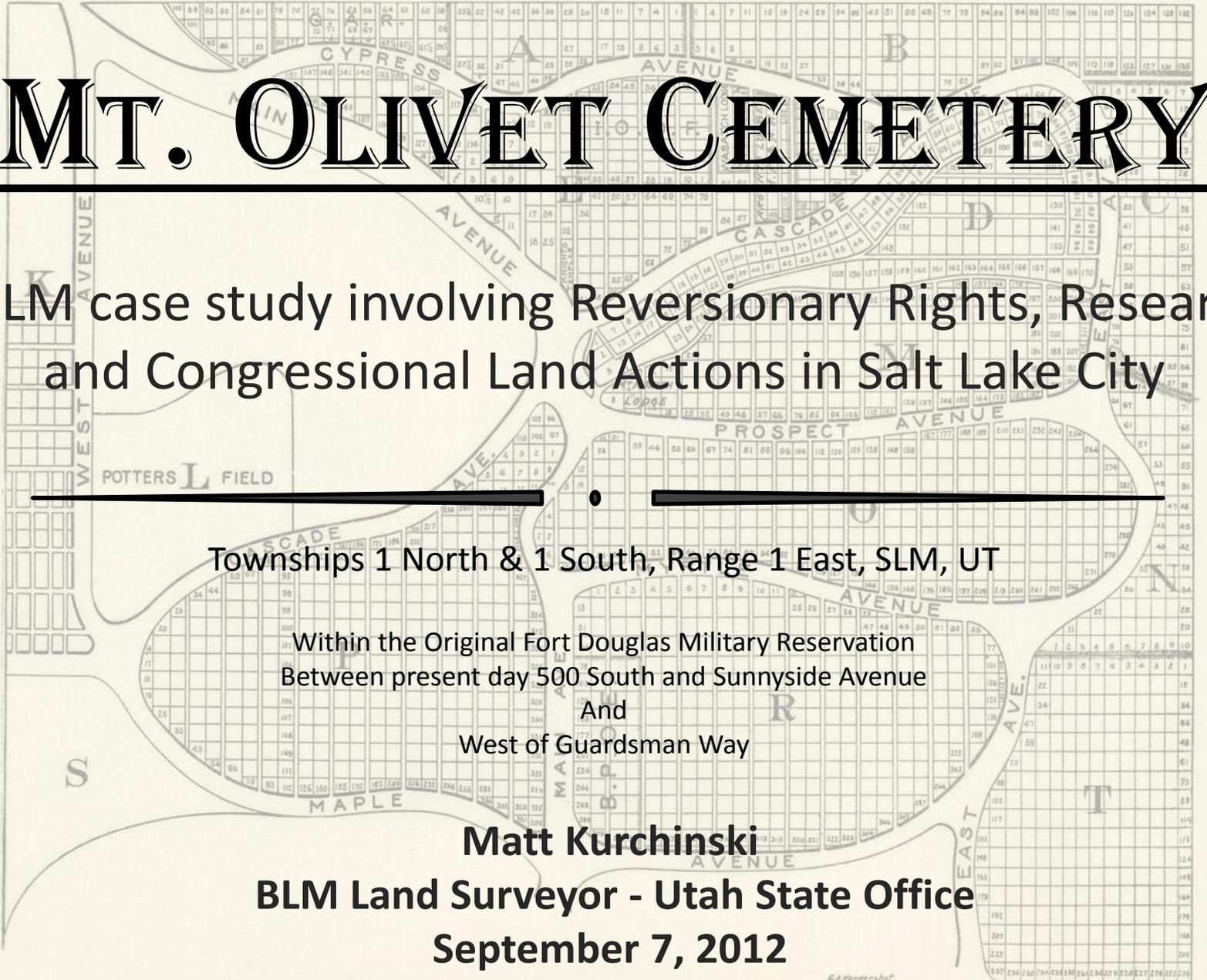


MT. OLIVET CEMETERY



A BLM case study involving Reversionary Rights, Research,
and Congressional Land Actions in Salt Lake City

Townships 1 North & 1 South, Range 1 East, SLM, UT

Within the Original Fort Douglas Military Reservation
Between present day 500 South and Sunnyside Avenue
And
West of Guardsman Way

Matt Kurchinski

BLM Land Surveyor - Utah State Office

September 7, 2012

Rowland H

Open space? » With OK by Congress, Mount Olivet selling 13 acres for ne

By **DEREK P. JENSEN**
The Salt Lake Tribune

A weedy lot on Salt Lake City's east bench that was destined to be filled with tombstones instead will be teeming with teenagers one day now that Rowland Hall is poised to finalize a purchase agreement with Mount Olivet Cemetery.

The deal to convert 13 acres of open space at 1443 E. Sunnyside Ave. into a new campus — in the works for nearly eight years — could be completed next week.

It follows a series of twists and turns that included a private bidding war, pushback from the neighborhood, a zoning change, two extensions and an act of Congress.

Rowland Hall, which bested the University of Utah in a bid for the acreage, hopes to build a new junior high and high school to join its elementary fronting 720 S. Guardsman Way. Representatives say that still may be a decade away, depending on the success of a fundraising campaign.

The "imminent" sale — neither party would reveal the price — was brokered between the private school and Mount Olivet, which has claimed for years that it needs the millions to maintain its neighboring cemetery.

"It's essentially done," says William Adams, chairman of the Mount Olivet Cemetery Association. "Without the sale, Mount Olivet will not have the money for perpetual care."

Critics say the public nonprofit cemetery stands to gain

a "windfall," tion why the ment would public open aside as cen the past 100; "It's a view Webster, a n chairman o Neighborho urban wildli deer. Having tor like a sch alien use."

Webster a and the cen Rowland Ha to buy the l doesn't smel

"The que are they gett he asks abo which must t the feds, th school. "The they don't ha to mow the l zero transpa

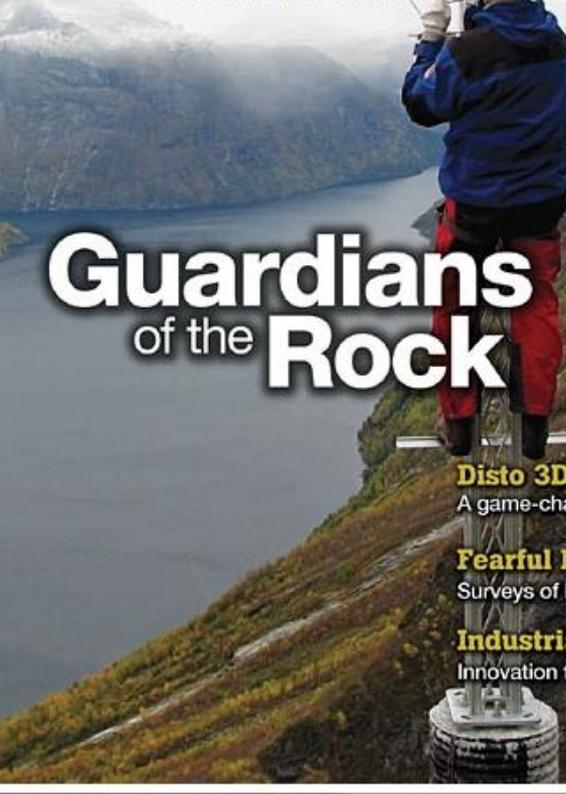
Rowland l an Susan Kc process has sisting the lowed every col. "Had tl Utah been tl on the prop "they would l der at the ta Rowland H: kind of favo er, but that's

