be located at the top of the gas pump canopy.
5. Associated pump islands must have a minimum setback of twenty-five feet (25') from a property line and adjacent buildings.
6. Tanks constructed of non-corrodible material, steel clad with a non-corrodible material, or designed in a manner to prevent the release or threatened release of any stored fuel are required for all new and replacement fuel storage tanks put underground to ensure greater durability and lifespan.

7. Landscaping should be used as a treatment for stormwater and onsite detention for all surface runoff before leaving the subject site and must be approved by the Public Utilities Department.

8. The property owner is accountable for any cleanup and remediation of the subject property, any City property, and any downstream water or soil contamination, should a leak or surface-runoff contamination occur.

9. A primary and secondary containment is required for all fuel storage tanks, and each must hold one hundred and ten percent (110%) of the capacity of each fuel storage tank.

10. If fuel tanks and pumps are out of service for one year or more and are no longer used, the tanks and pumps shall be removed.

11. Stacking Lane Standards: These standards ensure adequate on-site maneuvering and circulation areas, ensure that stacking vehicles do not impede traffic on abutting streets, and that stacking lanes will not have nuisance impacts on abutting residential lots.

    a. Gasoline Pumps: A minimum of 36 feet of stacking lane is required between a curb cut and the nearest gasoline pump.

    b. Stacking lanes shall be arranged to avoid conflicts with site access points, access to parking or loading spaces, and internal circulation routes to the maximum extent practicable.

12. Electric Vehicle Parking: Gas stations shall provide at least one (1) parking space dedicated to electric vehicles for every ten (10) on-site parking spaces. Electric vehicle parking spaces shall count toward the minimum required number of parking spaces. The electric vehicle parking space shall be:

    a. Located in the same lot as the principal use.

    b. Located as close to a primary entrance of the principal building as possible.

    c. Signed in a clear and conspicuous manner, such as special pavement marking or signage, indicating exclusive availability to electric vehicles; and

    d. Outfitted with a standard electric vehicle charging station.

D. Fuel Dispensing Facilities: All fuel pumps and fuel storage tanks (above or underground) for fleet or maintenance vehicles and equipment that are accessory use to a permitted use on sites that store any fuel shall comply with all requirements of this code, the current adopted version of the International Fire Code (IFC), and any applicable regulations of the state of Utah and federal regulations. In case of conflicting provisions in any of the above-listed rules, the strictest restrictions shall apply.

E. Standards for Fuel Dispensing Facilities:
Shall comply with all provisions found in 21A.36.370.C (with the exception of provision C.12) of this chapter and the following additional standards:

1. Above-ground fuel storage tanks shall:
   a. Provide a 25-foot clear radius from combustible materials, storage areas, parking/backing areas, and buildings on the same lot;
   b. Be setback a minimum of 30 feet from any property line. This setback is in addition to the minimum distance (350') indicated in section B of this ordinance from water bodies and resources, parks, and open space.
2. Above-ground fuel storage tanks shall have a maximum height of twenty feet (20').
3. Tanks constructed of non-corrodible material, steel clad with a non-corrodible material, or designed to prevent the release or threatened release of any stored fuel are required for all new and replacement fuel storage tanks put underground to ensure greater durability and lifespan.
4. An obscuring sight fence of six feet in height shall be required surrounding the fuel storage tanks and associated vehicle fueling areas. All required fencing shall be prewoven chain-link with slats, wood, brick, tilt-up concrete, masonry block, stone, metal, composite/recycled materials, or other manufactured materials or combination of materials commonly used for fencing. In addition, the fenced area must be paved with a nonpermeable surface.
5. A primary and secondary containment is required for all fuel storage tanks, and each must hold one hundred and ten percent (110%) of the capacity of each fuel storage tank.
6. If above-ground or underground tanks and pumps are out of service for one year or more and are no longer used, the tanks and pumps shall be removed.

F. Standards for Existing Gas Station and Fuel Dispensing Facilities Upgrades:

1. Replacing and Updating Tanks and Associated Equipment: An existing gas station may replace existing tanks and associated equipment in substantially the same location without having to comply with the provisions of this section.
2. The zoning administrator may modify the location of the fuel tanks and associated equipment if federal or state requirements or other legal requirements prevent locating the replacement tanks in a substantially similar location.
3. The zoning administrator may approve an alternate location for fuel tanks and associated equipment if the applicant can demonstrate a more efficient and safe location is more appropriate.

G. Standards for Reconstruction of Existing Gas Station Sites and Fuel Dispensing Facility Sites:

1. Existing gas stations that are noncomplying as to lot area, lot frontage, or tank setbacks may be demolished and reconstructed, provided the reconstructed use complies with the other applicable regulations of this section and the tank location is substantially the same.
2. The zoning administrator may modify the location of the fuel tanks and associated equipment if federal or state requirements or other legal requirements prevent locating the replacement tanks in a substantially similar location.
3. The zoning administrator may approve an alternate location for fuel tanks and associated equipment if the applicant can demonstrate a more efficient and safe location is more appropriate.

H. Standards for Non-Conforming Status of Existing Gas Stations and Fuel Dispensing Facilities

- Any existing gas station site that is nonconforming to the standards of this section 21A.36.070, has been closed for over one year, and has had the tanks and pumps removed will be considered a willfully abandoned land use and will no longer be eligible for nonconforming status to reopen as a gas station use subject to complying with all applicable regulations.

