

May 28, 2025

To: County Commission
San Juan County
117 South Main
Monticello, UT 84535

Attn: Commissioner Stubbs
Commissioner Harvey
Commissioner Maughan

Cc: Mr. Mack McDonald

Re: Board of Commissioners Meeting (3 June 2025) - Sky Ranch Estates Subdivision Phase II

Dear Commissioners,

As the developer of the Balanced Rock project, Gardner Plumb has a significant financial interest in the Elkin Spielman land that abuts the southern boundary of the Sky Ranch runway, and its proposed fly-in subdivision. Being at the end of the runway, the property is hazarded and encumbered by Sky Ranch's current use, and its proposed enhanced use.

Therefore, we are sending this letter to convey our concerns to you in advance of the June 3rd County Commission meeting when you will reconsider the approval of the Sky Ranch Estates Subdivision Phase II, per the orders of District Court Judge Torgerson and ALJ Luke.

With respect to legal hierarchy, we ask that you thoroughly read and consider Judge Torgerson's Ruling and Order (Dated 8/19/24), and not solely rely on the ALJ's Order of Remand (Dated 12/16/24). While the ALJ's order captures the district court's ruling that your consideration of the subdivision must include the runway and its associated safety concerns, it failed to call out that Judge Torgerson wrote the following regarding the ALJ's original ruling (Dated 9/21/23) (underlines added for emphasis):

As part of her decision, the ALJ :

- found that "[t]he airstrip is not included in the subdivision boundaries of Sky Ranch Estates phase II.", and
- concluded that "subdivision approval ...was not a review of the legal status of the airstrip as it was not even included in the formal boundaries of the subdivision plat map and had been previously acknowledged and approved in the original Sky Ranch Estate development."

But those findings are erroneous on the record before the court. The proposed

Seventh Judicial District Court, Ruling and Order, Dated 8/19/24

We respectfully request that you consider the following during your deliberations:

- A. **Legal Status of the Runway:** First and foremost, to comply with the District Court’s ruling, we recommend that you thoroughly assess the legal status of the runway. It would make no sense to consider approving the subdivision, or spending time assessing the safety concerns of the runway, before determining if the runway (an inherent feature of the subdivision) is legal.

Exhibit A has a summary of why we have concluded that the runway is illegal. You can reference a more exhaustive review by reading the document (*240809 Sky Ranch Runway Airstrip*) that we emailed to you on August 9, 2024.

According to the current San Juan County land use ordinance, if the runway was constructed contrary to the provisions of the land use ordinance, the County has the authority to declare the runway unlawful and a public nuisance, and to commence action for the removal of the offending structure.

1-12 Nuisance and Abatement

Any building or structure erected constructed, altered, enlarged, converted, moved or maintained contrary to the provisions of this Ordinance, and any use of land, building or premise established, conducted or maintained contrary to provisions in this Ordinance shall be, and the same hereby is, declared to be unlawful and a public nuisance; and the County Attorney shall, upon request of the governing body, at once commence action or proceeding for abatement and removal of enjoinder thereof in a manner provided by law, and take other steps as will abate and remove such building or structure, and restrain or enjoin any person, firm, or corporation from erecting, building, maintaining, or using said building or structure or property contrary to the provisions of this Ordinance. The remedies provided for herein shall be cumulative and not exclusive.

- B. **Concerns Regarding the Runway:** The ALJ ordered that the runway is included in the proposed subdivision, and that “*The Commission shall consider evidence in this matter and shall take evidence regarding safety concerns under applicable law.*”

SAFETY

Since the land use ordinance is lacking in content regarding runway safety, and due to the County not having staff with the necessary core competency on the issue, we strongly encourage the County to engage an outside firm that specializes in airport design, safety, and hazard reduction. We also recommend consulting the FAA’s recommendations regarding runway design, and reviewing the *Airports and Land Use* and *Compatible Land Use Planning for Airports* documents found in Appendices K and L of the Spanish Valley Area Plan.

Sky Ranch does not own or control enough land to adequately contain its potential hazards. Currently, the runway runs from property boundary to property boundary and is

using SITLA and Elkin Spielman properties for its runway protection zones. Sky Ranch does not have aviation easements that would allow this use. This is unacceptable.

“The use of private landing fields must not impose a hazard upon the person or property of others.”

Utah Code 72-10-116

Please recall that in September 2023 a pilot experienced a hard landing, skidded for hundreds of feet, almost hit a high voltage transformer, and nearly crashed through the fence dividing the Sky Ranch and Elkin Spielman properties (the plane finally stopped with one wing overhanging the fence). This happened at a time when the runway is infrequently used and there is only one hangar home on the property. Imagine the potential for accidents if the fly-in subdivision is approved and many more planes are using the runway.

OTHER CONCERNS

Although safety issues are important, the ALJ’s order fell short of capturing Judge Torgerson’s conclusions, including:

addressed by the ALJ’s decision or the County Commission. As proposed, the airstrip is more than just an adjacent feature. It would be incorporated into the new subdivision. And that might impact property tax obligations, easements, potential safety concerns, and other considerations that should be considered by the Commission as part of its decision.

