

652

ENCROACHMENT AGREEMENT

STATE OF WYOMING §
 §
COUNTY OF SHERIDAN §

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, ConocoPhillips Pipe Line Company, a Delaware corporation, (hereinafter referred to as "Permitter"), is the current owner of a right-of-way as specified in an instrument dated the 25th day of April, 1963 from Robert and Beatrice Moller covering lands in Sheridan County, State of Wyoming, said instrument being filed of record in Book 141, Page 286 of the Deed Records of Sheridan County, Wyoming hereinafter referred to as the "Right-of-Way"), and

WHEREAS, Permitter owns and operates a 8-inch pipeline(s) in the lands covered by Permitter's Right of Way; and

WHEREAS, Vesta, LLC., (hereinafter referred to as "Permittee", whether one or more) with an address of 102 Scott Drive, Sheridan, Wyoming 82801, is the owner of a tract of land which is subject to the above specified Right-of-Way, said fifty (50) feet wide right of way being described in the document filed of record number 477828, Sheridan County, Wyoming Records; and

WHEREAS, Permittee has requested permission to encroach upon Permitter's Right-of-Way located on Permittee's land specified above by constructing the following:

- 1) Spring View Drive as shown on Exhibit "A"
- 2) Cross Creek Court as shown on Exhibit "A", and
- 3) An 8 inch water supply pipeline as shown on Exhibit "C"

(hereinafter referred to as the "Encroachment, whether one or more"); and

WHEREAS, Permitter is agreeable to permitting said Encroachment subject to the terms and conditions of this Encroachment Agreement ("Agreement").

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00), and of the premises and of the covenants hereof contained, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. Subject to the terms and conditions of this Agreement, Permittee hereby consents to the placement and maintenance of the Encroachment within the Right-of-Way as are specifically described and/or depicted on the plat as shown on Exhibit "A" and "C", attached hereto and made a part hereof. The Encroachment within the Right-of-Way shall be placed only in the locations as described and/or depicted on Exhibit "A". Any changes in the nature or location of the Encroachment shall require the prior written approval of Permittee.

2. Permittee has been advised, and is fully aware, that Permitter now has, and shall continue to have, the right to utilize the land within the Right of Way and Permitter is hereby granted the right to use additional workspace outside of said Right-of-Way for pipeline purposes; that in so doing, Permitter may, at any time and from time to time, and without liability to Permittee, enter upon said land, place and transport machinery and equipment thereon, excavate trenches or ditches thereon, and perform other pipeline operations and related activities thereon, any of which may damage or destroy the Encroachment.

Permittee agrees that Permittor shall have no obligation to repair, restore or replace the Encroachment or to compensate Permittee for any damage to or destruction of the Encroachment arising out of any such Permittor activity. Permittee also agrees that Permittor shall not be responsible or liable for, and Permittee hereby releases Permittor from, any lost business or consequential damages resulting from Permittor's above described activities, howsoever caused.

3. Permittee shall give Permittor at least ten (10) days written notice before commencing any construction, maintenance or replacement of the Encroachment on the Right-of-Way, or movement of equipment across the Right-of-Way, in order that Permittor shall have an opportunity to have an inspector or representative present during the time such activities are carried out and so that Permittor's pipeline(s) can be staked to minimize the possibility of damage. Notice is to be given to the following individual at the listed address and phone number:

ConocoPhillips Pipe Line Company
Attn: Ron Grandstaff, Area Supervisor
P.O. Box 369
Evansville, Wyoming 82636
Telephone 307-265-8011
Fax 307-265-5633

OR

ConocoPhillips Pipe Line Company
Attn: Frank Barking
3404 Highway 87
Sheridan, Wyoming 82801
Telephone 307-674-7959 Ext 1, 10
Fax 307-674-4604

4. Any future encroachments on, or disturbances of, Permittor's Right-of-Way are forbidden unless permitted by a separate fully executed Encroachment Agreement. Permittee will not excavate, nor permit others to excavate, on Permittor's Right-of-Way for subgrade preparations or for any other purposes, except as allowed by this Agreement. Permittee, at its sole cost and expense, shall at all times maintain the Encroachment in a condition which will not interfere with or endanger Permittor's pipeline(s) or the operation of such pipelines located within Permittor's Right-of-Way.