Modifications to the existing Land Use Tables in 21A.33:

CURRENT LAND USES & QUALIFYING PROVISIONS:

Use	Permitted and Conditional Uses By District												
	BP	CB	CS[1]	CC	CSHBD[1]	CG	TSA-MUEC (Transition)	TSA-SP (Transition)	M-1	M-2	D-2	D-3	D-4
Accessory Use, except those that are specifically regulated elsewhere in this title	P	P	P	P	P	P	P	P	P	P	P	P	P
Gas Station	P[7]	C	P	P	P	P	P	P	P	P	P	P[7]	P[7]

PROPOSED LAND USES & QUALIFYING PROVISIONS:

Use	Permitted and Conditional Uses By District												
	BP	CB	CS[1]	CC	CSHBD[1]	CG	TSA-MUEC (Transition)	TSA-SP (Transition)	M-1	M-2	D-2	D-3	D-4
Accessory Use, except those that are specifically regulated elsewhere in this title	P[25]	P[24]	P[24]	P[24]	P[24]	P[24]	P[13]	P[13]	P[21]	P[21]	P[20]	P[20]	P[20]
Gas Station	P[7 & 25]	C[24]	P[24]	P[24]	P[24]	P[24]	P[13]	P[13]	P[21]	P[21]	P[20]	P[7&20]	P[7&20]

Proposed qualifying provision # for light yellow section (Table 21A.33.070):
25. Subject to section 21A.36.370 Regulations for Gas Stations and Facilities with Underground and Above-Ground Fuel Storage Tanks

Proposed qualifying provision #24 for blue section (Table 21A.33.030):
24. Subject to section 21A.36.370 Regulations for Gas Stations and Facilities with Underground and Above-Ground Fuel Storage Tanks

Proposed qualifying provision #13 for the light orange section (Table 21A.33.035):
13. Subject to section 21A.36.370 Regulations for Gas Stations and Facilities with Underground and Above-Ground Fuel Storage Tanks

Proposed qualifying provision #24 for the light green section (Table 21A.33.040):
21. Subject to section 21A.36.370 Regulations for Gas Stations and Facilities with Underground and Above-Ground Fuel Storage Tanks

Proposed qualifying provision #20 for yellow section (Table 21A.33.050):
20. Subject to section 21A.36.370 Regulations for Gas Stations and Facilities with Underground and Above-Ground Fuel Storage Tanks

Staff recommends modifying all tables, in the Land Use Tables of 21A.33, that allow "gas station", and "accessory uses" (that would allow above or underground fuel storage tanks) as permitted or conditional use, to have an added qualifier stating that these uses are *subject to section 21A.36.370 Regulations for Gas Stations and Facilities with Underground and Above-Ground Fuel Storage Tanks*.

ATTACHMENT C: Analysis of Standards

ZONING TEXT AMENDMENTS

21A.50.050: A decision to amend the text of this title or the zoning map by general amendment is a matter committed to the legislative discretion of the City Council and is not controlled by any one standard. In deciding to amend the zoning text, the City Council should consider the following:

1. Whether a proposed text amendment is consistent with the purposes, goals, objectives, and policies of the city as stated through its various adopted planning documents.

The proposed amendments are consistent with the goals and policies of the City's plans. The amendments to the zoning code are in-line with the policies found in Salt Lake City Open Space Plan and Plan Salt Lake, as discussed under Key Consideration #1. The proposed zoning code regulations are intended to ensure that future development of gas stations and facilities with above and underground fuel storage tanks, helps achieve the general policies and goals in these plans that speak of reducing potential negative environmental impacts to the city's water sources and open space.

2. Whether a proposed text amendment furthers the specific purpose statements of the zoning ordinance.

The proposed text amendment is consistent with the stated purpose of promoting the protection of the city's water sources and open space, as outlined in the Key Considerations section of this report.

21A.02.030 Purpose and Intent
The proposal generally furthers the purpose and intent of the zoning ordinance: *"to promote the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Salt Lake City."* The Zoning Ordinance of Salt Lake City is, among other intentions, intended to ***protect the environment***.

As discussed in the Key Considerations section of this report, the proposed amendment is intended to promote health and safety by placing standards on gas stations and facilities with above and underground fuel storage tanks to protect against any potential negative environmental impacts to water sources and open space.

Amendments Purpose Statement
Section 21A.50.010 states: *"The purpose of this chapter is to provide standards and procedures for making amendments to the text of this title and to the zoning map. This amendment process is not intended to relieve particular hardships nor to confer special privileges or rights upon any person, but only to make adjustments necessary in light of changed conditions or changes in public policy."*

The proposal is consistent with the purpose statement of the amendment process because it does not relieve any hardships for any specific person. The purpose of the amendment is to align the

regulations for gas stations and accessory and primary facilities with above and underground storage fuel tanks with the public policy statements contained in the applicable master plans.

3. Whether a proposed text amendment is consistent with the purposes and provisions of any applicable overlay zoning districts that may impose additional standards.

The Groundwater Source Protection Overlay District (GSPOD) is applicable to this ordinance text amendment. Since this amendment is focused on the proximity to water resources, it is important to consider the additional restrictions of the GSPOD that need to be considered and complied with; however, they are not impacted by the proposed standards, the proposed ordinance enhances and increases the ability to protect the groundwater.

