

2003

# Intermountain Sports, Inc., a Utah Corporation v. Utah Department of Transportation : Brief of Appellee

Utah Court of Appeals

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**IN THE UTAH COURT OF APPEALS**

INTERMOUNTAIN SPORTS, INC.,  
a Utah Corporation,

Plaintiff/Appellant,

vs.

UTAH DEPARTMENT OF  
TRANSPORTATION,

Defendant/Appellee.

Case No. 20031029-CA

**APPELLEE'S BRIEF**

On appeal from a final judgment of the Third Judicial District,  
Salt Lake County, State of Utah,  
Honorable William B. Bohling, District Judge, presiding

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Defendants/Appellees

**ORAL ARGUMENT AND PUBLISHED OPINION NOT  
REQUESTED BY APPELLEE**

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UTAH DEPARTMENT OF  
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Defendants/Appellees.

Case No. 20031029-CA

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**APPELLEE'S BRIEF**

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**LIST OF PARTIES**

Appellant-Plaintiff is Intermountain Sports, Inc. (Intermountain). Intermountain was a Utah Corporation, however the corporate status became delinquent January 5, 2004 and the corporate status expired May 6, 2004 for failure to file a renewal.

Appellee-Defendant is the Utah Department of Transportation (UDOT) a department of the State of Utah created by statute Utah Code Ann. § 72-1-201(2001).

**JURISDICTION**

This case was transferred to the Court of Appeals from the Utah Supreme Court pursuant to Utah Code Ann. § 78-2a-3(2)(j)(2002); the Supreme Court had jurisdiction over this case pursuant to Utah Code Ann. § 78-2-2(3)(j)(2002), as an appeal from final judgment.

## ISSUES AND STANDARDS OF REVIEW

### **A. Inverse Condemnation Claim**

Does Intermountain state a protected property interest under Utah law? The complaint identifies as the sole basis of Intermountain's inverse condemnation claim the alleged "blocking and/or taking" of the plaintiff's "easement of access." (Complaint ¶¶ 31-37. Addendum exhibit 1, R. 7-9.) Under Utah law, private citizens cannot own an "easement of access" to public right of ways. Thus, the trial court correctly dismissed Intermountain's inverse condemnation claim against UDOT. (R. 290, 314 at 35.)

#### **Standard of Review:**

The dismissal of the complaint under Utah R. Civ P. 12(c) is a question of law and is reviewed for correctness. A trial court's dismissal is only proper if the Complaint lacks legal sufficiency to allow a recovery. Bennett v. Jones Waldo, 2003 UT 9, ¶ 30, 70 P.3d 17.

### **B. Uniform Operation of Laws Claim**

Does Utah law recognize a general cause of action for a constitutional violation? The complaint fails to state a cause of action, instead it accuses UDOT of "arbitrarily and capriciously providing other businesses with direct and beneficial access to 4500 South Street and by configuring such access so as to direct traffic flow to those businesses, south of the Affected Property and north and west of the Affected Property, while at the same time refusing to offer such accommodations to Plaintiff who paid substantial taxes. . . ." (Complaint ¶¶ 39 and 40. Addendum exhibit 1, R. 9,10.)



Thus the trial court correctly dismissed this claim as alleged in the complaint as inadequate to state a cause of action upon which damages can be awarded. (R. 291, 314 at 35.)

#### **Standard of Review:**

The dismissal of the complaint under Utah R. Civ P. 12(c) is a question of law and is reviewed for correctness. A trial court's dismissal is only proper if the Complaint lacks legal sufficiency to allow a recovery. Bennett v. Jones Waldo, 2003 UT 9, 70 P.3d 17.

### **CONSTITUTIONAL PROVISIONS**

#### **Constitution of Utah**

Art I, § 22 [**Private Property for public use.**] Private Property shall not be taken or damaged for public use without just compensation.

Art I, § 24 [**Uniform operation of laws.**] All laws of a general nature shall have uniform operation.

### **STATEMENT OF THE CASE**

This is an appeal of the decision of the trial court to grant UDOT's Motion for Judgment on the pleadings under Utah R. Civ P. 12(c).

The trial court found as a matter of law that the Complaint failed to state a claim sufficient under Utah law. ( R. 314 at 35.)

#### **Background of the Case**

In 1984 the Wasatch Front Regional Council began the I-15 corridor study to determine the transportation needs and to plan to meet the needs of the public using

this important transportation link. After many years of public debate, planning studies, formal environmental impact studies, and budgetary deliberations by state, local, and federal legislative bodies and decision makers, work on the I-15 and Salt Lake Light Rail Systems began in 1997.

The I-15 highway element of the work alone required the demolition and construction of over 136 bridges, 13 interchanges and 3 interstate-to-interstate highway interchanges. Every resident and every traveler, transient or resident, in Salt Lake County was affected by the construction impacts.

Intermountain operated an RV sales business located at 4225 South 500 West in Murray, Utah. Its business premises are visible, but not directly accessible from I-15. The Intermountain premises are accessible only from 500 West. (Complaint ¶ 8, addendum exhibit 1, R. 2, and addendum exhibit 2, aerial photo map. R. 314 at 9.) The I-15 project performed no work on 500 West, did not block or disrupt traffic on 500 West and never blocked access to Intermountain premises. (R. 314 at 10.)

Plaintiff claimed it lost the prospect of anticipated merchandise sales during the I-15 project and filed suit asserting six causes of action. (Complaint, addendum exhibit 1, R. 1.) On UDOT's Motion to Dismiss (R. 62, 112) all six causes of action were dismissed by the trial court as failing to state a legally sufficient claim under Utah law. (R. 285) Intermountain now appeals only the dismissal of counts one, Inverse Condemnation, and two, Uniform Application of the Law.

## SUMMARY OF ARGUMENT

A complaint must state a claim for relief. If it does not, the Court may, on proper motion under Utah R. Civ P. 12(c), dismiss for “failure to state a claim upon which relief can be granted.” Intermountain’s Complaint fails to assert a legally adequate claim.

Intermountain’s Complaint based its inverse condemnation cause of action on the assertion that it and its customers hold an “easement of access” over I-15, its off-ramps, and 4500 South to get to 500 West and thereby travel to plaintiff’s premises to conduct business. (Complaint ¶¶ 30-37, Addendum exhibit 1, R. 7-9.) Utah law recognizes no such “easement of access” and therefore the trial court was correct to dismiss the cause of action.