5. Nothing in this Agreement shall be construed as a grant of any of Permittor's rights in the Right-of-Way instrument specified above and this Agreement shall in no way limit or impair said rights.

6. If it becomes necessary in Permittor's sole judgment, to lower or relocate Permittor's pipeline(s) as a result of any encroachment by Permittee within the Right-of-Way, other than the Encroachment, such lowering or relocating of the pipeline(s) shall be undertaken by Permittor at the sole cost and expense of Permittee, including (without limitation) the cost of acquiring any additional right-of-way. Any relocation of the pipeline(s), as well as the relocation route, shall be at the sole discretion of Permittor.

7. Permittor shall have the right to adequately mark its pipeline(s) with permanent line markers and ground placards to promote public safety and the future safe operation of said pipeline(s), and to meet applicable governmental regulations.

8. Permittee represents and warrants that it is in compliance with and shall continue to comply with all of the terms and conditions set forth in the "Additional Right-of-Way Encroachment Terms & Conditions" attached hereto as Exhibit "B".

9. **PERMITTEE SHALL PROTECT RELEASE, INDEMNIFY, DEFEND AND HOLD PERMITTOR, ITS PARENTS, SUBSIDIARIES, AFFILIATES, CONTRACTORS AND SUBCONTRACTORS, THEIR SUCCESSORS AND ASSIGNS, AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND REPRESENTATIVES (HEREINAFTER COLLECTIVELY REFERRED TO AS THE "INDEMNIFIED PARTIES"), HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, FINES, PENALTIES, DAMAGES, DEMANDS, SUITS, CAUSES OF ACTION, JUDGMENTS, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES, COSTS OF LITIGATION AND/OR INVESTIGATION AND OTHER COSTS ASSOCIATED THEREWITH), AND LIABILITIES, OF EVERY KIND, (COLLECTIVELY REFERRED TO HEREFTER AS "CLAIMS"), INCLUDING WITHOUT LIMITATION THOSE RELATING TO LOSS OF OR DAMAGE TO ANY PROPERTY (INCLUDING, BUT**

NOT LIMITED TO, ENVIRONMENTAL DAMAGES, POLLUTION OR CONTAMINATION), AND INJURY TO OR DEATH OF ANY PERSONS, IN ANY WAY ARISING OUT OF, CONNECTED WITH OR RESULTING FROM THE EXERCISE OF ANY OF THE RIGHTS IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THE CONSTRUCTION, PRESENCE, MAINTENANCE, USE, REPAIR OR REMOVAL OF THE PERMITTED ENCROACHMENT, OR ANY BREACH OF THIS AGREEMENT BY PERMITTEE OR BY ANYONE ACTING ON BEHALF OF PERMITTEE, REGARDLESS OF THE CAUSE OR CAUSES THEREOF, INCLUDING WITHOUT LIMITATION ANY CLAIMS CAUSED BY OR CONTRIBUTED TO, IN WHOLE OR IN PART, BY THE INDEMNIFIED PARTIES' SOLE, JOINT OR CONCURRENT NEGLIGENCE OR FAULT (WHETHER IMPOSED BY STATUTE, RULE, REGULATION OR OTHERWISE) AND STRICT LIABILITY, EXCEPT TO THE EXTENT ANY SUCH CLAIMS ARE CAUSED BY THE INDEMNIFIED PARTIES' WILLFUL MISCONDUCT.

10. This Agreement shall be a covenant running with the property rights under which Permittee is conducting its activities on Permitter's Right-of-Way.