4. The extent to which a proposed text amendment implements best current, professional practices of urban planning and design.

Sustainability
The proposed amendment will limit the locations where gas stations and accessory & primary facilities with above or underground storage fuel tanks can be developed. Therefore, decreasing the potential for soil, water, and air contamination caused by gas leaks and vapers.

Equity
The proposed amendment will promote greater equity in the city as a way to ensure that the city is a safe and healthy place for all residents by keeping gas stations and accessory & primary facilities with above or underground storage fuel tanks in locations that will not be potentially detrimental to the public water sources and open space.

Growth & Opportunity
The proposed amendment would implement best practices in growth and opportunity by allowing gas stations and accessory & primary facilities with above or underground storage fuel tanks in appropriate locations, using appropriate equipment and best management practices to mitigate any potential contamination to the air, water sources, and soil of public open space and water resources while giving business owners the ability to serve the community as fuel providers.

ATTACHMENT D: Public Process & Comments

Public Notice, Meetings, Comments:

The following is a list of public meetings that have been held and other public input opportunities related to the proposed project since the applications were submitted:

- July 10 – August 21, 2023 – The project was posted to the Online Open House webpage.
- July 10, 2023 – All Community Councils were sent the 45-day required notice for recognized community organizations.
    - Only the Sugar House Community Council submitted a letter responding to this item. (attached below)
- November 8, 2023 – A letter was sent to all existing gas station owners within Salt Lake City, informing them about the proposed text amendment requirements and giving them an opportunity to comment on the proposal. **Five comment letters were received and are attached to the end of this report.**

Notice of the public hearing for the proposal included:

- January 5, 2024
    - Public hearing notice mailed.
    - Public notice posted on City and State websites and Planning Division list-serve.

Public Input:

Staff received two emailed comments from two members of the public:

If this will prevent the development of a gas station adjacent to Sugar House Park, I applaud and support this ordinance.

With or without this change, the proximity of a water body and park should be reason enough to deny Kum & Go's appeal.

Joyce Marder

Good afternoon,

I support the text amendment to increase the distance of gas station facilities from water sources and sensitive lands. It is imperative that we are good stewards of water sources and sensitive lands for the benefit of the community at large. With the drought, air pollution concerns, and heat waves we are facing here in Salt Lake City, it only makes sense to try to mitigate the possibility for increased air and water pollution in our city.

Thank you for your time and consideration.

Dayna McKee

Sugar House Community Council

Nibley Trustee

84106

September 25, 2023

TO: Salt Lake City Planning Commission

FROM: Judi Short, Vice Chair and Land Use Chair
Sugar House Community Council

RE: Gas Stations Located Near Water Sources and Sensitive Lands

The Sugar House Community Council reviewed this proposal at it's June17, 2023 Land Use and Zoning meeting. Because we have just gone through the issue of a gas station near an earthen dam in Sugar House, there was very little discussion. Our community is very clearly in favor of protecting our water sources and sensitive lands, and have wondered why something like this was not already in place.

I received only two comments about this, which are attached. We ask that you vote in favor of this Zoning Text Amendment.

Enclosure: Comments to Not Allow Gas Stations in Areas Close to a water source

ATTACHMENT E: Department Review Comments

This proposal was reviewed by the following departments. Any requirement identified by a City Department is required to be complied with.

Building: Steven Collett // steven.collett@slcgov.com // 801-535-7289

No additional comments

Engineering: Scott Weiler // scott.weiler@slcgov.com // 801-535-6159

Engineering has no comments on this.

Fire: Doug Bateman // douglas.bateman@slcgov.com // 801-535-6619

The Fire Department has collaborated with Planning in the writing of the texts and has accepted the proposed draft.

Public Utilities: Kristeen Beitel // Kristeen.beitel@slcgov.com // 801-483-6733

No comments- all changes have been addressed.

Transportation: Jena Carver // jena.carver@slcgov.com // 801-535-6694

Transportation added information to the text amendment on stacking.

Urban Forestry: Rick Nelson // rick.nelson@slcgov.com // 801-972-7818

No comment was given.

Sustainability: Peter Nelson // peter.nelson@slcgov.com // 801-535-6477

"*The main question is whether they have checked if these requirements already exist or contradict any of the State and federal tank regulations. There seems like there could be potential overlaps. If they haven't already, we would recommend that they run this by DERR's Underground Storage Branch: https://deq.utah.gov/environmental-response-and-remediation/underground-storage-tank-branch*"

Credit & Acknowledgements:

For the creation of the live interaction map- Gas Station Uses in Proximity to Waterbodies and Green Spaces (October 18, 2023):
Brian Maya- Graphic Designer
Madison Blodgett- Principal Planner

Collaboration on the text amendment requirements & standards:
From the Utah Division of Environmental Response and Remediation
Brent Everett, Director
Therron Blatter, Manager/Petroleum Storage Tank Branch
Morgan Atkinson, PST Release Prevention and Compliance Section Manager

From Salt Lake City Fire Department:
Douglas Bateman, Fire Protection Engineer

From Salt Lake City Public Utilities Department
Kristeen Beitel, PU Assistant Chief Engineer