For his p the cemetery use the mor only on the c

In 2006, sented to th cials watec owner to g public acce:

THE American Surveyor

A FOOT IN THE PAST... AN EYE TO THE FUTURE



Guardians of the Rock

Disto 3D
A game-changer

Fearful E
Surveys of D

Industrial
Innovation fr

...ut done

will probably be the only major U.S. city without a public cemetery. That's really unfor-

VantagePoint



By **Wendy Lathrop, LS, CFM**

Wendy Lathrop is licensed as a Professional Land Surveyor in NJ, PA, DE, and MD, and has been involved since 1974 in surveying projects ranging from construction to boundary to environmental land use disputes. She is a Professional Planner in NJ, and a Certified Floodplain Manager through ASFPM.

Congressional Land Actions

While there are times we complain that government gets in our way, at other times Congressional intervention may be the only means of resolving land problems. While checking a bill on the Library of Congress website recently, curiosity drew me to some other bill summaries that included references to "land" and "boundaries", words that are a magnet to any surveyor.

One of them made me pause to contemplate the extreme measures necessary to correct some problematic surveys. Apparently the Bureau of Land Management uncovered errors in a private 1960 survey while conducting its own survey in November 2007, errors that affected about 27 residents of the Mountaineer Subdivision in Arizona who suddenly became aware that improvements to "their land" were actually built on federal land. As a result, Representative Paul Gosar introduced House Resolution 1038 on March 11, 2011, summarized as follows: "To authorize the conveyance of two small parcels of land within the boundaries of the Coconino National Forest containing private improvements that were developed based upon the reliance of the landowners in an erroneous survey conducted in May 1960."

The bill itself is, as of this writing, still awaiting approval. During Subcommittee Hearings, in December 2011, testimony by Matt Ryan of the Coconino County Board of Supervisors and Gregory Smith, Acting Deputy Chief of Staff of the US Department of Agriculture, shed light on the situation leading to the proposed legislation. Ryan noted



that the 1960 survey misidentified the boundaries of the State Forest, a discrepancy that impacts 26 properties and 27 property owners. While the cumulative area of encroachment encompasses less than 3 acres, in some instances the correct boundary goes through houses, and those homeowners trying to sell their lands since the revelation of the error have been facing difficulties due to questions about ownership. Smith's testimony was similar, although he stated that 19 properties were affected with a cumulative 2.67 acres of encroachment. Smith noted that while the United States Forest Service (USFS) does have the right to transfer land title under the "Small Tracts Act" (see 16 USC 521c et seq. for details of how USFS can sell tracts of less than 40 acres), the process outlined in Representative Gosar's bill would be a quicker and more efficient remedy.

The proposal is for a legal entity representing these homeowners to pay \$20,000 to the Secretary of Agriculture (which encompasses USFS) in exchange for clear title to the clouded 2.67 acres. The Secretary would then use these funds to acquire other lands in Arizona to add to the National Forest System.

Why all this legal activity over two small parcels that have been privately used for over 50 years? Here is where our understanding of adverse possession comes into play: public lands that are held and used for public purposes are not subject to adverse possession claims by private individuals or entities. Certainly national forests fall into the category of publicly owned and publicly used property. Because the system of national forests and parklands was created by Congress and is under Congressional protection, unless there

continued on page 54

How did the BLM get involved with a deal between the Cemetery and Rowland Hall?

Public Law 111-168
111th Congress

An Act

May 24, 2010
[H.R. 1442]

To provide for the sale of the Federal Government's reversionary interest in approximately 60 acres of land in Salt Lake City, Utah, originally conveyed to the Mount Olivet Cemetery Association under the Act of January 23, 1909.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Deadlines.

SECTION 1. CONVEYANCE OF FEDERAL REVERSIONARY INTEREST, MT. OLIVET CEMETERY, SALT LAKE CITY, UTAH.

(a) **CONVEYANCE REQUIRED.**—If, within one year after the completion of the appraisal required by subsection (c), the Mount Olivet Cemetery Association of Salt Lake City, Utah (in this section referred to as the “Association”), submits to the Secretary of the Interior an offer to acquire the Federal reversionary interest in all of the approximately 60 acres of land in Salt Lake City, Utah, conveyed to the Association under the Act of January 23, 1909 (chapter 27, 25 Stat. 580), the Secretary shall convey to the Associa-

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(b) SURVEY.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall complete a survey of the lands described in subsection (a) to determine the precise boundaries and acreage of the lands subject to the Federal reversionary interest.

(c) APPRAISAL.—Not later than 180 days after the date of enactment of this Act, the Secretary shall complete an appraisal of the Federal reversionary interest in the lands identified by the survey in subsection (b). The appraisal shall be completed in accordance with the “Uniform Appraisal Standards for Federal Land Acquisitions” and the “Uniform Standards of Professional Appraisal Practice”.

(d) CONSIDERATION.—As consideration for the conveyance of the Federal reversionary interest under subsection (a), the Association shall pay to the Secretary an amount equal to the appraised value of the Federal interest, as determined under subsection (c). The consideration shall be paid not later than 30 days after the date the conveyance is made.

(e) COSTS OF CONVEYANCE.—As a condition of the conveyance under subsection (a), all costs associated with the conveyance under subsection (a), including the cost of the survey required by subsection (b) and the appraisal required by subsection (c), shall be paid by the Association.

**TASK FOR
CADASTRAL:
Determine and
survey the
Federal
reversionary
interest.**

So that is how this survey surfaced for BLM Cadastral.

- *I arrived at the Utah State Office at the end of April 2010.*
- *Little did I know that wheels had been set into motion by Congress that would be cause for my crash course in history of one small corner of the Salt Lake Valley.*
- *By August I became involved with the project*
- *By the end of September, Assignment Instructions were issued for a field survey to be conducted.*
- *The survey needed to be approved by December.*

How involved can this be?