11. The provisions hereof shall extend to, be binding upon, and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

EXECUTED on the dates set forth in the acknowledgments, but effective for all purposes as of the 2nd day of August, 2005 (the "Effective Date").

PERMITTOR

ConocoPhillips Pipe Line Company

Signature: Michael J. Moore

Printed Name: Michael J. Moore
Attorney-in-Fact

Title: _____

PERMITTEE

Vesta, L.L.C.

By: Julie Warren

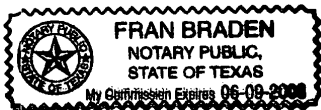
Title: Manager

STATE OF TEXAS

COUNTY OF HUTCHINSON

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This instrument was acknowledged before me on this 9th day of August, 2005, by Michael Moore as an Attorney-in-fact of CONOCOPHILLIPS PIPE LINE COMPANY, a Delaware corporation, on behalf of said corporation.



(seal)

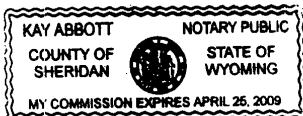
Fran Braden
Notary Public in and for the State of Texas
Printed Name: FRAN BRADEN
Residing in: BORGER, TX
MY COMMISSION EXPIRES: July 9, 2008

STATE OF WYOMING

COUNTY OF SHERIDAN

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This instrument was acknowledged before me on this 2nd day of August, 2005, by Jim Warren, as Manager of Vesta, L.L.C., a Limited Liability Company on behalf of said Vesta, L.L.C. Limited Liability Company.



(seal)

Kay Abbott
Notary Public in and for the State of Wyoming
Printed Name: Kay Abbott
Residing in: Sheridan, WY
My Commission Expires: 4-25-2009

EXHIBIT B
CONOCOPHILLIPS PIPE LINE ENCROACHMENT GUIDELINES

1. Company (Permitter) operates and maintains its pipelines in compliance with current U.S. Department of Transportation (DOT) regulations and industry and Company standards for safe operations. Should Encroaching Party (Permittee) propose plans to alter the area through which Permitter's pipeline(s) pass, causing such pipeline(s) not to meet these requirements, modifications to the pipelines or plans will be made. **The cost of all such modifications will be borne by the Permittee.**
2. Permittee requesting Permitter to restrict the Right-of-Way (ROW) width will have a centerline survey of the line completed across his land by a registered land surveyor at the Permittee's expense. The Permittee will provide proof of ownership of the property (i.e., warranty deed).
3. No buildings, engineering works, patios, in-ground swimming pools, septic systems, or other permanent structures will be permitted on the ROW. No temporary structures, storage containers, construction equipment or vehicle parking will be permitted within the ROW without Permitter's prior written approval. No manned structures, temporary or permanent will be approved. Retaining walls are not permitted. This includes all water retention devices. Large debris such as old cars, trailers, scrap metal, etc., will not be permitted on the ROW. The ROW must be kept clear for maintenance.
4. All buildings and other permanent structures must comply with a building setback of 25 feet from the pipeline(s), and this setback requirement will be included as a covenant on any parcel carved out of the above referenced lands that abut the ROW. For a single line easement, a strip of land 50 feet wide, centered on the pipeline, must be maintained. A greenbelt area will be established around the pipelines within a new proposed development whenever possible, with no lot lines or fences across the ROW or centered on the pipeline(s).
5. No fences will be allowed on the ROW without Permitter's prior written approval. Fences must be easily removable and not obstruct the view of the ROW for inspection purposes. No masonry, brick, or stone fences will be allowed. Fences that are perpendicular to the pipeline(s) must include a gate or other form of access across the width of the ROW. Fence posts shall not be placed within 4 feet of the pipeline(s). Fences that are parallel to the pipeline(s) must be located at least 10 feet from the nearest pipeline(s), or 20 feet if located on both sides of the line.
6. No utility poles will be allowed to cross the ROW if they interfere with future maintenance. Utility poles, guy wires, or anchors shall not be placed within 8 feet of the pipeline(s). Utility poles running parallel to the pipeline(s) must be located at least 25 feet from the nearest pipeline(s).
7. Trees or deep-rooted plants are not permitted on the ROW. Existing trees may be removed or side trimmed by Permitter if in their sole discretion, such trees interfere with their ability to maintain or monitor the pipelines.
8. For new roads running parallel to Permitter's pipeline(s), there must be at least 25 feet from the edge of the road to the nearest pipeline. All roads passing over Permitter's pipeline(s) shall cross at an angle as close to 90 degrees as possible. Depth of cover shall be at least 36 inches (48 inches for HVL lines) in the barrow ditches and 48 inches under road surfaces from top of pipe to top of surface. In addition, it may be necessary to lower and recondition, replace, relocate, or protect the pipeline(s) at the point of crossing to insure that they are not subjected to excessive stress from movement of traffic. Any such modification to the pipeline(s) will be made at Permittee's expense.
9. Construction of parking lots over the pipeline(s) will not be permitted without Permitter's prior written approval and a hold-harmless agreement releasing Permitter from any and all future damages to the parking lot due to pipeline maintenance and repair. Depth of cover must be at least 48 inches from top of pipe to top of finished surface. Concrete parking lots must have jointed sections at no more than 20-foot intervals for ease of repair.

