

00/11  
78-4-47-1W  
09-012-0018 + 0019

STEPHEN C. WARD - Bar No. 3384  
Assistant Attorney General  
JAN GRAHAM -- Bar No. 1231  
Attorney General  
ATTORNEYS FOR PLAINTIFF  
160 EAST 300 SOUTH  
P.O. BOX 140857  
SALT LAKE CITY, UTAH 84114-0857  
TELEPHONE: (801) 366-0353  
TELEFAX: (801) 366-0352

FILED IN CLERK'S OFFICE  
DAVIS COUNTY, UTAH  
DEC 3 12 27 PM '96  
CLERK, 2ND DIST. COURT  
BY \_\_\_\_\_  
DEPUTY CLERK

E 1292461 8 2073 P 239  
CAROL DEAN PAGE, DAVIS CNTY RECORDER  
1996 DEC 11 8:52 AM FEE .00 DEP NT  
REC'D FOR ATTORNEY GENERAL'S OFFICE

IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR  
DAVIS COUNTY, STATE OF UTAH

DEPARTMENT OF COMMUNITY AND	)	
ECONOMIC DEVELOPMENT,	)	
	)	<b>FINAL ORDER OF CONDEMNATION</b>
Plaintiff,	)	
	)	
vs.	)	
	)	
KAPP CONSTRUCTION AND DEVELOP-	)	
MENT COMPANY, INC.; and BANK	)	
OF UTAH,	)	Civil No. 950700312 CD
	)	
Defendants	)	Judge Rodney S. Page
	)	

It appearing to the Court and the Court now finds that hereto-  
fore, on the 13th day of September, 1996, this Court made and  
entered its Judgment on Stipulation in the above-entitled proceed-  
ing; and

It appearing to the Court and the Court now finds that pursuant to the law and the said Judgment, the Plaintiff did pay said Judgment to the Defendants, together with all interest required by said Judgment to be paid; and

It further appearing to the Court that the Plaintiff has made all payments as required by law and order of this Court, and that this is not a case where any bond was required to be given, and all and singular the law in the premises being given by the Court understood and fully considered,

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that easements upon the parcels of land hereinafter described are hereby taken and condemned as land use restrictive easements identified as Parcel No. 708, for the purpose described and set forth in the Plaintiff's Complaint, i.e., for the use of the Plaintiff, Utah Department of Community and Economic Development, for restrictive easement purposes.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said use is a public use and a use authorized by law.

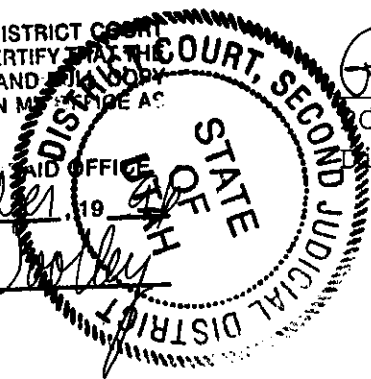
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a copy of this Final Order of Condemnation be filed with the County Recorder of Davis County, State of Utah, and thereupon the property interests hereinafter referred to and set forth shall vest in the Plaintiff, Utah Department of Community and Economic Development, 324 South State Street, Suite 500, Salt Lake City, Utah 84111. The following is a description of the property upon which the easements are condemned as hereinabove provided, such easements are hereby vested in the Plaintiff, all of such property being situated in Davis County, State of Utah. The restrictions and the property subject to the restrictions are more particularly described in the following attachment.

DATED this 27<sup>th</sup> day of November, 1996.

BY THE COURT:

STATE OF UTAH )  
COUNTY OF DAVIS ) ss.

I, THE UNDERSIGNED, CLERK OF THE DISTRICT COURT OF DAVIS COUNTY, UTAH, DO HEREBY CERTIFY THAT THE COPY ENCLOSED AND FOREGOING IS A TRUE AND CORRECT COPY OF THE ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS CLERK.



Godney S. Page  
GODNEY S. PAGE  
District Court Judge

WITNESS MY HAND SEAL OF SAID OFFICE  
THIS 3 DAY OF December, 1996  
PAULA CARR, CLERK

BY: Linda A. Wootley

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing FINAL ORDER OF CONDEMNATION was served by hand-delivering the same, first-class postage prepaid, this 1st day of October, 1996,

to:

LaVar E. Stark  
Attorney for Defendant  
2485 Grant Avenue, Suite 200  
Ogden, UT 84401

Amy Casterline

AMENDED CONDEMNATION RESOLUTION

HILL AIR FORCE BASE EASEMENT ACQUISITION PROJECT

RESOLVED by the Utah Department of Community and Economic Development, hereinafter referred to as the Department, that it finds and determines and hereby declares that:

The Utah State Legislature enacted Title 63, Chapter 43a, Section 1, et seq., Utah Code Annotated, 1953, as amended, which directs the acquisition by the Department of restrictive easements against certain real properties located near Hill Air Force Base, which easement and real property is more particularly described hereinafter.