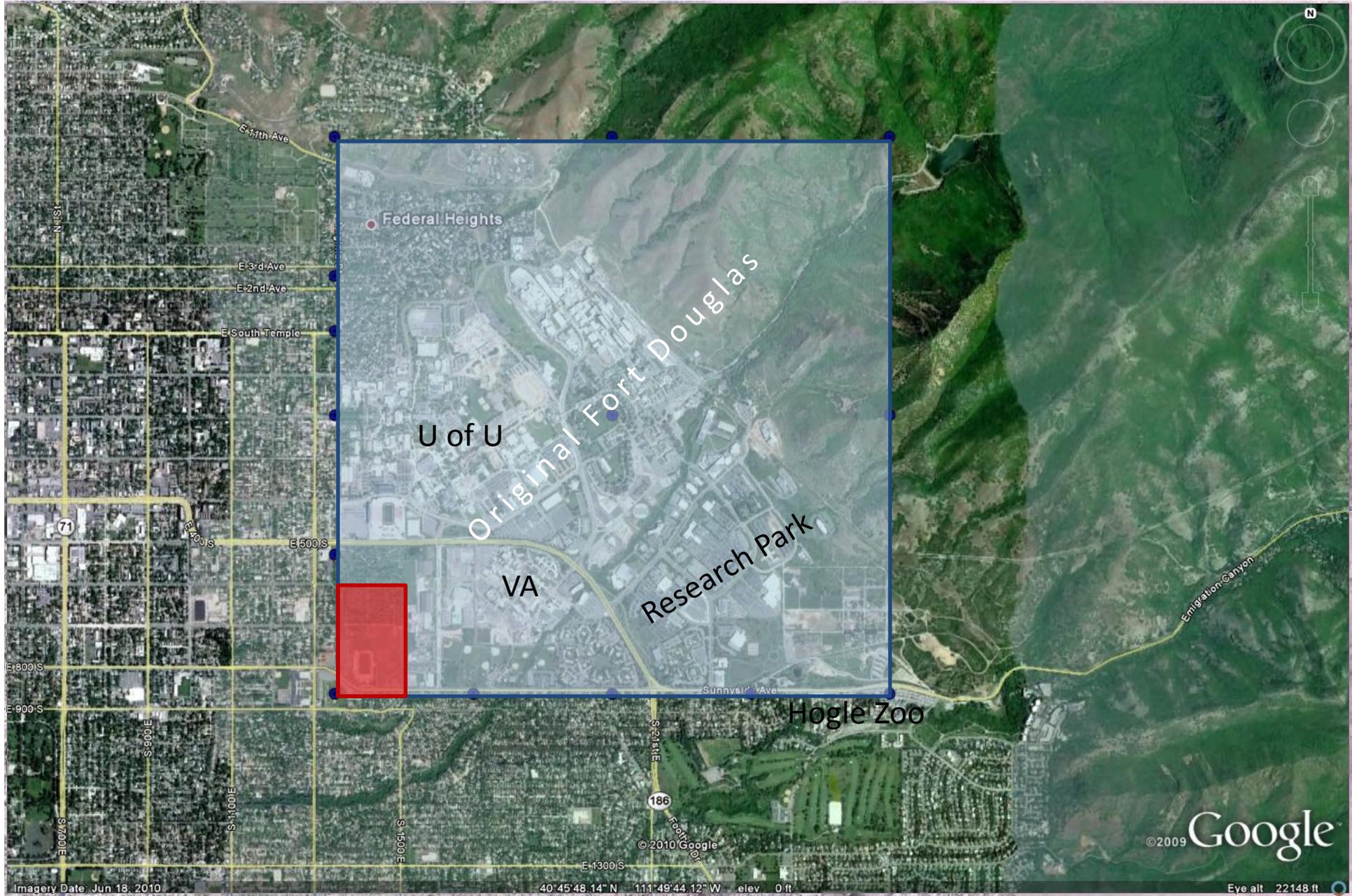
MOUNT OLIVET
CEMETERY

ESTABLISHED 1874

Lots Available, Inquire At Office

- *The 2010 Act simply directs us to survey the lands conveyed to the Cemetery Association under the Act of January 23, 1909 which are subject to Federal reversionary interest.*

A GENERAL OVERVIEW OF LOCATION



Starting with 2010 Act and working back in time...

Public Law 111–168
111th Congress

2010

An Act

May 24, 2010

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Starting with 2010 Act and working back in time...

CHAP. 37.—An Act For the exchange of certain lands situated in the Fort Douglas Military Reservation, State of Utah, for lands adjacent thereto, between the Mount Olivet Cemetery Association, of Salt Lake City, Utah, and the Government of the United States.

January 23, 1909.
[H. R. 23863.]

[Public, No. 194.]

2010

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War, for and on behalf of the United States, is hereby authorized and directed to grant and convey by deed to the Mount Olivet Cemetery Association, of Salt Lake City, Utah, the following-described tract of land: Commencing at the southwest corner of the Fort Douglas Military Reservation and running thence east along and upon the south line of said Fort Douglas Military Reservation eighty rods; thence north parallel with the west boundary line of the said military reservation to the southeast corner of the Mount Olivet Cemetery grant; thence west along the south boundary line of the said Mount Olivet Cemetery grant eighty rods to the intersection of said line with the west line of said military reservation; thence south along and upon said west line of said military reservation to the place of beginning, containing an area of fifty acres, more or less. Said land to be by the said Mount Olivet Cemetery Association permanently used as a cemetery for the burial of the dead: *Provided*, That when it shall cease to be used for such purpose it shall revert to the United States.

Fort Douglas Military Reservation, Utah.

Exchange of lands in, with the Mount Olivet Cemetery Association, authorized.

Description:

1909

Provido.
Reversion.

Land to be conveyed to Government.

Description.

SEC. 2. That the deed provided for in the foregoing section of this Act shall not be delivered to the said Mount Olivet Cemetery Association until said association shall have conveyed, or caused to be conveyed, to the United States in fee simple, free and clear of all incumbrances, subject to the approval of the Attorney-General of the United States, the following-described land, to wit: The fractional southwest quarter of section two, township one south, range one east, Salt Lake meridian, containing one hundred and fifty and ninety-two one-hundredths acres, situate in Salt Lake County, State of Utah.

Approved, January 23, 1909.

More Research!

- The references to the Military Reservation and Cemetery Grant now require that we locate them to control the boundary of the 1909 conveyance.

More Congressional Land Actions!

=Fort Douglas Military Reservation=

- In 1862 Col. P.E. Conner established Camp Douglas
- It is unclear whether a survey was made on the ground in 1862.
- The earliest survey plat of the Reservation boundary obtained is dated May 31, 1869.