10. Any utilities that parallel Permititor's pipeline(s) will maintain a minimum separation distance of 20 feet from the utility's outside wall to the outside wall of Permititor's pipeline(s). All utilities which cross Permititor pipeline(s) must pass underneath existing pipeline(s) by a minimum of 18 inches and the crossing shall be as close to 90 degrees as possible and adequately marked on both sides of such pipeline(s). The markers shall be maintained by Permittee in the future. Any future relocation of the utility line due to Permititor's pipeline maintenance shall be done at the Permittee's expense. Any exceptions to these requirements will not be allowed without Permititor's prior written approval.

11. Telephone cables, TV cables, secondary electrical lines (240vac or less), and non-steel gas lines must be in a minimum Schedule 40 steel or PVC casing. Primary (high voltage) electrical lines must be in a minimum Schedule 40 PVC casing and have a minimum clearance of 24 inches from Permititor's pipeline(s). They shall also be covered with a red concrete slab a minimum of 4 inches thick and 24 inches wide for a distance of 10 feet on both sides of the pipeline(s).

12. If any of Permittee's lines that cross or run parallel to Permititor pipeline(s) are installed and constructed of a material requiring cathodic protection, an interference survey shall be made by Permititor and Permititor shall determine what necessary steps will be taken to prevent the damage of either line. The survey will be done at Permititor's expense. Any measures required to address interference issues as a result of the installation of the Permittee's lines will be done at Permittee's expense.

13. Grade or elevation changes may not be made without Permititor's prior written approval. Changes in grade for the purpose of water retention will not be approved.

14. Permittee will maintain a minimum of 36 inches of soil cover over Permititor's pipeline(s) across the entire width of the Encroachment where it crosses the ROW. 48 inches of cover is required for HVL lines. If insufficient cover to meet the aforementioned coverage requirement currently exists, then the line must be lowered or additional cover provided for placement over the ROW at Permittee's sole cost and expense. Cover over the lines may not exceed 6 feet without Permititor's prior written approval. The method of achieving the required depth of cover will be at the Permititor's sole discretion.

15. The Permittee must provide the Permititor with plans for all work that may affect the ROW for approval prior to construction, including an accurate plat and a profile (along the pipeline centerline) showing any grade work to be done. Upon receipt of these drawings, Permititor will prepare a cost estimate of any necessary modifications to its pipeline(s). Permititor requires that 100% of the cash equivalent of Permititor cost estimate be given to the Permititor prior to beginning modifications. Permittee will be charged actual costs for design/construction as incurred by the Permititor and an overhead charge to cover procurement, accounting, and legal services. Any part of the cost estimate not spent will be returned to the Permittee or the Permittee will be invoiced for amounts exceeding the cost estimates. Any pipeline modifications shall be done by Permititor or one of the Permititor's contractors.