Intermountain’s complaint alleges UDOT violated article I, § 24 of Utah’s Constitution<sup>1</sup> by providing “other businesses with direct and beneficial access to 4500 South Street” and “configuring such access so as to direct traffic flow to those businesses.” (Complaint ¶¶ 38-40, Addendum exhibit 1, R. 9, 10.) In stating its complaint thus, Intermountain fails to state a legal cause of action. Other than a taking, Utah does not recognize a stand alone cause of action for a constitutional violation.

Even if there were such a direct constitutional cause of action, plaintiff has not

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<sup>1</sup> Art I, § 24 [**Uniform operation of laws.**] All laws of a general nature shall have uniform operation.

demonstrated that, the required elements of the Spackman test have been met as a prerequisite to any recovery of damages for a constitutional violation. Spackman v. Bd. of Educ. of the Box Elder Sch. Dist., 2000 UT 87, 16 P.3d 533.

The Complaint does not state a cause of action for a constitutional cause of action for the denial of the uniform application of laws. Plaintiff now points to the Transportation Code, Title 72, of the Utah Code, as a basis for a cause of action, (Br. of App. At 8, 27) however, Title 72 creates no private cause of action and no such cause of action was pleaded in the complaint.

The State and UDOT takes its responsibilities to private property owners very seriously. UDOT is responsible to both the legislature and certainly to the courts for its actions. States Counsel was correctly quoted in Intermountain's brief, to argue to the trial court, that UDOT knew this project would "break some eggs" but the brief fails to include that it was also argued that "UDOT has never been shy about buying those eggs that it is responsible for breaking." The purpose of the vast body of Utah law is to instruct UDOT on what eggs it must buy. Intermountain now wants this Court to take a quantum leap into the legislative arena to greatly increase those eggs.

As Justice Holmes observed in the leading case Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 43 S.Ct. 158, (1922):

Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law.

Id. at 413.

Holmes went on to caution that in establishing where the limits fall:

The greatest weight is given to the judgment of the legislature but it is always open to interested parties to contend that the legislature has gone beyond its constitutional power.

Id. at 413.

The legislature must be able to establish budgets for state projects. UDOT must be able to reasonably plan the costs of its projects. Predictability of what eggs it must buy is important. In doing so, it must be able to rely of the years of decisions of Utah courts to calculate and follow the law in determining which eggs it buys and which it does not. Intermountain, on the other hand, asks this court to greatly expand the properties UDOT must buy. In doing so, however, Intermountain fails to answer some important questions regarding this expansion of the law. How close must a business be to be paid under Plaintiff's theory? Should the State pay such impact awards to businesses within a quarter mile radius of an interchange? Should the circle be a half mile, one mile, five miles, ten miles? Should the State give an inconvenience payment to all citizens in the Wasatch Front? How much? Intermountain is asking two million dollars. Any such payments may violate the constraints on spending of highway funds of article XIII, § 5(6) of the Utah Constitution.<sup>2</sup> Intermountain's premises have never had direct access to 4500 South Street (Complaint ¶ 8, addendum exhibit , R. 2, and addendum exhibit 2, aerial photo map, R. 9) and the I-15 project never interfered with

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<sup>2</sup> Restricts fuel tax spending to highway purposes including right of way taken or damaged.

the access traveling on 500 West from the Intermountain premises to 4500 South. (R. 9-10.) The body of Utah law is clear - if the state takes or damages a protected property right for a public purpose, it must pay. Intermountain asks for more. In 1904 the Utah Court, in addressing a railroad construction project stated:

We do not wish to be understood as holding that every inconvenience that an individual may be subjected to in the possession and enjoyment of his property because of the construction and operation of a railroad or other public utility in the vicinity of his premises entitles him to damages or injunctive relief. The rule is well settled that no recovery can be had for losses and inconveniences which are suffered in common with the general public. .

Stockdale v. Rio Grande Western Railway, 77 P. 849, (Utah 1904), at 852

## **ARGUMENT**

### **Inverse Condemnation**

To prove a taking under Utah law a plaintiff must establish two elements:

1. The claimant must demonstrate some protectable interest in property.
2. The claimant must then show that the interest has been taken or damaged by government action.

See Strawberry Electric Serv. Dist. v. Spanish Fork City, 918 P.2d 870, 877, (Utah 1996), and View Condominium v. MSICO, 2004 UT App 104 ¶ 35.

Intermountain's inverse condemnation is based, according to its complaint, on its claim that it and its potential customers hold an "easement of access." Intermountain claims that UDOT blocked or interfered with that "easement of access by

closing the 4500 South on and off ramps from I-15 for demolition and reconstruction. (Complaint ¶¶ 32, 33, and 34, Addendum exhibit 1, R. 7-9.)

No “easement of access” as alleged in Intermountain’s complaint is recognized by Utah law. An easement is a property interest. Individuals do not hold a property interest in public lands. The easement assumed by Intermountain must be based on a prescriptive right of easement for access. This can be based either on an easement of necessity or on a pattern of adverse use. Both are well recognized property rights, but neither are applicable to these facts. No easement of necessity has been plead or is proper because Intermountain is not “landlocked” and has full access to its land via public and private rights of way. Further, no prescriptive easement based on historic use is appropriate under these facts. It is a widely recognized principle of law that one cannot take an adverse possessory interest against a governmental entity. Sweeten v. United States, 684 F.2d 679 (10th Cir. 1982). This principle has been statutorily incorporated into the Utah Code Ann. § 78-12-13. One cannot obtain an interest in a public way by adverse possession. This doctrine is also confirmed and applied to claims of prescriptive easements in Lund v. Wilcox, 97 P. 33 (Utah 1908), and Cassity v. Castago, 347 P.2d 834 (Utah 1959). In citing Lund, the Cassity court stated:

Proof that the land was owned by the government at any time during the prescriptive period is usually a sufficient defense to a claim of right by adverse use. One may not adverse the sovereign.

347 P.2d at 834.

Utah has long recognized that a change of traffic patterns is not a compensable property interest. This principle was opined by the Utah Supreme Court as far back as 1941 in the early days of modern highways. In the case of State Road Commission v. Rozzelle, 101 Utah 464, 120 P.2d 276 (Utah 1941), Justices Wolfe and McDonough in separate concurring opinions each stated respectively: “The law does not give [Defendant] a vested right in the business which travel along a public highway may have afforded them” and “diminution in value of the realty caused by the loss of the flow of traffic to or past defendant’s place of business is not compensable.” Id. at 277.