Holland & Hart

Christopher R. Hogle
Partner
[redacted]
121871

November 29, 2023

Submitted via email to diana.martinez@slcgov.com

Diana Martinez, Senior Planner
Salt Lake City Planning Division
451 South State Street, Room 406
Salt Lake City, UT 84111

Re: Comments on behalf of Jacksons Food Stores, Inc. on Zoning Text Amendment Related to Gas Stations Located Near Water Sources and Sensitive Lands, Petition Number PLNPCM2023-00260

Dear Ms. Martinez,

This firm represents Jacksons Food Stores, Inc. ("Jacksons"), an Idaho-headquartered company with more than 300 company-operated convenience stores and fuel stations in seven western states, including more than 20 stores operated by the company in Utah. With more than 3,000 associates, Jacksons also serves as a wholesale supplier of fuel, delivering over 1 billion gallons of fuel to over 1,200 branded and unbranded locations in nine western states, including Utah.

Jacksons appreciates the opportunity to comment on Salt Lake City's proposed zoning text amendment (the "Proposed Amendment") related to gas stations near water sources and sensitive lands. The Proposed Amendment would regulate gas stations and fuel dispensing facilities with fuel tanks on site through various requirements, including by barring storage tank and fuel tank vent line discharge points from being located less than 350 feet from the nearest exiting water bodies, water resources, and public parks or open space over one acre in size. Jacksons values the City's dedication to protection of water resources and open spaces.

Unfortunately, the Proposed Amendment goes much further than regulating for the protection of water resources and open spaces. If adopted by the City Council, the Proposed Amendment would require gas stations to provide at least one electric vehicle ("EV") charging station for every ten on-site parking spaces. Gas stations would also be required to prioritize the EV parking space(s) by placing them "as close to a primary entrance of the principal building as possible" and placing signage to "indicat[e] exclusive availability to electric vehicles." Moreover, gas stations would be required to outfit the parking space(s) with a standard EV charging station. An important part of Jacksons' success is the ability to offer adequate parking to its customers, so that those customers can enjoy a safe and convenient experience when

stopping at Jacksons convenience store for their gas or food needs. The Proposed Amendment would adversely impact Jacksons and its customers.

As explained below, imposing the EV parking and charging requirements on gas stations and fuel providers is an unlawful exercise of a municipality's zoning authority. For that reason, Jacksons encourages the Salt Lake City Planning Commission to send a negative recommendation for the Proposed Amendment to the City Council, or to initiate a new zoning amendment that does not include the EV parking and charging requirements. In addition, Jackson suggests that the applicability of the Proposed Amendment to existing gas stations should be clarified.

1. The proposed EV parking and recharging station requirement is an unlawful exaction.

The EV parking and recharging station requirement is an exaction for which there is no link to a legitimate governmental interest and is in no way proportionate to the impacts of gas stations. "Exactions are conditions imposed by governmental entities on developers for the issuance of a building permit or subdivision plat approval." *B.A.M. Dev., LLC v. Salt Lake County*, 2006 UT 2, ¶ 34, 128 P.3d 1161. "These exactions can be in the form of mandatory land dedications or monetary obligations." *Alpine Homes, Inc. v. City of West Jordan*, 2017 UT 45, ¶ 19, 424 P.3d 95.

The EV parking and recharging station requirement is unquestionably an exaction. If enacted, it would be a condition imposed by the City on gas station developers for the issuance of development approvals.

As such, the new requirement is subject to the test for exactions set forth in the Utah Municipal Land Use, Development, and Management Act ("MLUDMA"), specifically, Utah Code § 10-9a-508. Under that statute:

> (1) A municipality may impose an exaction or exactions on development proposed in a land use application . . . if:
>
> (a) an essential link exists between a legitimate governmental interest and each exaction; and
>
> (b) each exaction is roughly proportionate, both in nature and extent, to the impact of the proposed development.

Utah Code § 10-9a-508(1). This test has two components: "first an inquiry into the presence of an '"essential nexus"'. . . between the "legitimate state interest"' and the land dedication requirement and second, 'some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development.'" *B.A.M. Dev., LLC*, 2006 UT 2, ¶ 40.

The test arises from private property rights firmly rooted in the United States Constitution. *Id*. at ¶¶ 35-40 (citing *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994)); U.S. Const. Amend. V ("[P]rivate property [shall not] be taken for public use, without just compensation."); *see also* Utah Const. art. I, § 22 ("Private property shall not be taken or damaged for public use without just compensation.").

An EV priority and exclusive parking and recharging station requirement does not withstand application of the test for exactions in MLUDMA. The Proposed Amendment demonstrates no "essential link exists between a legitimate governmental interest" and the parking and charging station requirement and, more importantly, the requirement is not "proportionate, both in nature and extent, to the impact" of gas stations.

> In order for an exaction to be constitutional, a municipality must make some determination "that the required dedication is related both in *nature and extent* to the impact of the proposed development." The *Dolan* analysis thus has two aspects: first, the exaction and impact must be related in nature; second, they must be related in extent.
>
> A court engaging in a *Dolan* analysis must first determine, therefore, whether the nature of the exaction and impact are related. One method that other courts have adopted to determine this relationship is to look at the exaction and impact in terms of a solution and a problem, respectively. We agree that the impact is the problem, or the burden that the community will bear because of the development. The exaction should address the problem. . . .
>
> The second component of the *Dolan* analysis is whether the exaction and impact are related in extent. This requirement implies that both the exaction and the impact should be measured in the same manner, or using the same standard.