16. The Permititor retains the right to adequately mark Permititor's pipelines with permanent line markers to insure public safety and the future safe operation of the lines. DOT Regulations state that any person who willfully and knowingly defaces, damages, removes, or destroys any pipeline sign or right-of-way marker shall be subject to a fine, imprisonment, or both. **The Permittee is required by State law to contact the local One-Call Center at least 48 hours prior to any excavation taking place near the pipeline(s).** The Permititor reserves the right to have an inspector or representative on the job to oversee all construction within the ROW.

17. The Permittee will allow no material or equipment to be used in the construction of the Encroachment that would hinder or impair Permititor's ability to safely maintain and operate Permititor's pipeline(s). Temporary construction roads with additional cover and/or stabilization will be required when crossing Permititor's pipeline(s) with equipment and vehicles, and must be approved by Permititor.

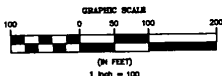
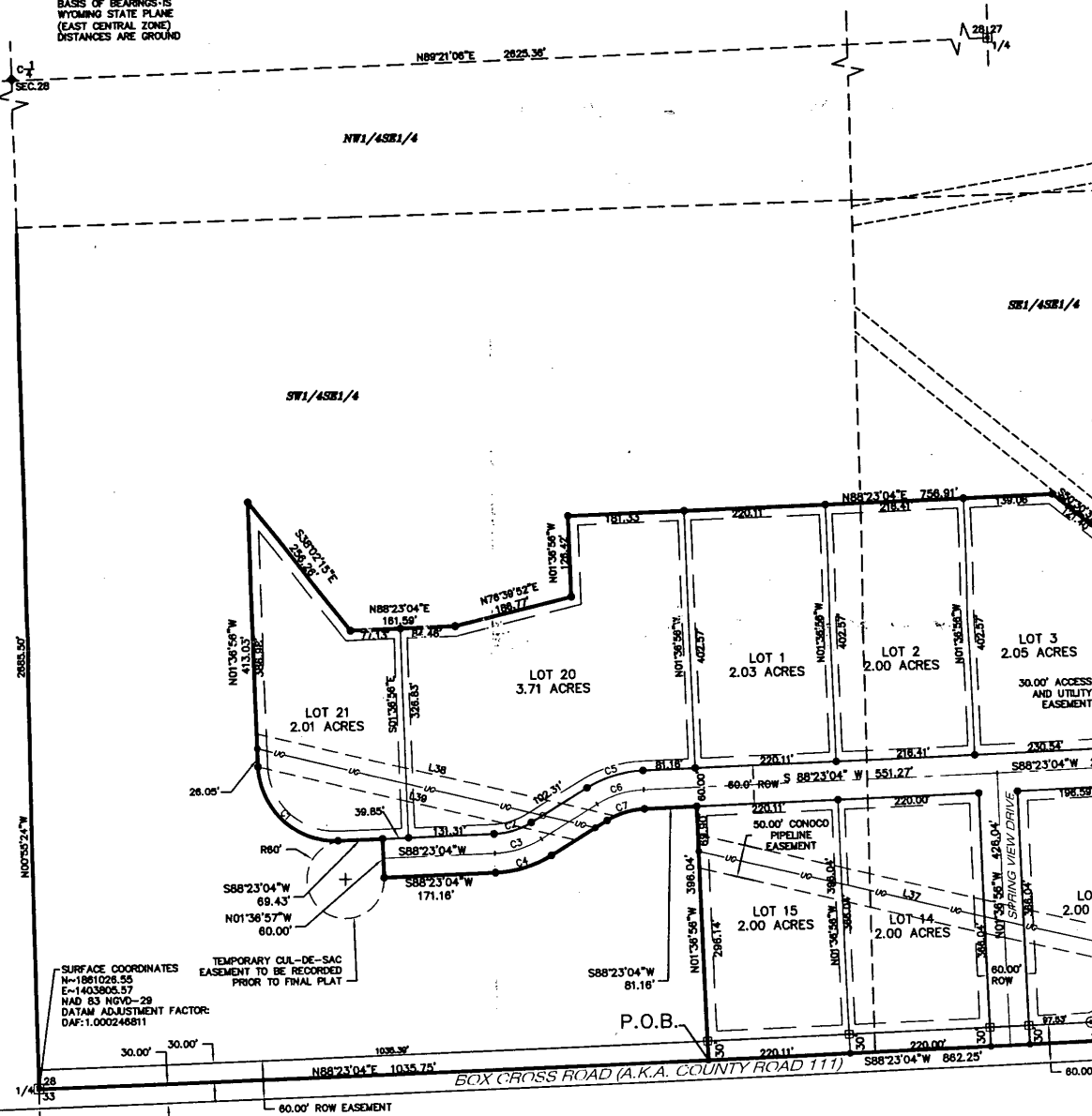
18. Permittee shall not allow the Encroachment to create an erosion problem along the ROW, and should such an erosion problem arise then Permittee, at Permittee's sole cost and expense, will immediately correct the problem.