In 1968 the Utah Supreme Court again picked up this theme in the case of Hampton v. State Road Comm’n, 445 P.2d 708 (Utah 1968), where the court, in holding that the State has police power to place reasonable restrictions on access points went on to state:

Nor does the right of ingress or egress to or from one’s property include any right in and to existing public traffic on the highway, or any right to have such traffic pass by one’s abutting property. The reason is that all traffic on public highways is controlled by the police power of the State, and what the police power may give an abutting property owner in the way of traffic on the highway it may take away, and by any such diversion of traffic the State and any of its agencies are not liable for any decrease of property values by reason of such diversion of traffic. . . .

Id. at 771. Emphasis added.

Utah also recognizes an access right referred to as an “easement appurtenant.” In 1974 the Utah Supreme Court issued its leading opinion on appurtenant rights in Utah State Road Comm’n v. Miya, 526 P.2d 926 (Utah 1974). In holding that



the rights of access, light, and air are easements appurtenant to the land of an abutting owner or a street; that constitute property rights forming part of the owner's estate. These substantial property rights, although subject to reasonable regulation, may not be taken away or impaired without just compensation.

Id. at 928, 929.

The Miya court was equally clear in proclaiming the principle that:

A property owner has no property right to a free and unrestricted flow of traffic past his premises, and any impairment or interference with this flow does not entitle the owner to compensation.

Id. at 928.

As recently as November 2002 the Utah Supreme Court affirmed the principle that the protected appurtenant access right does not create an unlimited claim to access and traffic movements in Utah Department of Transportation v. Harvey Real Estate, 2002 Ut 107 at ¶ 14, 57 P.3d. 1088 :

This right doesn't include the right to travel in any particular direction from one's property or upon any particular part of the public highway right of way. Nor does the right of ingress or egress to or from one's property include any right in and to existing public traffic on the highway, or any right to have such traffic pass by one's abutting property. Quotations omitted.

UDOT v. Harvey 2002 UT 107, ¶ 15, 57 P.3d. 1088.

Intermountain does not enjoy an easement appurtenant because its access point is not to either I-15 or to 4500 South. Intermountain's easement appurtenant is to 500 West. (Complaint ¶ 8, addendum exhibit 1, R. 2, and addendum exhibit 2, aerial photo map. R. 314 at 9.)

It is clear from Utah law that Intermountain and its potential customers did not have an “easement of access” either by necessity, prescription, or rights appurtenant, and because its inverse condemnation claim is based on an “easement of access,” the trial court was correct in dismissing the inverse condemnation cause of action.

The brief filed herein by Intermountain’s counsel instead of defending its pleaded cause of action, presents a dissertation on the history of inverse condemnation law in Utah, and raises many new arguments and academic theories regarding inverse condemnation which were not advanced in the complaint. Intermountain’s counsel blurs the lines between an inverse taking and a regulatory taking. Appellant’s brief now argues that its protected right is a right to conduct business and enter into contracts. UDOT’s brief will not address the historical discourse but does wish to address the current state of the law in Utah in inverse condemnation and government takings both possessory and regulatory.

This Court in View Condominium v. MSICO, 2004 UT App 104, has reaffirmed the principles stated in Strawberry Electric Serv. Dist. v. Spanish Fork City, 918 P.2d 870, (Utah 1996), that the claimant must demonstrate some recognized constitutionally protected property interest.

Does Intermountain present a interest in property for the courts to protect with constitutional fervor? No. The property interest now asserted by Intermountain is the bare hope that drivers driving southbound on I-15 will see their show yard located on the west side of I-15, and on a sudden impulse will exit I-15 at 4500 South and drive

approximately 1 mile in a circular route to purchase a new motor home or travel trailer. This wishful thinking of future sales falls far short of the types of contractual property rights which the Court has described as protected in Strawberry Electric and in Bagford v. Ephriam City, 904 P.2d 1095, (Utah 1995). Bagford stated that “to create a protectable property interest, a contract must establish rights more substantial in nature than a mere unilateral expectation of continued rights or benefits.” Id. at 1099.

Referring to contracts as a property right the court stated:

A contract that is terminable at the will of either party does not by itself give rise to protectable property interest because the mere expectation of benefits under such a contract does not give the promisor a legally enforceable right against a promisee to provide future service and therefore does not by itself provide a basis for compensation for loss of future business.

Id. at 1099.

Intermountain does not present an enforceable contract right, merely the hope of future sales. A protected property right must demonstrate a more certain legal right than wishful business hopes of potential sales.

Even if Intermountain were able to present a protected property right, the second element of this test must still be established - was the interest taken or damaged by government action? Intermountain was open for business throughout the project time period using its normal and only access to its premises off of 500 West. Traffic on 500 West was not halted, blocked, or otherwise interfered with by the project. (Complaint, addendum exhibit 1, R. 1, R. 314 at 9, 27.) The construction of the I-15

project did not constitute a taking of Intermountain's protected property rights under Utah law.

Intermountain now, in the alternative, also attempts to recharacterize the property interest taken by UDOT as Intermountain's "right to use its land for the operation of a commercial business." (Brief pp. 8, 11-15.) This argument was not presented by Intermountain in its complaint and thus is not properly before the court. In any event, this Court has addressed a similar argument in its recent decision in Diamond B-Y Ranches v. Tooele County, 2004 UT App. 135. In B-Y Ranches, this Court opined that a taking occurs if:

[a] regulation denies all economically beneficial or productive use of land, or even if the property has not necessarily been deprived of all economically beneficial use; an analysis of several factors indicates that the interference is so great that a virtual taking has nonetheless occurred. Quotations omitted.

Id. at ¶ 14.

The B-Y Ranches court reversed the trial court's dismissal of the claim and remanded the case for a factual finding to determine "if the effect of denying the permit is to leave its property economically idle. . . ." Id. at ¶ 18.

Although the complaint does not present these arguments and Intermountain raises them first in its brief, the allegation must fail on its face because unlike the situation in B-Y Ranches, as the Complaint indicates, the land was not left idle but was used for commercial business operations throughout the I-15 project and is still so used to date. (R. 314 at 27).

Finally, Intermountain argues that a jury should be allowed to determine what is a compensable claim for a taking under Utah law. (Br. Of App. at 8, 11.) Juries determine questions of fact. Utah Code Ann §78-21-2 (2002). These are questions of law to be determined by the court. Utah Code Ann § 78-21-3(2002).