B.A.M. Dev., LLC v. Salt Lake County, 2008 UT 74, ¶¶ 9-11, 196 P.3d 601 (emphasis in original) (citations and footnotes omitted) (citing *Sparks v. Douglas County*, 127 Wn.2d 901, 904 P.2d 738, 742 (Wash. 1995) (stating that an exaction must be "reasonably calculated to prevent, or compensate for, adverse public impacts of the proposed development" (citation and internal quotation marks omitted)); *Burton v. Clark County*, 91 Wn. App. 505, 958 P.2d 343, 354 (Wash. Ct. App. 1998) ("[T]he government must show that its proposed solution to the identified public problem is 'roughly proportional' to that part of the problem that is created or exacerbated by the landowner's development.").

The proposed ordinance makes no determination that the EV parking and recharging station requirement is related to the impact posed by gas stations. Nor could it. Unlike the fuel

storage tank requirements in the proposed ordinance, the EV parking and recharging station requirements bear no relation to impacts posed by gas stations. The need for EV recharging stations arises from the advent of EVs and the dearth of EV recharging infrastructure to serve them, neither of which are problems created by gas stations.

"[T]he Takings Clause [of the U.S. Constitution] requires *a direct relationship*—an 'essential nexus'—between a condition imposed on a developer and the development's predicted impact on the community." *B.A.M. Dev., LLC v. Salt Lake County*, 2012 UT 26, ¶ 17, 282 P.3d 41 (emphasis added). The U.S. Supreme Court in *Nollan*, "for example, held that a dedication of land for a beach-front pathway as a condition for receiving a residential building permit did not meet the essential-nexus test because the government's need for beach access was not created by the proposed development." *Id*. at ¶ 18.

Likewise, there is no "direct relationship" between an EV recharging station requirement and gas stations' predicted impact on the community. The need for EV recharging stations was not created by gas stations. Nor is there any demonstrated need for prioritized and exclusive EV parking spaces "as close to a primary entrance of the principal building as possible" to address gas stations' community impacts. Thus, the proposed EV parking and recharging station requirement is an unlawful exaction that Salt Lake City may not enact consistent with private property rights enshrined in the U.S. and Utah Constitutions.

2. The proposed EV parking and recharging station requirement is outside the scope of the City's zoning authority.

Through MLUDMA, Utah has delegated zoning power to Salt Lake City, but has constrained that power to accomplishing specific, enumerated purposes. Those purposes are laid out in MLUDMA:

> (a) provide for the health, safety, and welfare;
>
> (b) promote the prosperity;
>
> (c) improve the morals, peace, good order, comfort, convenience, and aesthetics of each municipality and each municipality's present and future inhabitants and businesses;
>
> (d) protect the tax base;
>
> (e) secure economy in governmental expenditures;
>
> (f) foster the state's agricultural and other industries;
>
> (g) protect both urban and nonurban development;

(h) protect and ensure access to sunlight for solar energy devices;

(i) provide fundamental fairness in land use regulation;

(j) facilitate orderly growth and allow growth in a variety of housing types; and

(k) protect property values.

Utah Code § 10-9a-102(1).

Regulating gas stations to require prioritized and exclusive EV parking and recharging serves none of the enumerated purposes found within MLUDMA. There is no reasonable relationship between requiring EV parking and charging at gas stations and the public health, safety, morals, prosperity, or peace. Moreover, there is no connection to protecting the tax base, securing economy in governmental expenditures, providing fundamental fairness in regulation, protecting property values, or any of the other enumerated purposes.

To the contrary, imposing this burden on gas stations will negatively impact the fuel industry, rather than "foster the state's . . . industries." *Id.* Thus, the regulation, as it relates to EV parking, falls outside the scope of the City's zoning authority, and would likely not withstand judicial review. *See* Utah Code § 10-9a-501(3) ("A legislative body shall ensure that a land use regulation is consistent with the purposes set forth in this chapter."); *id.* § 10-9a-505(3) (stating a court shall review a land use regulation to determine whether it "is expressly preempted by, or was enacted contrary to, state or federal law" or whether it "conflicts with the authority" granted by MLUDMA).

3. The proposed EV parking and recharging station requirement unlawfully discriminates against gas stations.

The proposed EV parking and recharging station requirement singles out gas stations and fuel providers to offer EV charging and parking. Jacksons understands that no other business or entity type is required to provide prioritized and exclusive EV parking or charging. This discriminatory treatment likely violates MLUDMA.

MLUDMA requires the City to "ensure that the [land use] regulations are uniform for each class or kind of buildings throughout each zoning district." Utah Code § 10-9a-505(2). However, "regulations in one zone may differ from those in other zones." *Id.* Additionally, the court will review a land use regulation to determine if it is "arbitrary and capricious." *Id.* § 10-9a-505(3)(b)(i).

Here, gas stations are singled out to be the sole providers (not including city- or state-owned land used for EV parking) for EV prioritized and exclusive parking and recharging.