Seventh Judicial District Court, Ruling and Order, Dated 8/19/24

The District Court is acknowledging that the County Commission has broad authority to assess the impacts of the runway (airstrip) beyond the safety concerns. This could include the runway’s potential to reduce neighboring property values, its negative impacts on the greater community that is planned, its inherent ability to cause nuisances that may lead to future conflicts and lawsuits, Sky Ranch’s lack of aviation easements that would allow its use of neighboring properties for safety zones, and more.

- C. **CLUDMA:** We are encouraged that the ALJ directed that these proceedings be held consistent with the County Land Use, Development, and Management Act, as it has a lot of guidance regarding building permits, conditional uses, conditional use permits, constitutional takings, fire authority, land use applications, land use regulation, noncomplying structures, nonconforming uses, significant private airports, and more.

Chapter 17-27a-102 of CLUDMA defines the following Purposes, which we hope the Commission will give weight to (underlines added):

- (1)
 - (a) The purposes of this chapter are to:
 - (i) provide for the health, safety, and welfare;
 - (ii) promote the prosperity;
 - (iii) improve the morals, peace, good order, comfort, convenience, and aesthetics of each county and each county's present and future inhabitants and businesses;
 - (iv) protect the tax base;
 - (v) secure economy in governmental expenditures;
 - (vi) foster the state's agricultural and other industries;
 - (vii) protect both urban and nonurban development;
 - (viii) protect and ensure access to sunlight for solar energy devices;
 - (ix) provide fundamental fairness in land use regulation;
 - (x) facilitate orderly growth, allow growth in a variety of housing types, and contribute toward housing affordability; and
 - (xi) protect property values.

D. **TIME:** We ask that you consider the amount of time it has taken for this issue to finally be sent back to the County for reconsideration. The original approval of the subdivision happened in February 2021 (over 4 years ago) and was immediately appealed. Judge Torgerson issued his ruling on 8/19/24, which was over 9 months ago. The ALJ issued her most recent order on 12/16/24, which was nearly 4 months after Judge Torgerson's order, and nearly 6 months before this June 3rd Commission meeting.

The issue has dragged on for far too long and has been an unfair burden on the Elkin Spielman property, as well as other neighboring properties that are subjected to the impacts of the runway. We hope that you will move forward with expediency and release the community from the hazards associated with this illegal runway.

Thank you for your consideration.

Sincerely,

Jim Schnepel
Gardner Plumb LLC

EXHIBIT A

Runway is Illegal

In 2017, Sky Ranch ignored the land use ordinances and State code and undertook a major reconstruction and extension that changed the runway from:

- A simple dirt strip contained within one parcel of land, to a paved runway that was extended onto new property where a runway had never existed. (structure)
- A small runway that served an occasional plane from time-to-time, to being reconstructed with the intent to accommodate a fly-in community with many hangar homes. (use)

The runway was not properly permitted when it was reconstructed and extended onto new tax parcels in 2017. Although plainly specified as a Conditional Use, **Sky Ranch did not apply for or obtain a Conditional Use Permit or a Building Permit.**

While there was a clear process to establish the rights to reconstruct and use the runway in its new form, the Sky Ranch principals failed to follow the applicable land use ordinances and State laws. Consequently, the runway is now an illegal structure and use.

Since Sky Ranch did not submit any application (complete or otherwise) to properly permit the runway's reconstruction, it holds no vested rights to be considered under the 2011 land use ordinance when the runway may have been approved as a conditional use.

An [land use] application is considered "complete" and "submitted" when "the applicant provides the application in a form that complies with the requirements of applicable ordinances and pays all applicable fees. Accordingly, if an application omits required information, it is incomplete and consequently insufficient to give rise to vested rights."

The Utah Land Use Institute – Vested Rights – Kiel Berry, Author – October 2023

In 2019 the County adopted a new land use ordinance for Spanish Valley, which does not permit for a runway in any zoning district. In fact, despite an appeal from a Sky Ranch principal that runways be included as a conditional use, they were intentionally excluded from the ordinance.

Since the runway was not legally permitted (established) prior to the adoption of the new land use ordinance for Spanish Valley, it is not now a nonconforming use that could "grandfather" any use:

"To be eligible for nonconforming use status, a use must have been "legally established" under former zoning ordinances before those ordinances were changed. For a use to be "legally established" it must have obtained all necessary approvals and permits to conduct that use, including a conditional use permit. If the use did not obtain all necessary approvals, it cannot be eligible for nonconforming use status, regardless of how long it has existed."

Utah Property Rights Ombudsman – Advisory Opinion 159

We want to emphasize that it is not the County's duty to try to correct for Sky Ranch's negligence in not following the clearly outlined procedure to obtain the required permits and permissions for the runway. Although the County recommended in emails (and suggested the same in ex parte meetings) that Sky Ranch pursue a conditional use permit, the Sky Ranch principals declined to do so.

Any actions, or inactions, by County-related persons that did not conform with the land use ordinance and state laws would not legalize, or provide a path to legalization, for the runway.

A simple review of the legal status of the runway should be enough to shut down this illegal structure and use, that clearly presents safety concerns and hazards for neighboring property owners.