### Uniform Operation of Laws

The complaint identifies as the basis of Intermountain's denial of uniform operation of laws claim the alleged "arbitrarily and capriciously providing other businesses with direct and beneficial access to 4500 South Street and by configuring such access so as to direct traffic flow to those businesses, south of the Affected Property and north and west of the Affected Property, while at the same time refusing to offer such accommodations to Plaintiff who paid substantial taxes. . . ." (Complaint ¶¶ 39 and 40. Addendum exhibit 1, R. 9, 10.)

First, art 1, § 24 is not a self enforcing clause of the Utah Constitution under Spackman. Second, these allegations fail to state a cause of action upon which damages can be awarded. A claim for violation of a state constitutional right requires either a statutory or common law cause of action such as a negligence claim. In probing the sufficiency of a claim for damages resulting from an alleged constitutional violation, the Utah Supreme Court has held:

We begin by identifying the source of our authority to award damages for constitutional violations. Except for the Takings Clause, the Utah Constitution does not expressly provide damage remedies for constitutional violations. Thus, aside from the Takings Clause, there is no textual constitutional right to damages for one who suffers a

constitutional tort. . . . In the absence of applicable constitutional or statutory authority, Utah courts employ the common law. . . . Hence, a Utah court's ability to award damages for violation of a self-executing constitutional provision rests on the common law.

Spackman v. Bd. of Educ. of the Box Elder Sch. Dist., 2000 UT 87, ¶ 20, 16 P.3d 533 (2000).

Intermountain's complaint fails to state a legal basis for its cause of action and was properly dismissed by the trial court on the Utah R. Civ P. 12(c) motion to dismiss.

Intermountain now argues to this Court that the Transportation Code, Title 72 of the Utah Code, gives Intermountain a cause of action. (Brief pp. 9, 27.) Intermountain is unable to point to an express creation of a private cause of action in Title 72 because none exists. Under Utah law, it is improper to read a private cause of action into a statute if it is not expressly stated.

In the absence of language expressly granting a private right of action in the statute itself, the courts of this state are reluctant to imply a private right of action based on state law.

Miller v. Weaver, 2003 UT 12, 66 P.3d 592 (2003) ¶ 20.

Intermountain's complaint was properly dismissed because it fails to properly allege a cause of action upon which damages can be awarded under Utah law.

Even had the complaint properly stated a compensable cause of action under Utah law, it fails to allege the three required elements to proceed with a private suit for damages under a constitutional provision as announced by the Utah Supreme Court in Spackman v. Board of Ed. of Box Elder, 2000 UT 87, 6 P.3d 533 (2000).

The Spackman court announced:

*to ensure that damage actions [for constitutional violations] are permitted only under appropriate circumstances, we therefore hold that a plaintiff must establish the following three elements before he or she may proceed with a private suit for damages.*

First, plaintiff must establish that he or she suffered a “flagrant” violation of his or her constitutional rights. . . .

Second, a plaintiff must establish that existing remedies do not redress his or her injuries. . . .

Third, a plaintiff must establish that equitable relief, such as an injunction, was and is wholly inadequate to protect the plaintiff’s rights or redress his or her injuries. . . . *Id.* at ¶ 20.

Intermountain’s complaint fails to allege how these three required elements have been established. The complaint was therefore properly dismissed.

Intermountain leaps over these steps and even in its brief still fails to establish a basis for a court entertaining its claim.

Intermountain’s complaint fails to state a recognized cause of action for a violation of art. I § 24 of the Utah constitution and the additional arguments now presented in its brief also fall far short of justifying allowing the case to proceed.

### **CONCLUSION**

A claim for a government taking whether a regulatory taking or an inverse condemnation, must assert a protected property right under Utah law. Intermountain fails to do so under Coleman v Utah State Land Board, 795 P.2d 622 (Utah 1990), under Rocky Mountain Thrift Stores v. Salt Lake City, 784 P.2d 459 (Utah 1989), under Strawberry, 918 P.2d 870, (Utah 1996), under Bagford, 904 P.2d 1095, (Utah

1995), or under Diamond B-Y Ranches, 2004 UT App. 135. Intermountain is asking this Court to create new law by creating a new cause of action.

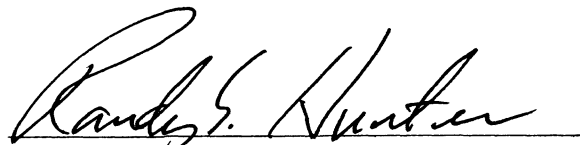
Intermountain fails to state a proper cause of action for a violation of the uniform application of laws constitutional provision. The trial Court was correct to grant the Utah R. Civ P. 12(c) Motion to dismiss because the complaint was deficient.

The decision of the trial court should be affirmed.

**DEFENDANT STATE OF UTAH DOES NOT REQUEST  
ORAL ARGUMENT OR A PUBLISHED OPINION**

Defendant-Appellee State of Utah does not request oral argument and a published opinion in this matter. The questions raised in this appeal, having already been decided by the courts in published opinions, are not such that oral argument or a published opinion are necessary. If argument is held by the Court, the defendant desires to participate.

RESPECTFULLY submitted this 14<sup>th</sup> day of June, 2004.

A handwritten signature in black ink, reading "Randy S. Hunter", written over a horizontal line.

RANDY S. HUNTER

Assistant Attorney General  
Attorney for Defendant State of Utah,  
Utah Department of Transportation




CERTIFICATE OF MAILING

This is to certify that I mailed two copies of the foregoing BRIEF OF  
DEFENDANT-APPELLEE STATE OF UTAH, UTAH DEPARTMENT OF  
TRANSPORTATION to the following this 14<sup>th</sup> day of June, 2004:

John Martinez  
2974 East St. Mary's Circle  
Salt Lake City, Utah 84108

B. Ray Zoll  
ZOLL & TYCKSEN, L.C.  
5300 South 3600 West, Suite 360  
Murray, Utah 84123

A handwritten signature in cursive script, appearing to read "B. Ray Zoll", written over a horizontal line.

## **ADDENDA**

Exhibit 1. Plaintiff's complaint

Exhibit 2. Aerial Photo map

# **EXHIBIT 1**

RECEIVED

JUN - 6 2002

UT. DEPT. OF TRANSP.  
FISH MGMT. UNIT

Steven C. Tycksen (#3607)  
B. Ray Zoll (#3607)  
ZOLL & TYCKSEN, L.C.  
5300 South 360 West, Suite 360  
Murray, Utah 84123  
Telephone: (801) 685-7800  
Facsimile: (801) 685-7808

FILED  
THIRD DISTRICT COURT  
SANDY DEPT.  
JUN - 3 2002

Attorneys for Plaintiff

IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY,  
STATE OF UTAH, SANDY DEPARTMENT

Intermountain Sports, Inc.