Other commercial businesses—for example, alcohol related establishments, restaurants, and department stores—are not required to do the same. There is no non-arbitrary and capricious reason for this inconsistent treatment. *See Prince George's Cnty. Council v. Concerned Citizens*, 300 A.3d 857, 881 (Md. 2023) (explaining that rezoning that discriminates between similarly situated properties without good reason, even when "a zoning authority deliberately targets a particular property or properties," should be invalidated). The proposed EV parking and recharging station requirement would create a nonuniform regulation that arbitrarily singles out gas stations. For that additional reason, the proposed EV parking and recharging station requirement is unlawful.

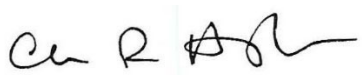
4. The Proposed Amendment raises additional concerns that require clarification.

The extent to which the Proposed Amendment would apply to existing gas stations raises additional concerns. The Proposed Amendment exempts gas stations that "replace existing tanks and associated equipment in the same location," but the extent to which an existing gas station may remodel its buildings and improvements without triggering the Proposed Amendment's requirements is unclear. Clarification on this issue would be helpful as Jacksons and other similarly situated companies consider the Proposed Amendment's impacts.

5. Conclusion

Jacksons appreciates the opportunity to provide these comments on the Proposed Amendment. As Jacksons continues to invest in Utah through growing its business and employing Utahns, it takes seriously the unfair burden this Proposed Amendment presents to future development in Utah. The Proposed Amendment goes too far by requiring gas stations and fuel providers to set aside priority parking and recharging for EVs, which is not an allowable land use regulation. For that reason, Jacksons encourages the Salt Lake City Planning Commission to send a negative recommendation for the text amendment to the City Council, or to initiate a new zoning amendment that does not include the EV parking and recharging station requirements.

Very truly yours,



Christopher R. Hogle
Partner
of Holland & Hart LLP

30977965_v1

From:	[redacted]
To:	Martinez, Diana
Subject:	(EXTERNAL) Fwd: 21.A.36.370 - Regulations for Gas Stations set for December 13th SLC Planning Commission Agenda (see attached)
Date:	Tuesday, November 28, 2023 12:43:00 PM
Attachments:	PlanningCommissionRequiremtsNov2023.pdf

Caution: This is an external email. Please be cautious when clicking links or opening attachments.

From: **Elliott Christensen** [redacted]
Date: Tue, Nov 28, 2023 at 12:29 PM
Subject: 21.A.36.370 - Regulations for Gas Stations set for December 13th SLC Planning Commission Agenda (see attached)
To: <dianamartinex@slcgov.com>

Diana,
Thank you for the opportunity to comment on the proposed zoning text amendments regulating future gas stations and improvements for existing gas stations in the City (potentially affecting my store at 1345 S. Pioneer Road).

By way of background, over the last 40 years I have served as president and board member of the two irrigation companies (Brighton and North Point Irrigation Companies) who manage and deliver most of the surface waters serving Great Salt Lake's wetlands and farms located in Salt Lake City's northwest quadrant north and west of the Salt Lake City Airport.

Also, I served for 8 years on the Salt Lake City Public Utilities Advisory Board under the direction of LeRoy Hooten.

During my 45-year career in the water industry, together with our two company's efforts shepherding water through Salt Lake City's south shore wetlands to Great Salt Lake, have made a couple of discoveries worth noting to the Planning Commission:

1. Due to Great Salt Lake's shallow depths (the deepest lake points now being about 20 feet in depth) coupled with the lake bed having very dense clays underlying it, **none** of the groundwater in Salt Lake City can feed into the lake.
2. All of the many existing wells I am aware of in Salt Lake City west of I-15 and north of the 21st South SR201 Freeway (a few being 1,000 feet in depth) contain very brackish saline waters that do not come close to meeting Utah State drinking water quality standards and are not connected (or expected in the future to be connected) into the City's drinking water system.

Over the years, in speaking with a large number of the engineering firms designing new residential and commercial developments, they all express difficulty finding open land upon upon which they can create stormwater detention basins.
Land scarcity within the City limits severely limits future development.

With the existing storm water systems in Salt Lake City already complete and generally adequately sized, why shouldn't the City prioritize its commitment to Great Salt Lake by allowing gas stations, and well as all future developments to have their storm water discharge directly into the City's existing storm drains and thereby enable all storm water to make it to

Great Salt Lake (rather than trying to storm water into the high saline water table underlying the City's West Side?

I appreciate the Commission moving to adopt my requested amendment!!

Warmest Regards,
Elliott

--
Elliott Christensen, Owner
Pioneer Chevron
1345 S. Pioneer Road
[redacted]

MAVERIK

Maverik, Inc.
185 South State Street, Suite 800
Salt Lake City, UT 84111
801-936-5557 | maverik.com

November 29, 2023

Salt Lake Planning Commission
Mike Christensen, Chairman
City & County Building
451 South State Street, Room 326
Salt Lake City, Utah 84111

RE: Proposed Amendments to 21A.36.370 Regulations for Gas Stations and Fuel Dispensing Facilities with Underground and Above Ground Fuel Storage Tanks

Dear Chairman Christensen and Planning Commission members,

Thank you for notifying Maverik, Inc. regarding the proposed amendments to 21A.36.370. As you may know, Maverik is the largest retail petroleum provider operation in Salt Lake City and Utah. Furthermore, Maverik has demonstrated a long time continuing focus on improving the lives of both our customers and residents in the state. We dedicate resources towards the highest quality fuels for cleaner air and our operations meet or exceed environmental requirements and regulations. Also, our commitment to various educational, charitable and housing causes is exemplary. Maverik is proud to be a good corporate citizen.