Fort Douglas Research

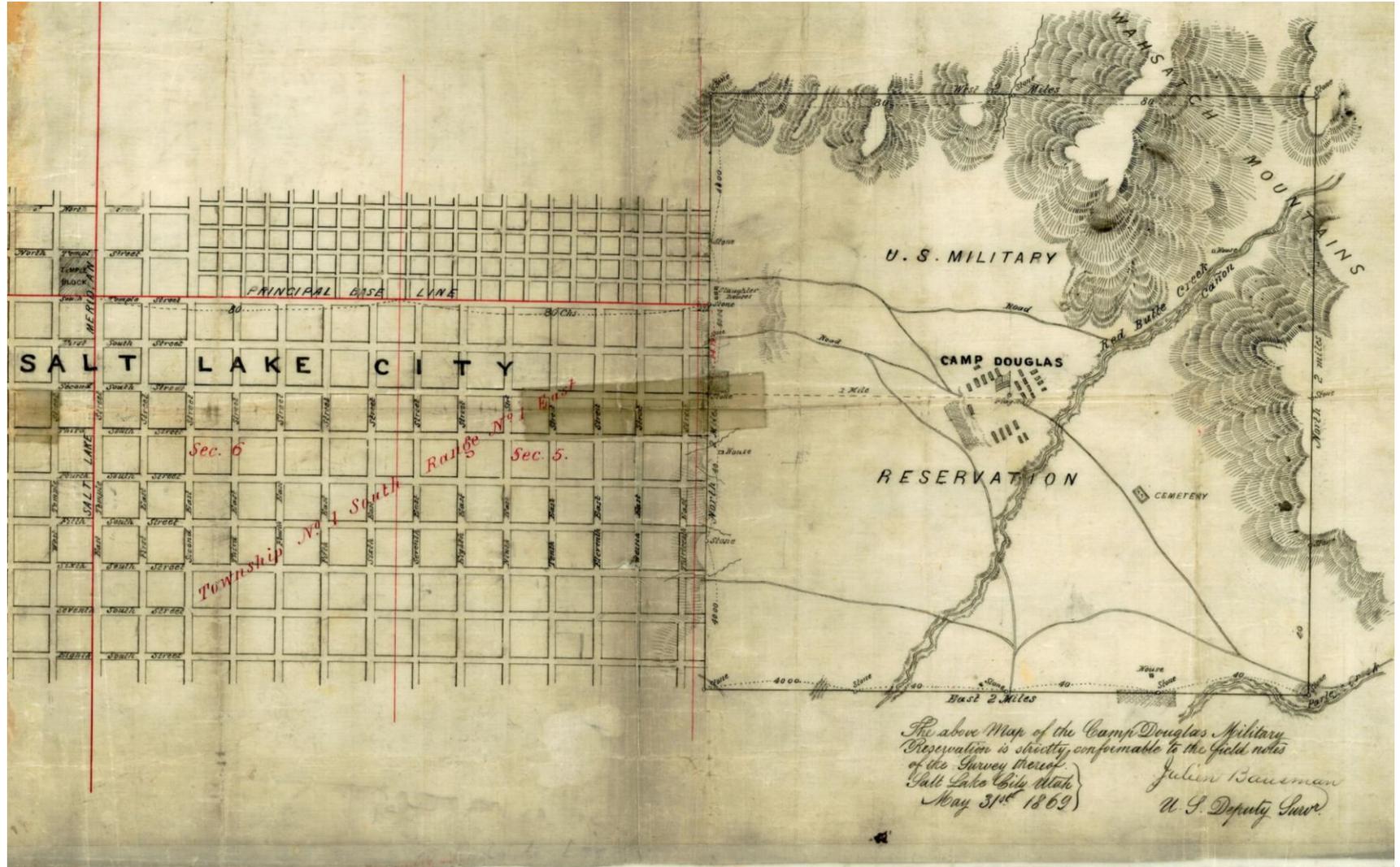
- Discussions with Archivists at the Museum: they believed an earlier survey was made, but no record could be found.
- Research here produce very useful (and interesting) information.



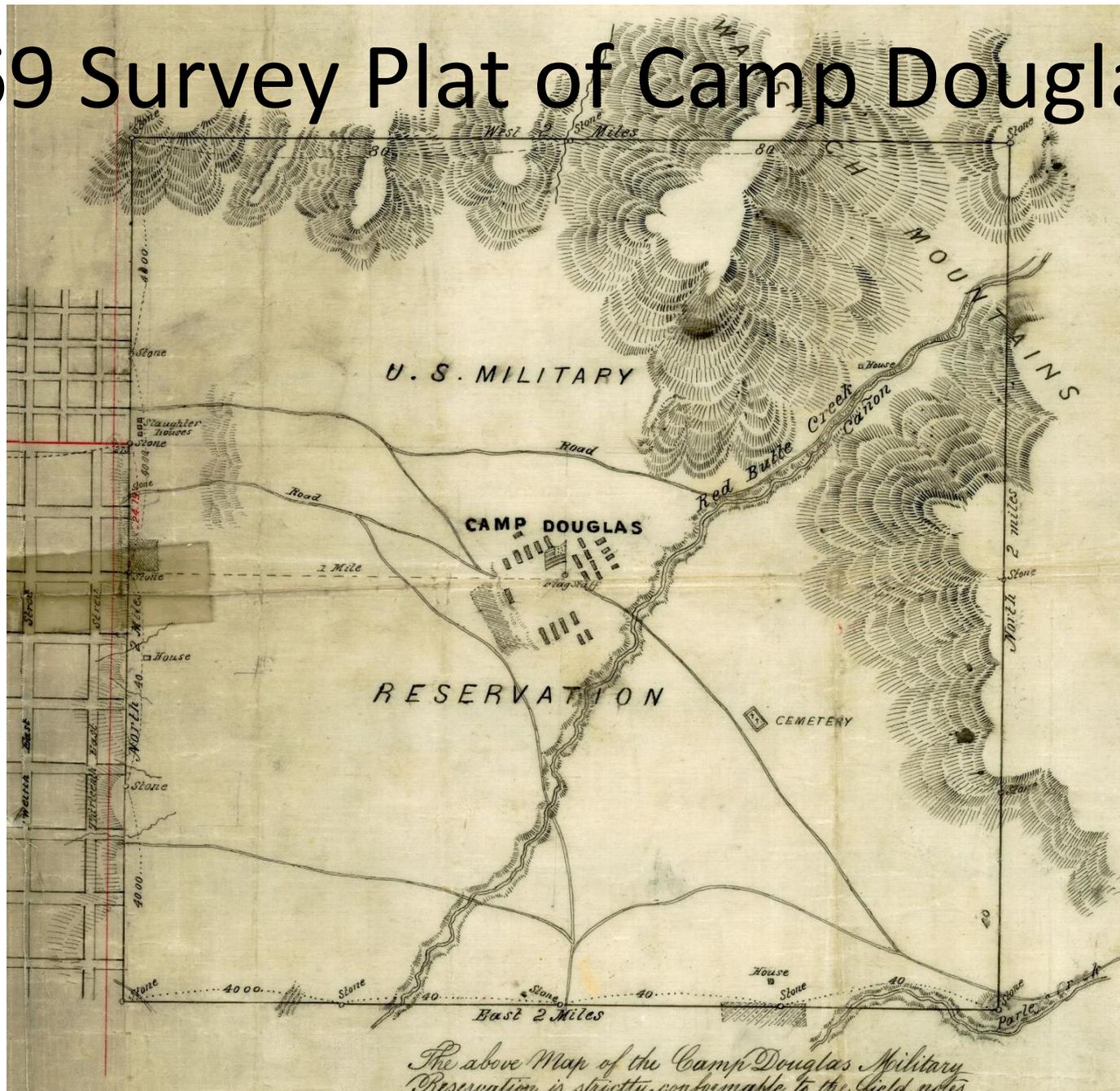
Fort Douglas History

- 1862 – established
- May 14, 1867 – Major W.H. Lewis writes to the Adjutant General asking if the Reservation had been confirmed and also requested permission to have someone *“run the line of the Reservation ... In its present dimensions the line has never been run.”*
- September 3, 1867 – President Andrew Johnson instructs the Secretary of the Interior to cause it to be noted in the Land Office to be reserved as a Military Post.
- The Reservation of Camp Douglas is published under General Order No. 66, Headquarters Department of the Platte dated December 17, 1869. The description of the Reservation begins one mile due west of the garrison flagstaff.