Plaintiff,

vs.

UTAH DEPARTMENT OF  
TRANSPORTATION AND  
MURRAY CITY,

Defendants.

**COMPLAINT**  
(JURY DEMAND)

Case No. 020406041

Honorable Lindberg

**COMES NOW** the Plaintiff, Intermountain Sports, Inc.

("Intermountain"), by and through its attorneys, Zoll & Tycksen, and  
complains against the Defendants as follows:

**JURISDICTION, VENUE AND PARTIES**

1. This Court has subject matter jurisdiction over this lawsuit  
pursuant to Utah Code Ann. § 78-3-4(1).

2. Venue of this claim is properly in this Court pursuant to Utah Code Ann. § 78-13-1, in that the cause of action arose in Salt Lake County, and the property at issue is located in Salt Lake County.
3. Plaintiff Intermountain is a business operating in Murray, Utah as a recreational vehicle sales company.
4. Defendant Murray City (the "City") is a municipal corporation organized pursuant to the laws of the State of Utah.
5. Defendant Utah Department of Transportation ("UDOT") is an agency or instrumentality of the State of Utah.
6. Intermountain has a right to sue the defendants pursuant to Article I, Sections 22 and 24 of the Utah Constitution, Utah Code Ann. §§ 63-30-10.5 and 63-30-10, and other legal and equitable remedies.
7. The claims alleged in this complaint arise in Salt Lake County, State of Utah.

#### **GENERAL ALLEGATIONS**

8. John Ashby ("Ashby") is the owner and operator of Intermountain located at 4225 South 500 West, Murray, Utah,

on the west frontage road at I-15 and north of 4500 South Street ("the Affected Property").

9. Intermountain has had a longstanding easement of access on the Affected Property, giving it access to the I-15 southbound off-ramp to 4500 South and to 4500 South Street. The Affected Property is shown on the map attached hereto as Exhibit A and incorporated herein by this reference.
10. On July 14, 1997, Intermountain received a letter and flyer from Carol Provenzano with Wasatch Constructors giving open house meeting information and the beginning date, on or about August 6, 1997, of the I-15 Reconstruction Project. See Letter attached as Exhibit B.
11. Upon information and belief, the open house meetings served only for information and instruction, not for hearing and meeting the needs of local businesses.
12. Prior to construction, Ashby performed extensive due diligence to determine whether or not there would be little effect to his business from the Reconstruction Project.
13. While serving as President of the I-15 Coalition, a non-profit

group of business owners representing over 850 businesses along the freeway corridor, Ashby testified at a meeting addressing the Reconstruction Project at the request of Senator Howell.

14. Ashby, acting for Intermountain Sports RV and the 1-15 Coalition, contacted UDOT with respect to their plan for the 4500 South interchange. In response to his query, he was provided a copy of a letter and drawing. These show a full closure of the Affected Property at the 4500 South interchange for a period of one year at the most.
15. UDOT represented to Intermountain that the Affected Property would be closed for one year.
16. UDOT officials met with business owners, including Ashby, and represented to said business owners that their concerns would be taken into consideration, but no action was taken nor remuneration made for the anticipated taking of Intermountain's property rights.
17. In direct reliance on the statements, representations and drawings of the City and UDOT, Intermountain did not pursue

action against UDOT or the City and has only now been able to determine its ascertainable damages, making its claims ripe for adjudication.

18. After reconstruction of I-15 began, traffic flow on I-15, in the area of 4500 South Street, dropped two thirds from the traffic flow figures prior to the Reconstruction Project.
19. In July 1997, UDOT began reconstruction on I-15 effecting 4500 South Street, by closing the off-ramp to the Affected Property.  
See Exhibit A.
20. Access to the Affected Property was closed until December 1998, a period of 18 months instead of the 12 months promised by UDOT in its construction contract.
21. The City and UDOT placed periodic closures on traffic at the 4500 South Street off-ramp over the following 2 ½ years.
22. The State and City were effectively closing access to freeway exits and entrances, as well as access for East and West traffic at the 4500 South Street off-ramp, from July 1997 until May 2001, nearly a period of four years.
23. The access provided by Defendants, in lieu of direct access off



the 4500 South off-ramp, involved a circuitous 2.5-mile loop (the "Circuitous Loop") (Attached as Exhibit "C") behind the Affected Property, which frustrated and eliminated potential customers. The Circuitous Loop was impractical and unreasonable for purposes of bringing prospective customers from the freeway to Plaintiff's business. Not only was the critical line of sight lost, but also the route was lengthy and confusing.

24. Upon information and belief, the already significantly diminished number of potential customers from drive-by traffic, now 1/3 of what it was prior to re-construction, ended up getting lost and never arriving to Intermountain.
25. The closure of the off-ramp, coupled with the change in configuration, denied reasonable access to the Affected Property and substantially damaged the value of Plaintiff's property in an amount to be proven at trial but currently calculated to be in excess of \$2,000,000.00.
26. The City constructed the Circuitous Loop in such a manner that other businesses obtained direct access to 4500 South off-ramp traffic, who otherwise benefited from the loss to Intermountain.

27. Such action by the Defendants became tantamount to a taking of the property for the good of others and at the expense of Intermountain without just compensation.
28. In the alternative, the City and/or UDOT, their agents, and employees who planned directed the traffic flow surrounding the Affected Property failed to exercise reasonable care, which directly resulted in the loss of business incurred by Intermountain.
29. Further, UDOT, its employees, and agents failed to exercise reasonable care in the planning and execution of the reconstruction of I-15 and the 4500 South Street interchange, which directly resulted in the loss of business incurred by Intermountain.

**FIRST CAUSE OF ACTION**  
**(INVERSE CONDEMNATION – UDOT & MURRAY CITY)**

30. Plaintiff re-alleges each of the allegations contained in paragraphs 1 through 29 of the Complaint as if fully set forth herein.