BE IT FURTHER RESOLVED by said Department that the Attorney General of Utah shall be requested, on behalf of said Department:

To acquire in the name of the Department the restrictive easement described on the attached page against the real property described on the attached pages by condemnation in accordance with the provisions of the Statutes and of the Constitution of Utah relating to eminent domain.

To prepare and prosecute such proceeding or proceedings in the proper court having jurisdiction thereof as are necessary for acquisition of such restrictive easement.

To obtain from said court an order permitting said Department to obtain said restrictive easement for public purposes.

BE IT FURTHER RESOLVED that the State Finance Director shall be requested on behalf of said Department:

To prepare a State Warrant in the amount of the approved appraisal of each restrictive easement; payee to be the Clerk of the District Court of the County wherein the affected real property is located, for the use and benefit of the landowners and/or lien holder as described herein;

That a tender to the landowners of a sum equal to the appraised value of the restrictive easement to be acquired shall be made prior to issuance of an Order of Immediate Occupancy.

The restrictive easement against real property, or interest in real property, which the Department is by this resolution authorized to acquire for said public use, is situated in the County of Weber, State of Utah, and is described on the attached pages.

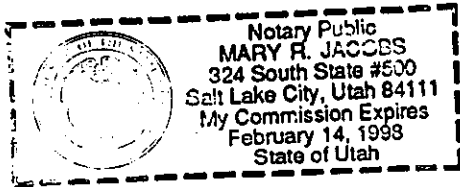
The foregoing Condemnation Resolution is hereby approved by the Director of the Department of Community and Economic Development pursuant to the provisions of 63-49a-1, et seq., Utah Code Annotated, on this 3rd day of April, 1996.

Joseph A. Jenkins  
Joseph A. Jenkins, Executive Director  
Utah Department of Community & Economic  
Development

On the 3rd day of April, 1996, personally appeared before me Joseph A. Jenkins, who by me duly sworn did say that he is the Executive Director of the Department of Community & Economic Development and he further acknowledged to me that said instrument was signed by him in behalf of said Utah Department of Community & Economic Development.

My Commission Expires: 2-14-98

Mary R. Jacobs  
Notary Public



-----

LAND USE EASEMENT E 1292461 B 2073 P 245  
(75 LdN)

The property hereinafter described will by this action be subject to a perpetual Land Use Easement for the purpose of protecting the health and safety of the citizens of Utah and assuring the continued operation of Hill Air Force Base as an active military base, as recited by Section 63-49a-1 et seq; Utah Code Annotated, 1953, as amended. Said easement regulates the use of the land hereinafter described and makes it subject to the following restrictions.

1. Owners of the hereinafter described property (Owners) shall not use or permit any use of said property or any of the air space above said tract of land for any purpose other than the following:

- A. ONLY RESIDENTIAL TRANSIENT LODGING WITH NOISE LEVEL REDUCTION (but not in areas above 80 LdN) (see paragraph 2 below).
- B. ALL INDUSTRIAL-MANUFACTURING
- C. TRANSPORTATION - COMMUNICATIONS & UTILITIES except for noise sensitive communication services
- D. ALL COMMERCIAL - RETAIL TRADE ESTABLISHMENTS
- E. ALL PUBLIC AND QUASI PUBLIC SERVICES except for hospitals, nursing homes, other medical facilities and educational services
- F. OUTDOOR RECREATION ACTIVITIES, including Golf Courses, Riding Stables and Water Recreation
- G. ALL RESOURCE PRODUCTION, EXTRACTION AND OPEN SPACE

2. No residential dwellings shall be allowed under any of the above mentioned uses other than transient lodging with noise level reduction of 30 db.

3. Measures to achieve Noise Level Reduction (NLR) of 30 db must be incorporated into the design and construction of occupied portions of all facilities constructed in the 75-80 areas.

4. Improvements located on the property subject to this easement at the time said easement is executed shall not be required to be removed. Single family dwellings in existence at the time this document is executed shall not be converted into multiple family dwellings.

5. The uses allowed under this easement shall not affect restrictions placed on the property by zoning ordinances and uses which may be permitted in this easement may be prohibited by zoning ordinances. The restrictions of this easement shall not apply to use existing at the time the easement is executed.

6. The Owners, their successors or assigns, shall not construct or place, or cause to be constructed or placed, any improvement upon the property subject to this easement which will exceed a height of 35 feet.

7. Any use made of the property subject to this easement by the Owners, their successors, or assigns, shall be such that no smoke, dust, steam or other substances is released into the airspace which would interfere with pilot vision.

8. The Owners shall not put said property to a use which will produce light emissions, either direct or indirect (reflections), which would interfere with pilot vision or a use which would produce electrical or other emissions which would interfere with aircraft communication systems or navigational equipment.