1869 Survey Plat of Camp Douglas



1869 Survey Plat of Camp Douglas



This is a 2010 photo of the flagstaff located at Stilwell Field (center of Military Reservation).

According to Fort Douglas Museum personnel, this flagstaff is in the same place as the original “within a couple of feet”.

It was contemplated early in the project to utilize this as control if needed.



“Mount Olivet Cemetery Grant”

Act of May 16, 1874

May 16, 1874. **CHAP. 180.**—An act granting a portion of the United States military reservation at Salt Lake City for cemetery purposes.

Portion of reservation at Camp Douglas, Utah, for public cemetery.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War be, and he is hereby, authorized to set apart a tract of land, not exceeding twenty acres in extent, in the United States military reservation of Camp Douglas, near Salt Lake City, in the Territory of Utah, to be used as a public cemetery, under such rules and regulations as he shall estab-

lish for the protection, care, and management of such cemetery. And he shall cause the same to be laid off and platted in convenient and suitable lots, which shall be forever devoted for the purpose of the burial of the dead. And he may set apart forever to each of the religious denominations organized in Salt Lake City which shall file with him proof of their organization a lot not to exceed one acre in size, and of convenient shape, which such denominations may inclose and ornament as they see fit, to be used for the purposes of burial; and two acres shall be reserved as a “potter’s field,” or common burying ground, which may be inclosed and ornamented by the authority of the said city.

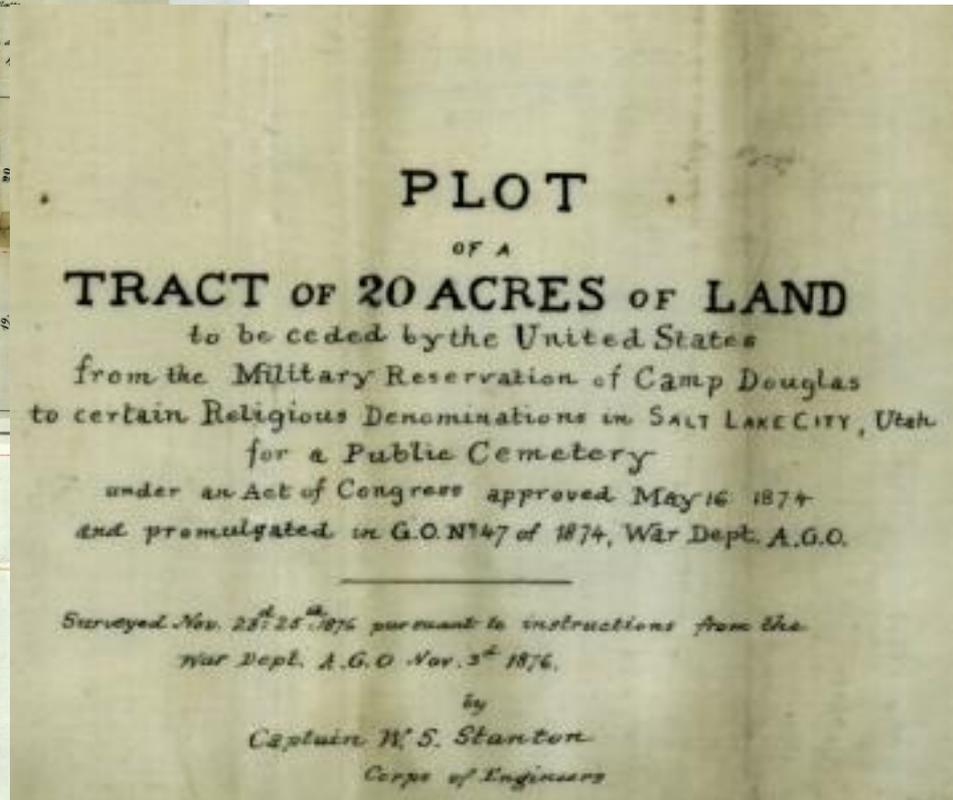
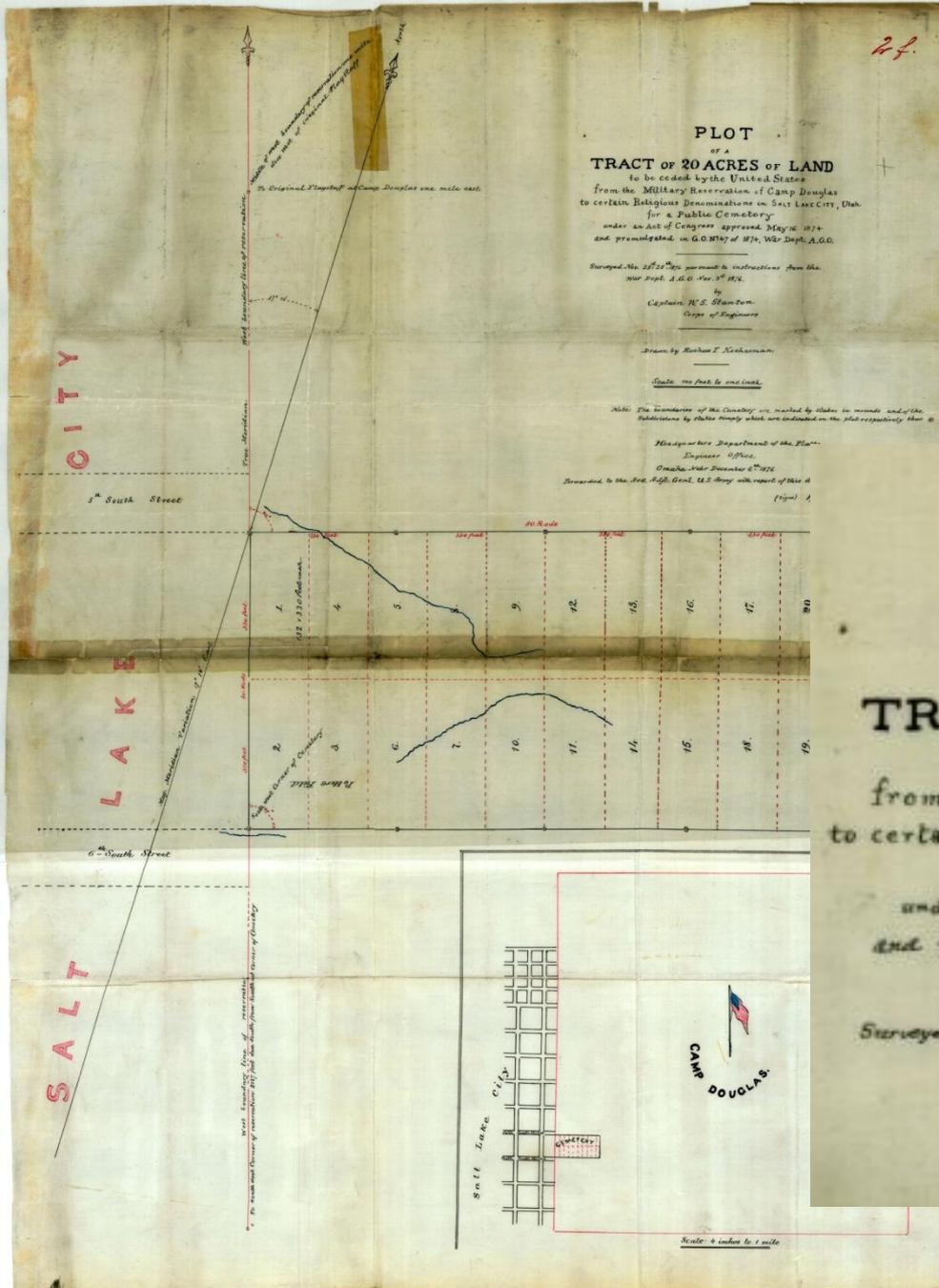
To be laid off into lots.