31. In violation of § 63-30-10.5 of the Utah Code and Article I Section 22 of the Utah Constitution, Defendants took or impaired Plaintiff's substantial property right for a public use without just compensation.
32. Upon information and belief, Defendants' determination to block and/or take the Plaintiff's easement of access over the Affected Property, allowing access to the I-15 Southbound off-ramp at 4500 South and to 4500 South Street was based on a public purpose to expand I-15 to reduce traffic impediments and safety concerns along I-15, as well as enhancing the 4500 South off-ramp.
33. In closing the off-ramp and otherwise blocking and/or taking the Plaintiff's easement of access, Defendants substantially and materially impaired Plaintiff's right of access to the I-15 off-ramp at 4500 South and to 4500 South Street as well as Plaintiff's customers' right of access to 4500 South Street and the Affected Property.

34. In blocking and/or taking the Plaintiff's easement of access over the Affected Property, Defendants substantially diminished the value of Plaintiff's private property.
35. This injury to Intermountain was an unavoidable result of the City and UDOT's action and was continuous for a period of almost four years.
36. Defendants' shutting down, blocking, and/or taking the Plaintiff's easement of access to the I-15 Southbound off-ramp at 4500 South and to 4500 South Street was damaging to Plaintiff's private property interest for a public use without just compensation.
37. Plaintiff is entitled to actual, economic, special and compensatory damages to be proven at trial and believed to be at least \$2,000,000.00.

**SECOND CAUSE OF ACTION**  
**(DENIAL OF UNIFORM OPERATION OF LAWS –**  
**UDOT & MURRAY CITY)**

38. Plaintiff re-alleges each of the allegations contained in paragraphs 1 through 37 of the Complaint as if fully set forth herein.

39. The City and UDOT have discriminated against Plaintiff in violation of Article I, § 24 of the Utah Constitution, by, among other things, arbitrarily and capriciously providing other businesses with direct and beneficial access to 4500 South Street and by configuring such access so as to direct traffic flow to those businesses, south of the Affected Property and north and west of the Affected Property, while at the same time refusing to offer such accommodations to Plaintiff who paid substantial taxes to the City and State and who relied on the City and UDOT's representations.
40. The City's and UDOT's accommodation of other businesses and the diversion of traffic through State and Municipal regulations from the Affected Property towards those other businesses was unreasonable and was not for a legitimate legislative purpose.

**THIRD CAUSE OF ACTION**  
**(BREACH OF THE COVENANT OF GOOD FAITH  
AND FAIR DEALING – UDOT & MURRAY CITY)**

41. Plaintiff re-alleges each of the allegations contained in paragraphs 1 through 40 of the Complaint as if fully set forth herein.

42. Defendant City and UDOT in determining to block and/or take Plaintiff's substantial property interest in the Affected Property, denying reasonable access to I-15, and thereby stifling the commercial development in the area effectively destroyed or injured Intermountain's rights to receive its justified expectations.
43. Plaintiff Intermountain has been seriously injured as a result of the City and UDOT's conduct in an amount to be proven at trial but currently calculated to be in excess of \$2,000,000.00.

**FOURTH CAUSE OF ACTION**  
**(NEGLIGENCE – UDOT & MURRAY CITY)**

44. Plaintiff re-alleges each of the allegations contained in paragraphs 1 through 43 above as if fully set forth herein.
45. Plaintiff alleges that in the planning and execution of the traffic flow surrounding the Affected Property the City and/or UDOT, their employees, and agents failed to exercise reasonable care when creating the circuitous route.
46. Plaintiff further alleges that UDOT, its employees, and agents failed to exercise reasonable care in the planning, design, and

execution of the reconstruction of I-15 and the 4500 South interchange.

47. Upon information and belief, the Defendants negligently interfered with the contractual relationships and potential relationships Intermountain had with vendors and customers, by (1) causing vendors to discontinue doing business with Intermountain, (2) making it impossible for Intermountain to satisfy customers, and (3) jeopardizing the value of Intermountain's business.
48. The Defendants have negligently and proximately, caused damages to Intermountain. Intermountain is entitled to damages in an amount to be proven at trial for the Defendants' interference.

**FIFTH CAUSE OF ACTION**  
**(INTENTIONAL INTERFERENCE WITH ECONOMIC RELATIONS –**  
**UDOT AND MURRAY CITY)**

49. Plaintiff re-alleges each of the allegations contained in paragraphs 1 through 48 above as if fully set forth herein.
50. Upon information and belief, the Defendants intentionally interfered with the economic relationship Intermountain had with

its potential buyers, the buyers choosing to not come by the property and to not do any further business with Intermountain.

51. Upon information and belief, the Defendants' interference was for an improper purpose, which was to have Intermountain's customers and vendors avoid the property voluntarily and discontinue or avoid any business relationship with Intermountain.
52. Upon information and belief, the Defendants' interference was by an improper means, as Defendants, contrary to law, requested that Intermountain and other businesses not bring claims against them and did not conduct condemnation hearings.
53. The Defendants' interference was the proximate and immediate cause of Intermountain's economic injuries. Intermountain is entitled to damages in an amount to be proven at trial.

**SIXTH CAUSE OF ACTION**  
**(BREACH OF CONTRACT - UDOT)**

54. Plaintiff re-alleges each of the allegations contained in paragraphs 1 through 53 above as if fully set forth herein.
55. Defendant UDOT made representations to Intermountain that



the closed access to I-15 at 4500 South would last one year.

56. UDOT made representations to Intermountain that it would address the concerns of the local businesses along I-15, including those of Intermountain.
57. Intermountain relied upon those representations and did not bring an action during the reconstruction of I-15.
58. Such forbearance, based on UDOT's representations and promises to address the needs of business owners, constituted consideration for that promise.
59. Defendant UDOT breached this contract by never addressing the business' concerns, including those of Intermountain.
60. UDOT further breached this contract by closing access to I-15 at 4500 South for a period of nearly four years, and not one year as represented to Intermountain by Defendant UDOT.
61. Plaintiff Intermountain has been seriously injured as a result of the Defendant's conduct in an amount to be proven at trial but currently calculated to be in excess of \$2,000,000.00.

### **PRAYER FOR RELIEF**

**NOW THEREFORE,** Plaintiff demands judgment against the

Defendants as follows:

1. On its First Cause of Action, Intermountain requests that this Court award it damages in an amount to be proven at trial but calculated to be at least \$2,000,000.00.
2. On its Second Cause of Action, Intermountain requests that this Court award it damages in an amount to be proven at trial but currently calculated to be in excess of \$2,000,000.00.
3. On its Third Cause of Action, Intermountain requests that this Court award it damages in an amount to be proven at trial but currently calculated to be in excess of \$2,000,000.00.
4. On its Fourth Cause of Action, Intermountain requests that this Court award it damages for the City and State's negligent interference with the contractual relationships Intermountain had and still has with its vendors as well the lost potential relationships with future customers and vendors in an amount to be proven at trial and calculated at \$2,000,000.00.