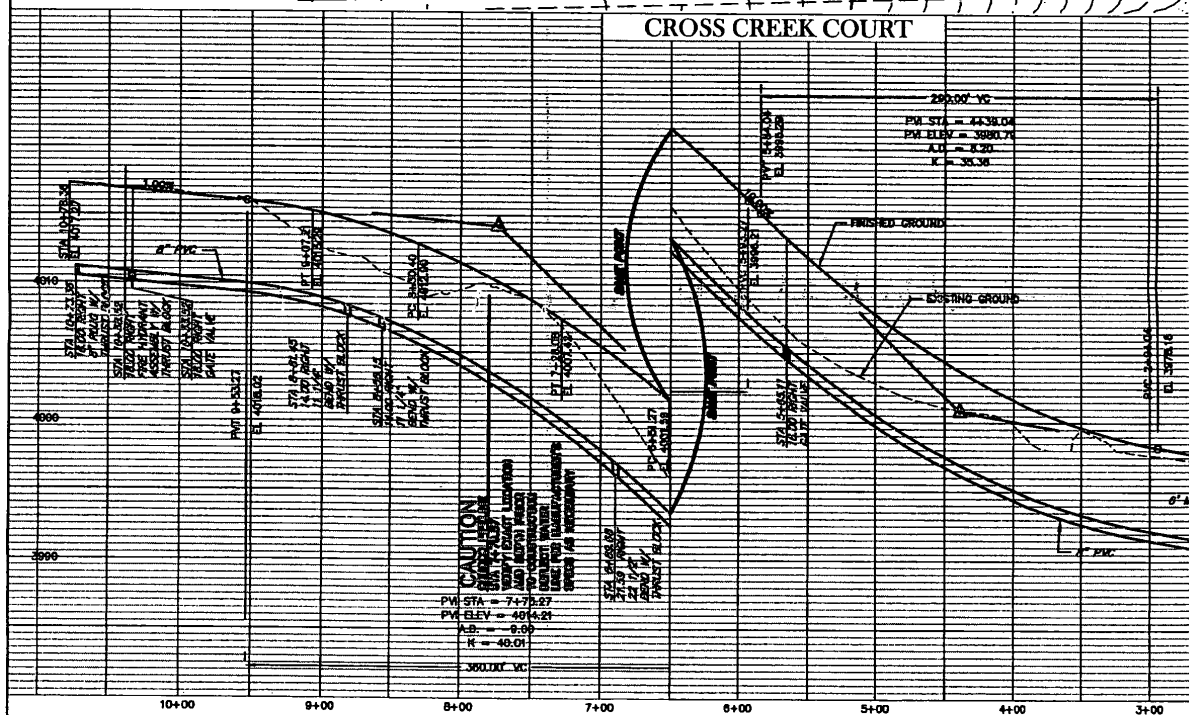
FINAL PLAT OF
CROSS CREEK ESTATES

SURVEYOR'S CERTIFICATE

STATE OF WYOMING } ss
COUNTY OF SHERIDAN }

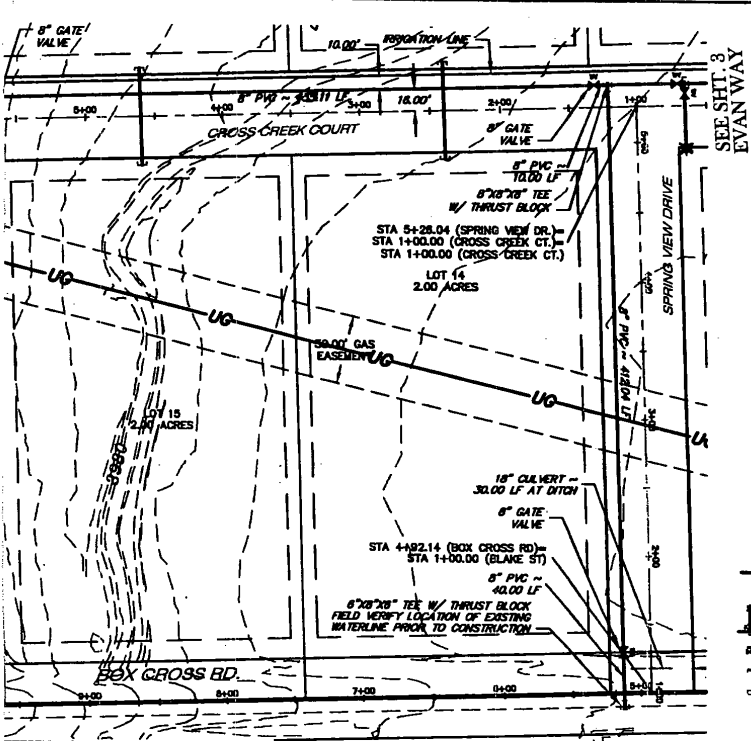
I, RONALD W. PRESFELDT, A DUTY REGISTERED LAND SURVEYOR IN THE STATE OF WYOMING, DO HEREBY STATE THAT THIS PLAT OF THE CROSS CREEK ESTATES TRULY AND CORRECTLY REPRESENTS THE RESULTS OF A SURVEY MADE BY ME OR UNDER MY DIRECT SUPERVISION.

BASIS OF BEARINGS-IS
WYOMING STATE PLANE
(EAST CENTRAL ZONE)
DISTANCES ARE GROUNDREGISTERED LAND SURVEYOR
NO. _____



**CALL BEFORE YOU DIG
ONE-CALL OF WYOMING
1-800-849-2476
CALL 2-BUSINESS DAYS IN ADVANCE
BEFORE YOU DIG, GRADE, OR EXCAVATE
FOR THE MARKING OF UNDERGROUND
MEMBER UTILITIES.**

[illegible]



- CONSTRUCTION NOTES**
1. ALL STATIONING BASED ON STREET CENTERLINE STATIONS UNLESS OTHERWISE NOTED.
 2. ALL WATERLINE CONSTRUCTION SHALL BE DONE IN ACCORDANCE WITH THE CITY OF SHERIDAN STANDARD SPECIFICATIONS FOR STREET AND UTILITY CONSTRUCTION.
- LEGEND**
- WATER SERVICE — STOP OUT TO CURB STOP WITH A CAPPED VALVE AND MARKER, NO METER PIT.
 - FIRE HYDRANT ASSEMBLY
 - W WATER VALVE
 - W/ W/ THRUST BLOCK
 - TE