Lot for each religious denomination.

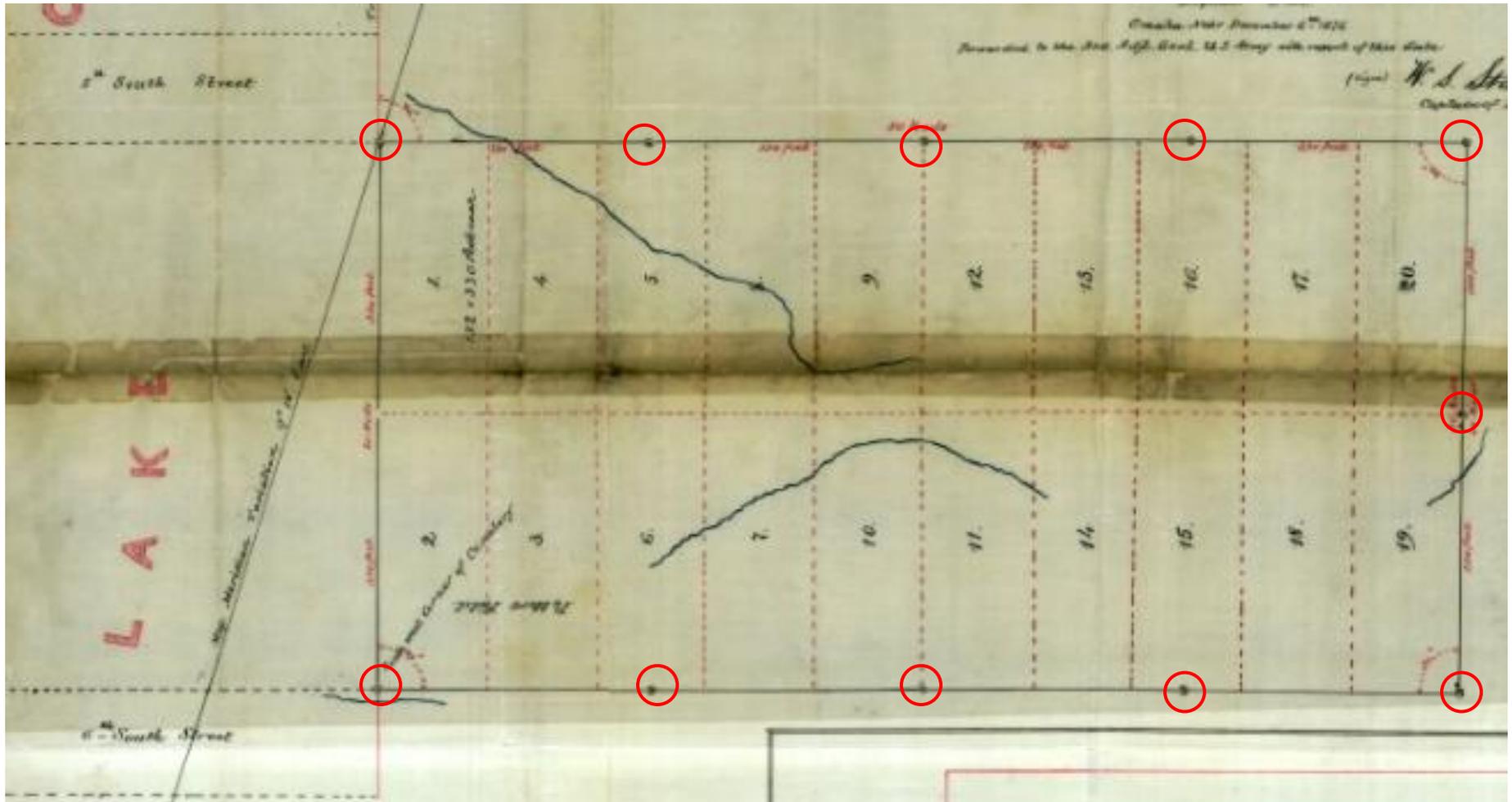
Common burial ground.

Approved, May 16, 1874.

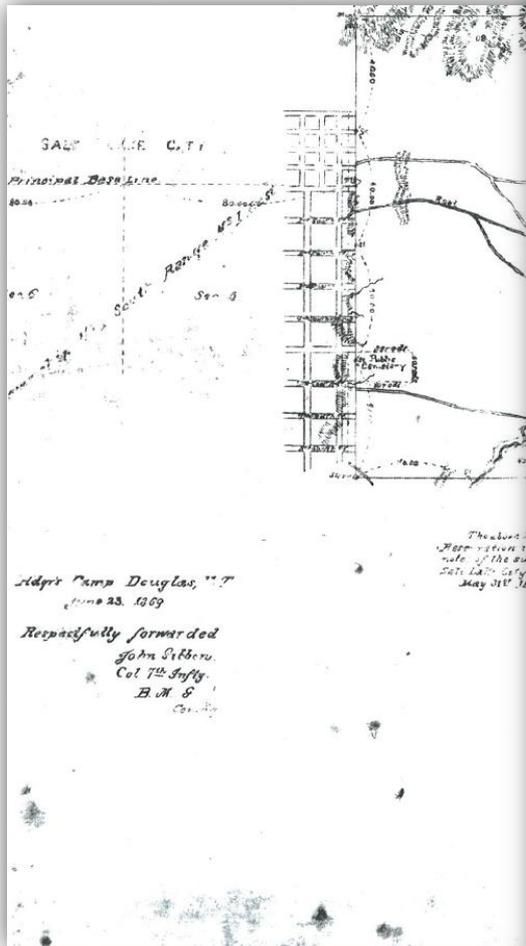
1876 Survey of 20 Acres Grant for Mount Olivet Cemetery (1874 Act)