We understand the desire of Salt Lake City and other government entities in promoting the use of electric vehicles. However, we believe that the most efficient, safest and economical transition to electric vehicle usage is through practical and responsible measures in the public and private arena.

In reviewing the amendments we have observations and concerns which will help the Commission craft language that accomplishes their goals but at the same time does not disrupt the activities of all gasoline convenience store operations.

Our observations and concerns of the proposed amendments are as follows:

1. It is our understanding that very few mandates have been adopted in the western United States. California has a statewide EV charging requirement on all new buildings but only requires level 2 chargers without designating the location of the EV chargers. Some municipalities in New Mexico and Colorado have EV requirements but at this point in time only require level 2 chargers or that the location be "EV Ready" (requirements depending on the municipality). No

state or municipality where Maverik currently operates requires level 3 chargers in their EV mandates AND no state imposes requirements on the location of the chargers.

2. The Utah Department of Environmental Quality (DEQ), under a federal EPA mandate and guidance, has a comprehensive program for similar regulations for gas stations and fuel dispensing facilities. Thus, the proposed amendments are redundant and unnecessary.

3. Very few U.S. gas stations are installing EV charging because there is little or no demand and there is no return on investment even with increased subsidies and tax incentives.

4. The EV charging infrastructure does not need to mirror the infrastructure that serves gasoline vehicles because most EV owners charge at home overnight or during other stretches of time when not using their car. Such practices are especially the case in metropolitan areas.

5. The amendments do not address the details of charging equipment. Therefore, we assume the requirement will be for a level 2 charger.

There is a tremendous cost difference in the installation and operation of level 2 chargers and level 3 chargers. A requirement to install level 3 chargers at the 1 per 10 parking stall rate results in an incremental cost about $500k to $1 million. Based on our research and practical experience, mandated installation of level 3 chargers is best achieved with significant incentives and grants provided by the appropriate government entities and only in locations with frequent and reliable demand for EV charging. Otherwise, there is no return on investment, even over time, to make the installation of level 3 chargers feasible.

6. One of the priorities for Maverik in designation of parking places near the entrance of our stores is for ADA accessibility. Maverik already dedicates parking and accessible access under the ADA in its most valuable parking locations near the entrance of our stores. Additional requirements for EV charging to be located near our store entrances impairs the ability of our customers to access the store.

Mandating EV charger locations would have a material adverse impact on store access, operations and profitability. Front of store parking spaces have high traffic with very fast turnaround usage. Providing EV parking and charging in the most valuable parking areas would disrupt store operations, negatively impact sales and deter other customers from being able to park at the store. Operators have a better understanding of the safest and most efficient location for chargers on the property. Any amendments should allow owners and operators to make the decision where a charger should be located.

7. Because private industry will be incurring the impact of any potential changes to current ordinances, the studies and research used to develop the proposed amendments should be released for public understanding and comment.

Based on the above items, we respectfully suggest postponement of any vote on the existing amendments to allow for additional time to conduct research and evaluation of effective regulations in other jurisdictions. This would include reviewing studies and analysis conducted by any experts. Because Maverik has operations in several of these jurisdictions we are happy to participate in such discussions. We believe this provides the best framework to construct public policy.

In the event that the commission wishes to make some recommendation to the City Council in the near future we suggest the following:

A. That language contained in the current proposed amendments that is similar or identical to Federal and state requirements be deleted to avoid confusion.

B. That a requirement as to where a charging station should be located be deleted for the reasons stated above, including that owners have the best sense of what will work for their customers and operations.

C. Any requirement for a charger would be a level 2 charger. Owners have the option to install level 3 chargers. A mandate for level 3 chargers is prohibitively expensive and impairs operations.

Maverik is able and willing to assist you in discussions or development of regulations in ordinances that achieve your goals and at the same time do not disrupt quality operations and activities by our company. Please let us know how we can assist you with this regard.

Sincerely,

Holly P. Robb
Director
Government Relations

UTAH FOOD INDUSTRY ASSOCIATION
UTAH RETAIL MERCHANTS ASSOCIATION

November 29, 2023

Salt Lake Planning Commission
Mike Christensen, Chairman
City & County Building
451 South State Street, Room 326
Salt Lake City, Utah 84111

RE: Proposed Amendments to 21A.36.370 Regulations for Gas Stations and Fuel Dispensing Facilities with Underground and Above Ground Fuel Storage Tanks

Dear Chairman Christensen and Planning Commission members,

The Utah Food Industry Association and Utah Retail Merchants Associations represent convenience and grocery store operators across the state of Utah including Salt Lake City. We have just become aware of the proposed regulations contained in 21A.36.370 and our members have grave concerns about the several of the provisions. We would ask that the SLC Planning Commission NOT recommend these changes to the City Council for adoption. Rather that the Planning Commission engage with industry to see if there is a way to work together on a proposal that could accomplish some of the City's objectives without operationally crippling retailers or frustrating future remodels / improvements to facilities. While our members have many concerns here are some of the significant ones:

1. The application of these new burdensome standards to remodels will simply prevent store owners from improving existing facilities. Based on how the standards are drafted it is unclear when these new standards will be triggered in the case of a remodel. The inability to remodel or improve a store will be detrimental to both consumers and Salt Lake City.