5. On its Fifth Cause of Action, Intermountain requests that this Court award it damages for the Defendants' negligent and intentional interference with the prospective economic relationships Plaintiff had and still has with its buyers, in an amount to be proven at trial and calculated at \$2,000,000.00.
6. On its Sixth Cause of Action, Intermountain requests that this Court award it damages in an amount to be proven at trial but currently calculated to be in excess of \$2,000,000.00.
7. For costs and attorney fees as allowed by law.
8. For such other and further legal and equitable relief as the court may find just and proper.

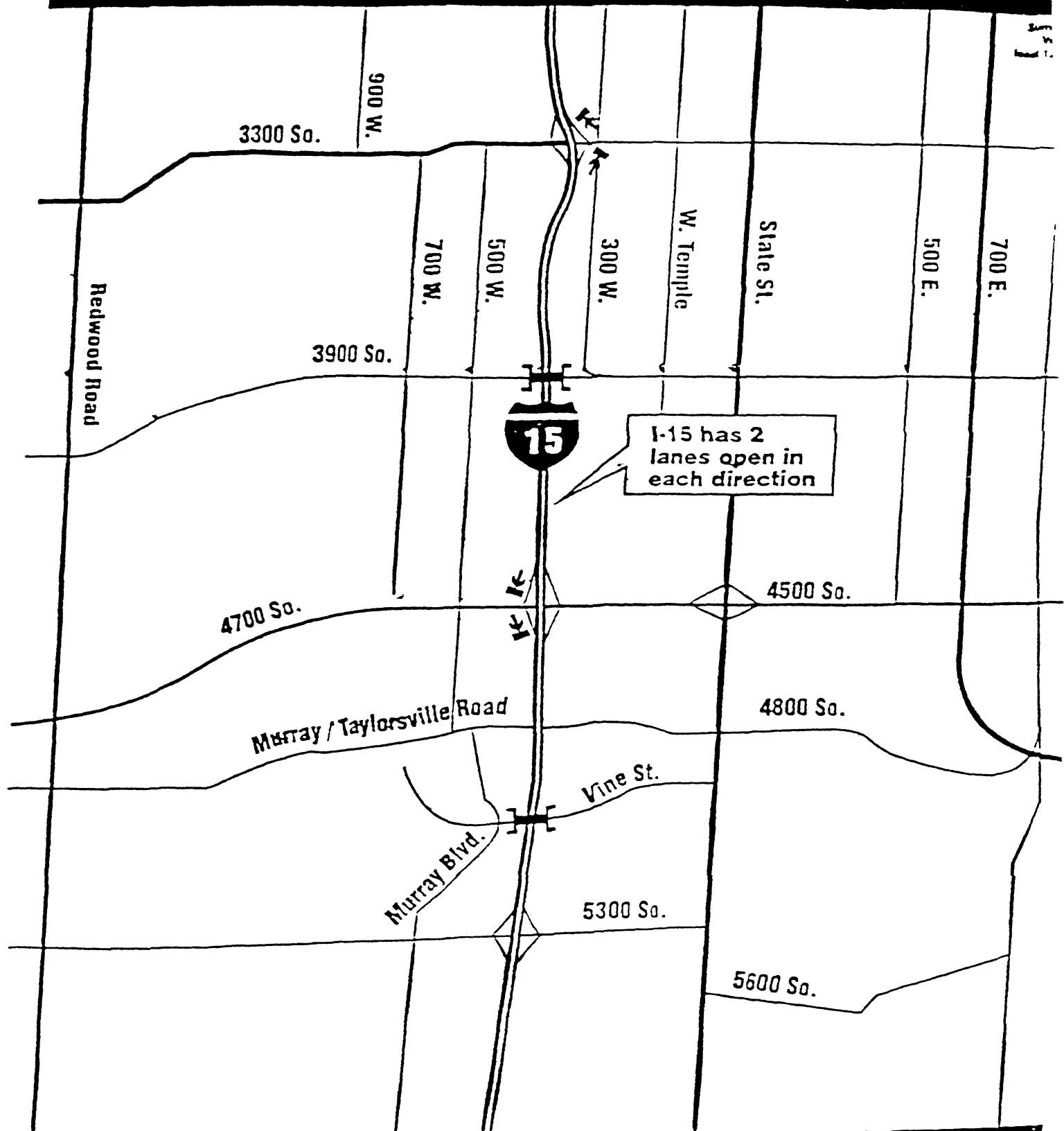
**DATED and SIGNED this 29 day of May 2002.**

**ZOLL & TYCKSEN, L.C.**

  
\_\_\_\_\_  
**B. Ray Zoll**  
**Attorneys for Plaintiff**

# **EXHIBIT A**

# 4500 South Alternate Routes



## Closed Ramps:

- I-15 southbound off-ramp to 4500 South

## Alternate Routes for 4500 South

- Exit at 3300 South and take State Street or Redwood Road
- Exit at 5300 South and take State Street or Redwood Road

## **EXHIBIT B**



## INTERSTATE 15 RECONSTRUCTION

July 14, 1997

Dear Resident or Business Owner:

On or around August 6, the I-15 Reconstruction Project will begin to affect residents, commuters and businesses using the 4500 South interchange. This action is one of many that make up the largest design-build highway project in the United States.

For you, it means planning your trips to address closure of I-15 Southbound off-ramp at 4500 South and the 4500 South on-ramp to I-15 Southbound. ~~Both closures will last approximately one year.~~

Access to 4500 South from I-15 Southbound

- Exit at 3300 South and take State Street or Redwood Road
- Exit at 5300 South and take State Street or Redwood Road

Access to Points South from 4500 South

- Take State Street to 5300 South on-ramp to I-15 Southbound
- Take 4500 South to I-215

An alternate for all North/South travel is I-215. This roadway has been expanded to four lanes in each direction. The additional capacity and easy access to east/west surface streets makes this a good alternate to include in your trip planning. During 4500 South ramp closures, southbound ramps will remain open at 3300 South and 5300 South. Ramps at 4500 South will re-open in approximately 12 months.

