

EMINENT DOMAIN LIMITATIONS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Susan Pulsipher

Senate Sponsor: Lincoln Fillmore

LONG TITLE

General Description:

This bill excludes certain uses for which the eminent domain right may be exercised.

Highlighted Provisions:

This bill:

- ▶ defines "century farm";
- ▶ prohibits a person from exercising the right of eminent domain for the purpose of establishing a public park on certain century farm property; and
- ▶ consolidates uses for which the eminent domain right may not be exercised.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-6-501, as last amended by Laws of Utah 2014, Chapter 59

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78B-6-501** is amended to read:

78B-6-501. Eminent domain -- Uses for which right may be exercised.

[Subject] (1) As used in this section, "century farm" means real property that is:

(a) assessed under Title 59, Chapter 2, Part 5, Farmland Assessment Act; and

(b) owned or held by the same family for a continuous period of 100 years or more.

30 (2) Except as provided in Subsection (3) and subject to the provisions of this part, the
31 right of eminent domain may be exercised on behalf of the following public uses:

32 ~~[(1)]~~ (a) all public uses authorized by the federal government;

33 ~~[(2)]~~ (b) public buildings and grounds for the use of the state, and all other public uses
34 authorized by the Legislature;

35 ~~[(3)]~~ (a) (i) public buildings and grounds for the use of any county, city, town, or
36 board of education;

37 ~~[(b)]~~ (ii) reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water or
38 sewage, including to or from a development, for the use of the inhabitants of any county, city,
39 or town, or for the draining of any county, city, or town;

40 ~~[(c)]~~ (iii) the raising of the banks of streams, removing obstructions from streams, and
41 widening, deepening, or straightening their channels;

42 ~~[(d)]~~ (iv) bicycle paths and sidewalks adjacent to paved roads;

43 ~~[(e)]~~ (v) roads, byroads, streets, and alleys for public vehicular use, including for access
44 to a development~~[-, excluding trails, paths, or other ways for walking, hiking, bicycling,~~
45 ~~equestrian use, or other recreational uses, or whose primary purpose is as a foot path,~~
46 ~~equestrian trail, bicycle path, or walkway]; and~~

47 ~~[(f)]~~ (vi) all other public uses for the benefit of any county, city, or town, or its
48 inhabitants;

49 ~~[(4)]~~ (d) wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads,
50 plank and turnpike roads, roads for transportation by traction engines or road locomotives,
51 roads for logging or lumbering purposes, and railroads and street railways for public
52 transportation;

53 ~~[(5)]~~ (e) reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and
54 pipes for the supplying of persons, mines, mills, smelters or other works for the reduction of
55 ores, with water for domestic or other uses, or for irrigation purposes, or for the draining and
56 reclaiming of lands, or for solar evaporation ponds and other facilities for the recovery of
57 minerals in solution;

58 ~~[(6)(a)]~~ (f) (i) roads, railroads, tramways, tunnels, ditches, flumes, pipes, and dumping
59 places to access or facilitate the milling, smelting, or other reduction of ores, or the working of
60 mines, quarries, coal mines, or mineral deposits including oil, gas, and minerals in solution;

61 ~~[(b)]~~ (ii) outlets, natural or otherwise, for the deposit or conduct of tailings, refuse or
62 water from mills, smelters or other works for the reduction of ores, or from mines, quarries,
63 coal mines or mineral deposits including minerals in solution;

64 ~~[(c)]~~ (iii) mill dams;

65 ~~[(d)]~~ (iv) gas, oil or coal pipelines, tanks or reservoirs, including any subsurface
66 stratum or formation in any land for the underground storage of natural gas, and in connection
67 with that, any other interests in property which may be required to adequately examine,
68 prepare, maintain, and operate underground natural gas storage facilities;

69 ~~[(e)]~~ (v) solar evaporation ponds and other facilities for the recovery of minerals in
70 solution; and

71 ~~[(f)]~~ (vi) any occupancy in common by the owners or possessors of different mines,
72 quarries, coal mines, mineral deposits, mills, smelters, or other places for the reduction of ores,
73 or any place for the flow, deposit or conduct of tailings or refuse matter;

74 ~~[(7)]~~ (g) byroads leading from a highway to:

75 ~~[(a)]~~ (i) a residence; or

76 ~~[(b)]~~ (ii) a farm;

77 ~~[(8)]~~ (h) telecommunications, electric light and electric power lines, sites for electric
78 light and power plants, or sites for the transmission of broadcast signals from a station licensed
79 by the Federal Communications Commission in accordance with 47 C.F.R. Part 73 and that
80 provides emergency broadcast services;

81 ~~[(9)]~~ (i) sewage service for:

82 ~~[(a)]~~ (i) a city, a town, or any settlement of not fewer than 10 families;

83 ~~[(b)]~~ (ii) a public building belonging to the state; or

84 ~~[(c)]~~ (iii) a college or university;

85 ~~[(10)]~~ (j) canals, reservoirs, dams, ditches, flumes, aqueducts, and pipes for supplying

86 and storing water for the operation of machinery for the purpose of generating and transmitting
87 electricity for power, light or heat;

88 ~~[(H)]~~ (k) cemeteries and public parks~~[, except for a park whose primary use is:]; and~~
89 ~~[(a) as a trail, path, or other way for walking, hiking, bicycling, or equestrian use; or]~~
90 ~~[(b) to connect other trails, paths, or other ways for walking, hiking, bicycling, or~~
91 ~~equestrian use;]~~

92 ~~[(I2)]~~ (l) sites for mills, smelters or other works for the reduction of ores and necessary
93 to their successful operation, including the right to take lands for the discharge and natural
94 distribution of smoke, fumes, and dust, produced by the operation of works, provided that the
95 powers granted by this section may not be exercised in any county where the population
96 exceeds 20,000, or within one mile of the limits of any city or incorporated town nor unless the
97 proposed condemner has the right to operate by purchase, option to purchase or easement, at
98 least 75% in value of land acreage owned by persons or corporations situated within a radius of
99 four miles from the mill, smelter or other works for the reduction of ores; nor beyond the limits
100 of the four-mile radius; nor as to lands covered by contracts, easements, or agreements existing
101 between the condemner and the owner of land within the limit and providing for the operation
102 of such mill, smelter, or other works for the reduction of ores; nor until an action shall have
103 been commenced to restrain the operation of such mill, smelter, or other works for the
104 reduction of ores.

105 (3) The right of eminent domain may not be exercised on behalf of the following uses:

106 (a) except as provided in Subsection (2)(c)(iv), trails, paths, or other ways for walking,
107 hiking, bicycling, equestrian use, or other recreational uses, or whose primary purpose is as a
108 foot path, equestrian trail, bicycle path, or walkway;

109 (b) (i) a public park whose primary purpose is:

110 (A) as a trail, path, or other way for walking, hiking, bicycling, or equestrian use; or

111 (B) to connect other trails, paths, or other ways for walking, hiking, bicycling, or
112 equestrian use; or

113 (ii) a public park established on real property that is:

- 114 (A) a century farm; and
- 115 (B) located in a county of the first class.