2. Operators have concerns about how these city regulations will interface with existing Utah DEQ and Federal EPA regulations. There are extensive bodies of law and regulation that address UST's / AST's and their impacts on nearby bodies of water / open spaces. Introducing local ordinances into this already complex area of regulation will only further confuse small business owners and increase the chance of non-compliance by mistake.

3. The proposed lot sizes and frontage requirements are arbitrary. It seems as if this is just an attempt to kill any future development of convenience stores in Salt Lake City. The inability to build future gas stations in Salt Lake City will hurt Salt Lake residents and limit their access to essential services.

4. The EV parking requirement is operationally unsustainable. This is an excellent example of why it is important for City planners to work with industry BEFORE coming up with a standard. To place an EV parking stall that will be occupied for an extended period "as close to the primary entrance of the principal building as possible" makes no operational sense. Convenience stores are built on the business of "quick in quick out" and to have a prime parking stall occupied for hours by a charging vehicle truly makes no sense.

Again, there may be issues that we could work together on but as the regulations currently stand, we would oppose them as overly burdensome and would ask the SL Planning Commission NOT to recommend them to the City Council. We do however stand ready to work together to come up with operationally sustainable solutions that could help address some of the City's concerns. Thank you for allowing our associations the opportunity to comment and if you have any questions or concerns, please feel free to contact me.

Sincerely,

UTAH FOOD INDUSTRY ASSOCIAITON
UTAH RETAIL MERCHANTS ASSOCIATION

David M. Davis
President & Chief Executive Officer

THE UTAH
PETROLEUM
MARKETERS
&
RETAILERS
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AN AFFILIATE OF
WESTERN PETROLEUM MARKETERS ASSOCIATION
www.wpma.com/utah

RECEIVED
DEC 11 2023
Salt Lake City Attorney

November 29, 2023

To Diana Martinez,

This week, a letter to Maverik Country Stores, a member of the Utah Petroleum Marketers & Retailers Association (UPMRA), was brought to our attention, regarding a newly initiated Zoning Text Amendment that would restrict the construction or reconstruction of existing gas stations in Salt Lake City based on their location, including near secondary groundwater recharge areas, public parks and open spaces.

While these proposed standards give notice to prospective gas station owners and operators, who might have wanted to build a new gas station in Salt Lake City, it also imposes a heavy burden on existing gas station owners, many of whom are small business owners, who may have wanted to rebuild and improve the layout of an existing site, but would now be precluded from improving their current gas stations, now and forever.

UPMRA worries about the unfair nature of these proposed zoning amendments on existing station owners, whose families have made substantial investment in their businesses and site locations, only to have existing long-time site zoning approvals withdrawn and/or rescinded.

Since the 1990s, Utah gas station owners have complied with EPA and State DEQ imposed underground storage tank rules and regulations, and they have diligently adhered to these laws to help protect Utah's ground water and the environment, but future plans to renovate stations to bring even greater safety and environmentally sound equipment and technology to existing sites would likely be stifled by these proposed zoning amendments.

And given the size of most existing gas station sites in Salt Lake City, by imposing new lot size restrictions of 30,000 square feet, and adding the very large and unattainable setbacks for the owners, and the requirement that landscaping be used for stormwater treatment and surface runoff with approval required by the Public Utilities Department, these amendments would kill any future project a current site owner might have dreamed or planned for in the future.

Additionally, regarding the issue of "secondary ground water recharge areas," do all existing gas station owners even know or understand if they are located in secondary ground water recharge areas, or, if a lot nearby has been, or will be proposed as a new park or open space?

By applying new standards retroactively, and establishing more stringent zoning standards on any gas station that is located in the secondary ground water recharge area of the city, or near a park or open space, could constitute an unlawful taking of property without just compensation.

This proposed zoning amendment is also unfair to existing gas station owners, because of a lack of clarity in identifying, specifically, what kind of reconstruction or renovation would be subject to the proposed ordinance, and the stringent new standards being applied retroactively.

And most egregious is the Electric Vehicle Parking requirement, with EV charging equipment placement at the front of the store, taking up prime real estate, and "outfitted with a standard electric vehicle charging station," which is currently Type 2 charging that no one will want to use because they charge so slowly, only adding about 30 miles of range per hour of charging.

UPMRA represents gas stations across Utah as well as in Salt Lake City, and we take umbrage with a "city mandate." If zoning amendments are to be adopted, they should be considered on a state-wide basis, to provide consistent expectations and requirements for gas station owners in all municipalities, cities and counties across the State.

Therefore, we would ask that the Salt Lake City Planning Commission pause their review of this Gas Station Zoning Amendment, and collect more information from current gas station owners and interested parties from across Utah.

As mentioned earlier, UPMRA only learned of this proposal this week and has had no time to discuss the amendments with our members, legal counsel or other interested parties to understand the full extent and ramifications of these proposed zoning amendments.

Nor have we had the opportunity to review and comment on all the background information referenced in the project memorandum.

Thank you for your consideration.

Sincerely,

R. Hall

Roy Hall
President

John Hill
Executive Director