The description of the tract of land upon which said perpetual easement is to be imposed is as described on the attached sheets:



**LAND USE EASEMENT  
(80 LdN)**

**E 1292461 B 2073 P 247**

The property hereinafter described will by this action be subject to a perpetual Land Use Easement for the purpose of protecting the health and safety of the citizens of Utah and assuring the continued operation of Hill Air Force Base as an active military base, as recited by Section 63-49a-1 et seq; Utah Code Annotated, 1953, as amended. Said easement regulates the use of the land hereinafter described and makes it subject to the following restrictions.

1. Owners of the hereinafter described property (Owners) shall not use or permit any use of said property or any of the air space above said tract of land for any purpose other than the following:

- A. **ALL INDUSTRIAL-MANUFACTURING** except professional, scientific, and controlling instruments; photographic and optical goods, watches and clocks.
- B. **TRANSPORTATION & UTILITIES**
  - (1) Railroad, Rapid Rail Transit
  - (2) Highway and Street Right of Way
  - (3) Auto Parking
  - (4) Utilities
  - (5) Other Transportation and Utilities
- C. **COMMERCIAL - RETAIL TRADE**
  - (1) Wholesale Trade
  - (2) Building Materials - Retail
- D. **PUBLIC AND QUASI PUBLIC SERVICES**
  - (1) Cemeteries
  - (2) Repair Services (with hearing protection for workers)
- E. **RESOURCE PRODUCTION, EXTRACTION AND OPEN SPACE** (with hearing protection for workers)
  - (1) Agriculture
  - (2) Livestock Farming, Animal Breeding
  - (3) Forestry Activities
  - (4) Fishing Activities & Related Services
  - (5) Mining Activities
  - (6) Permanent Open Space
  - (7) Water Areas
  - (8) Other Resource Extraction and Production

2. No residential dwellings shall be allowed under any of the above mentioned uses.

3. Measures to achieve Noise Level Reduction (NLR) of 35 db must be incorporated into the design and construction of occupied portions of all facilities constructed in the 80+ areas.
4. Improvements located on the property subject to this easement at the time said easement is executed shall not be required to be removed. Single family dwellings in existence at the time this document is executed shall not be converted into multiple family dwellings.
5. The uses allowed under this easement shall not affect restrictions placed on the property by zoning ordinances and uses which may be permitted in this easement may be prohibited by zoning ordinances. The restrictions of this easement shall not apply to use existing at the time the easement is executed.
6. The Owners, their successors or assigns, shall not construct or place, or cause to be constructed or placed, any improvement upon the property subject to this easement which will exceed a height of 35 feet.
7. Any use made of the property subject to this easement by the Owners, their successors, or assigns, shall be such that no smoke, dust, steam or other substances is released into the airspace which would interfere with pilot vision.
8. The Owners shall not put said property to a use which will produce light emissions, either direct or indirect (reflections), which would interfere with pilot vision or a use which would produce electrical or other emissions which would interfere with aircraft communication systems or navigational equipment.

The description of the tract of land upon which said perpetual easement is to be imposed is as described on the attached sheets.

PROPERTY #708

RECORDED OWNER:

Kapp Construction and Development Co.,  
Inc.

ADDRESS:

1595 West 3300 South  
Ogden, UT 84401

PARTY IN INTEREST:

Douglas L. Defries, Registered Agent of  
Bank of Utah

ADDRESS:

2605 Washington Blvd.  
Ogden, UT 84401-0231

LIEN HOLDERS:

None of record

APPRAISED VALUE:

\$40,000.00

PARCEL NO. 708:

THE LAND REFERRED TO IS SITUATED IN THE COUNTY OF DAVIS, STATE OF  
UTAH, AND IS DESCRIBED AS FOLLOWS:

**IN THE 75 DECIBLE ZONE, OUTSIDE OF THE APZ**

BEGINNING AT THE NORTHEAST CORNER OF SECTION 4, TOWNSHIP 4 NORTH,  
RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE WEST 1639.90 FEET;  
THENCE S 19°13'41" E 582.49 FEET; THENCE EAST 1448.07 FEET; THENCE NORTH  
550.00 FEET TO THE POINT OF BEGINNING.

*09-012-0018 & all 0019.*

CONTAINING 19.49 ACRES

**IN THE 80 DECIBLE ZONE, OUTSIDE OF THE APZ**

BEGINNING AT A POINT WEST 1639.90 FEET FROM THE NORTHEAST CORNER OF  
SECTION 4, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND  
MERIDIAN; THENCE WEST 340.10 FEET; THENCE SOUTH 550.00 FEET; THENCE  
EAST 531.93 FEET; THENCE N 19°13'41" W 582.49 FEET TO THE POINT OF  
BEGINNING.

CONTAINING 5.51 ACRES