Drivers can expect quicker and easier access to and from I-15 when reconstruction is complete. Until construction is complete, staying informed is your key to getting through the I-15 reconstruction with as little impact as possible to your schedule and your lifestyle. Call the information line at 388-INFO-I15. Access the Web site at [www.I-15.com](http://www.I-15.com). Find and use traffic reports in the local media. Consider changing your travel patterns by combining trips or talking with your employer about flex-time scheduling. Think about riding a bike, taking the bus to work or eliminating some trips altogether by telecommuting - you'll be reducing traffic (and your stress level!).

Included with this letter, is a flyer addressing issues specific to the 4500 South areas. Flyer information includes an announcement for business and community open house meetings. These meetings are an opportunity to obtain more information on planned closures, alternate routes, and project process and schedule - we hope you will come.

Thank you in advance for your active participation.

Sincerely,

Carol Provenzano  
Business and Community Affairs  
Program Manager  
Wasatch Constructors



# INTERSTATE 15

## ROAD TO THE FUTURE

July 1

Ramps close at 4500 South

### 4500 South Interchange Ramp Closure

The reconstruction of 4500 South interchange means quicker, easier access to and from I-15. In addition to rebuilding bridge footings, the bridges themselves and expanding the decks, this intersection will be rebuilt with an improved interchange. The new Single Point Urban Interchange (SPUI) system will make traffic flow more effective and efficient.

#### SEEING IS BELIEVING

Reconstruction activities will bring with them barriers blocking closed ramps, detour signs and some increased truck traffic. Working with construction impacts may be difficult at first, but driver planning and regular use of alternate routes will make your trips easier.

#### CLOSURE SCHEDULE

August 6:

I-15 Southbound off-ramp to 4500 South.

August 6:

4500 South on-ramp to I-15 Southbound.

East to west travel on 4500 South will remain open during ramp closures. Infrequent closures may be necessary during bridge removal activities - the community, affected businesses and services will be notified. The northbound on-and off-ramps will remain open during this approximately one-year closure.

#### ALTERNATE ROUTES

Access to 4500 South from I-15 Southbound

- Exit at 3300 South and take State Street or Redwood Road
- Exit at 5300 South and take State

Access to Pointe South from 4500 South

- Take State Street to 5300 South on-ramp
- Take 4500 South to I-215

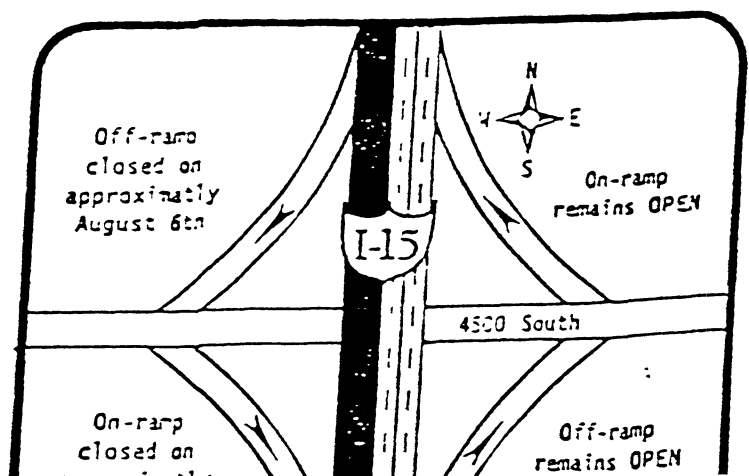
An alternate for all North/South travel is I-215. This roadway has been expanded to four lanes in each direction. The additional capacity and easy access to east/west surface streets makes this a good alternate to include in your trip planning. During 4500 South ramp closures, southbound-off ramps will remain open at 3300 South and 5300 South.

#### OPEN HOUSE MEETINGS

Wasatch Constructors will host a series of Open House meetings focusing on upcoming ramp closures at 3300 and 4500 South. The meetings will give residents and businesses a chance to

- Learn about planned closures
- View plans for the reconstructed interchange
- Discuss communications plans
- Review alternate route options

continued on back...



Open House



I-15 Reconstruction ; am  
480 North 2200 West  
Salt Lake City, UT 84116

PLAN ON IT! - STAY INFORMED

## Information: Where to get it

### OPEN HOUSE MEETINGS:

Business Open Houses

Monday, July 28

12:00 - 1:30 p.m.

Quality Inn

4465 Century Dr (450 W)

Murray

Wednesday, July 30

12:00 - 1:30 p.m.

Quality Inn

4465 Century Dr (450 W)

Murray

Community Open Houses

Tuesday, July 29

6 p.m. - 8 p.m.

Woodrow Wilson Elementary

2825 South 200 East

South Salt Lake

Thursday, July 31

6 p.m. - 8 p.m.

Salt Lake Lutheran School -

4020 South 900 East

Salt Lake City

### "PLAN ON IT" - STAY INFORMED

Until construction is complete, staying informed is your key to getting through the I-15 reconstruction with as little impact as possible to your schedule and your lifestyle. Read the newspaper and watch/listen for traffic updates on radio and TV news. You can access information sources at:

Internet: [www.I-15.com](http://www.I-15.com)

Tollfree: 1-888-INFO-I-15

UDOT 964-6000 (recorded information)

### QUESTIONS?

Wasatch Constructors 594-6400

UDOT I-15 Team 281-8167

Construction Noise 322-2378

For UDOT issues not directly related to the I-15 Reconstruction Project, access UDOT's Web site at [www.st.ex.state.ut.us](http://www.st.ex.state.ut.us) and select the Road Conditions icon, or call UDOT at 965-4000.

### Vanpooling

Individuals can get themselves and others to work by vanpooling. Passengers share expenses of maintenance and gas according to distance traveled and frequency.

## **EXHIBIT C**

# 4500 South Alternate Routes



## Closed Ramps:

- 4500 South southbound off-ramp
- 4500 South northbound on and off-ramps
- 3300 South southbound on-ramp

## Open Ramps:

- All ramps at 5300 South
- 4500 South southbound on-ramp (eastbound access only)
- 3300 South northbound on and off-ramps
- 3300 South southbound off-ramp

## East/West Closure:

- 4500 South between 500 West and 100 West  
(4500 South eastbound to I-15 southbound remains open)

## Alternate East/West Routes:

- 3900 South
- 4800 South

## Freeway Detours

- 5300 South

# **EXHIBIT 2**

N  
W + E  
S

Preconstruction  
photo

Intermountain  
Sports

access road

I-15

500 West

4500 South