1876 Survey of 20 Acres Grant for Mount Olivet Cemetery



Military Reservation and Cemetery composite



Twenty (20) Acres of land were set apart from the reservation and dedicated as a Public Cemetery by the Secretary of War Jan. 22, 1877 (G. O. No. 3 H. A., A. S. O. Jan. 26, 1877) pursuant to an Act of Congress approved May 16, 1874, and promulgated in G. O. No. 47 W. D., A. S. O. May 25, 1874.

Description of Boundary of Cemetery

Beginning at the point where the western boundary of the military reservation at Camp Douglas, Utah, as declared by the President, September 3, 1857, is intersected by the eastward prolongation of the south side of fifth South street, Salt Lake City and running thence due east eighty rods, thence due south forty rods to a point on the eastward prolongation of the north side of sixth South street, Salt Lake City, thence due west eighty rods to the point of intersection of said western boundary of said military reservation by said eastward prolongation of said north side of said Sixth South Street, thence due north along said western boundary of said military reservation forty rods to the point of beginning.

Cemetery boundary surveyed by Capt Stanton and Mr. Kehmman, Nov. 1878. It was marked by 12 posts planted in mounds of earth at the four corners and at equal intermediate distances of 330 feet.

Near SE Cor. 1876 Cemetery Survey



2010 view of the 1876 Survey location



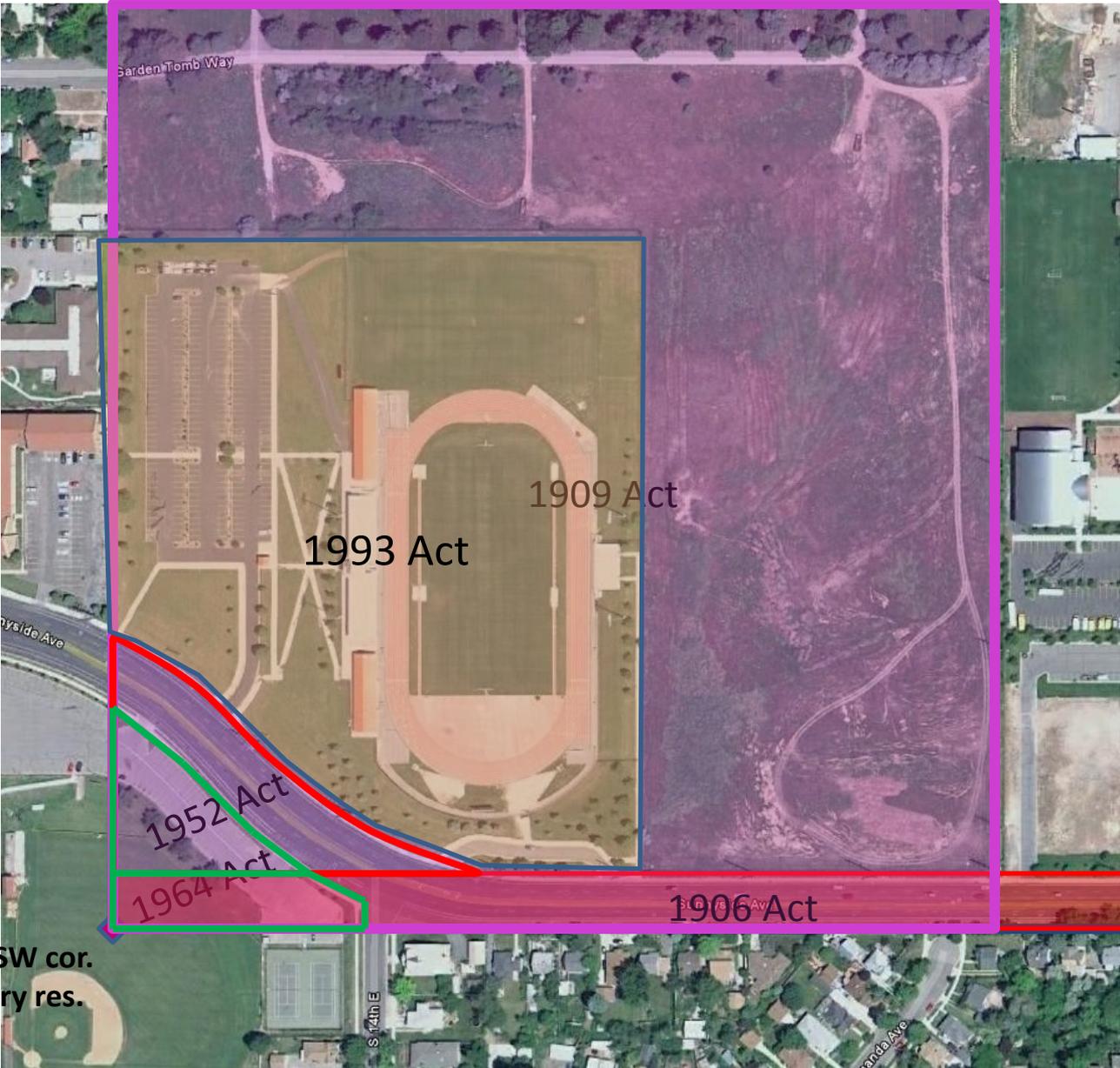
1874 Act



Original SW cor.
Military Reservation



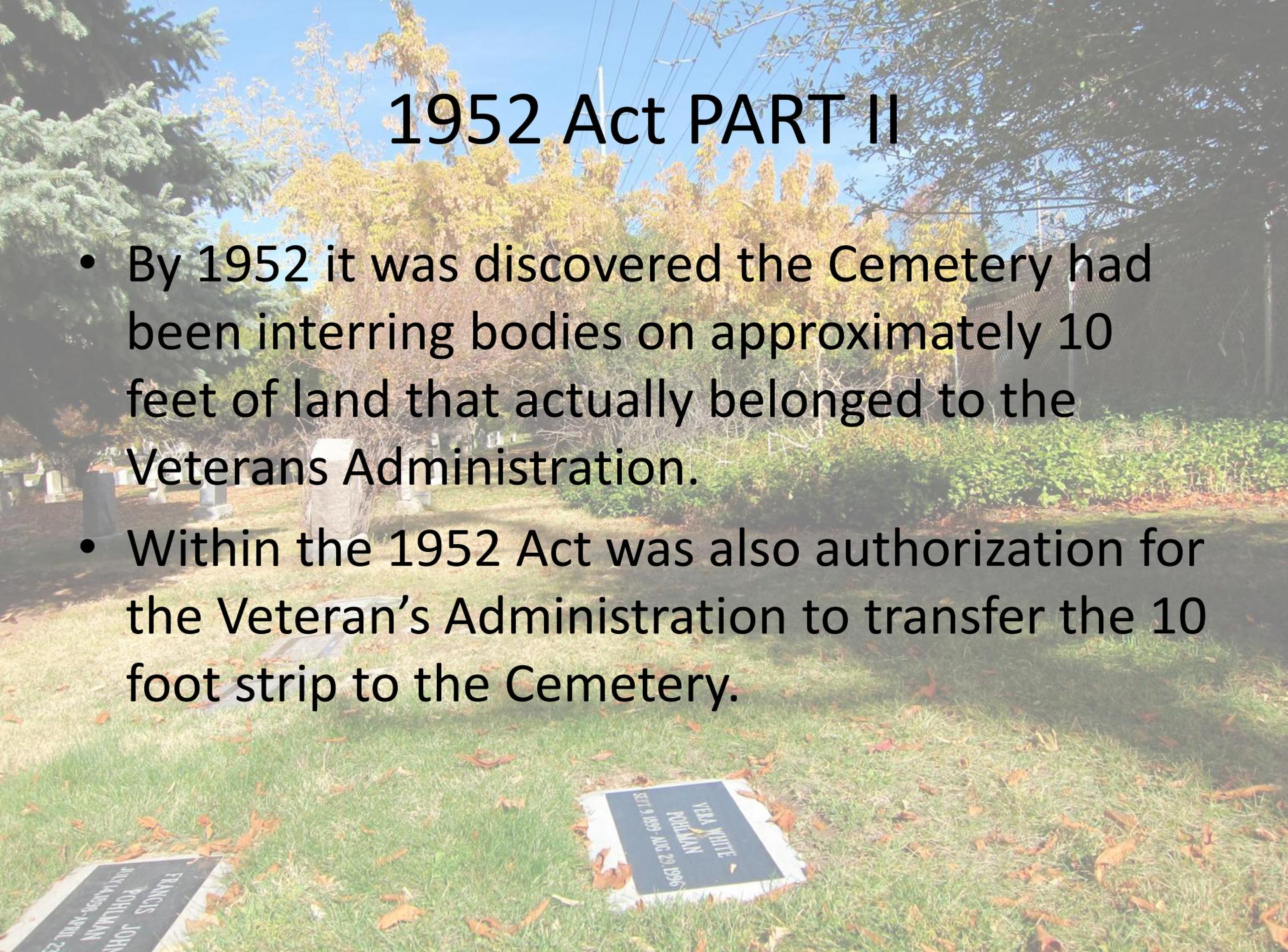
Acts of 1906, 1909, 1952, 1964, and 1993



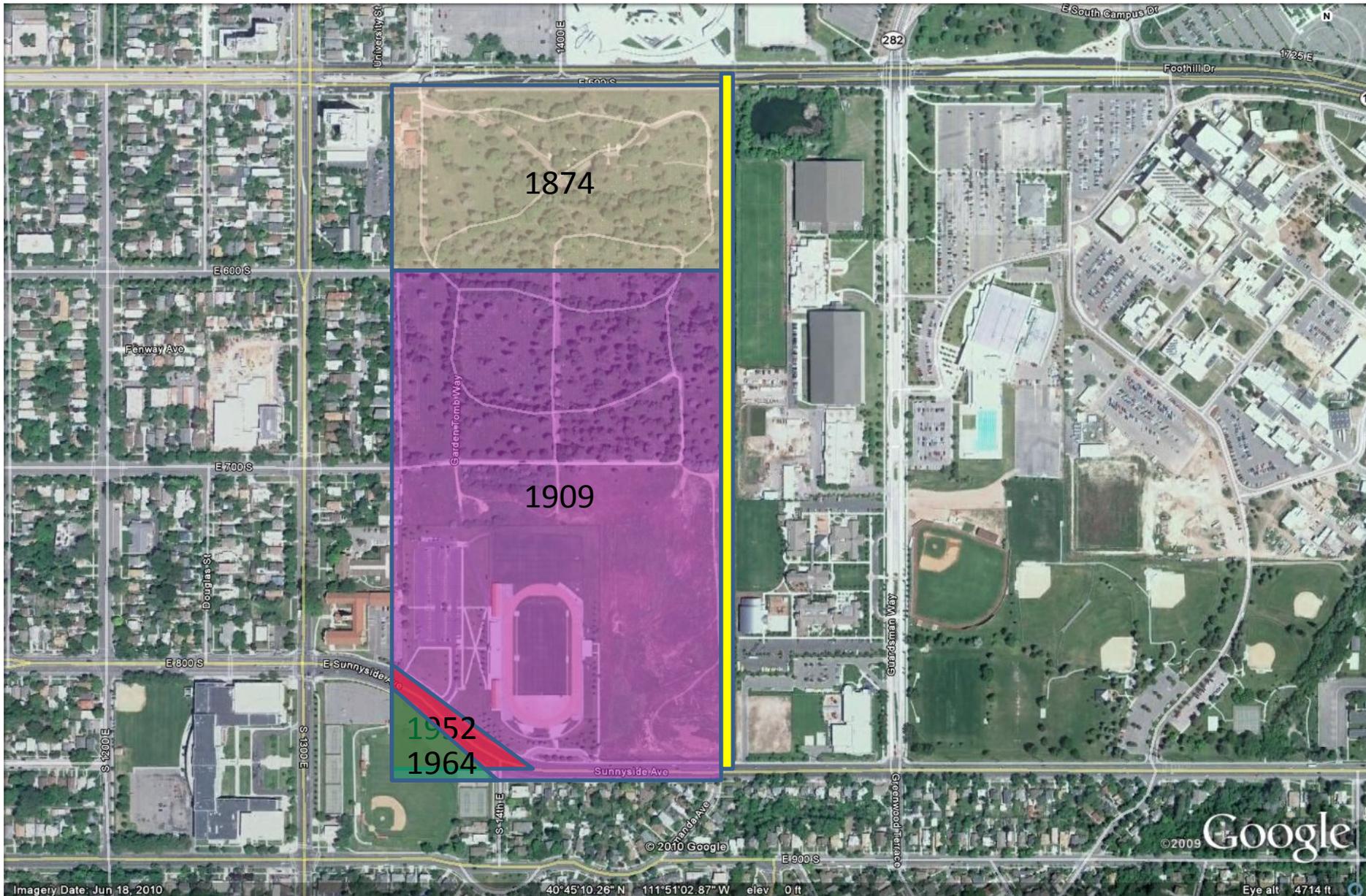
Orig. SW cor.
Military res.

1952 Act PART II

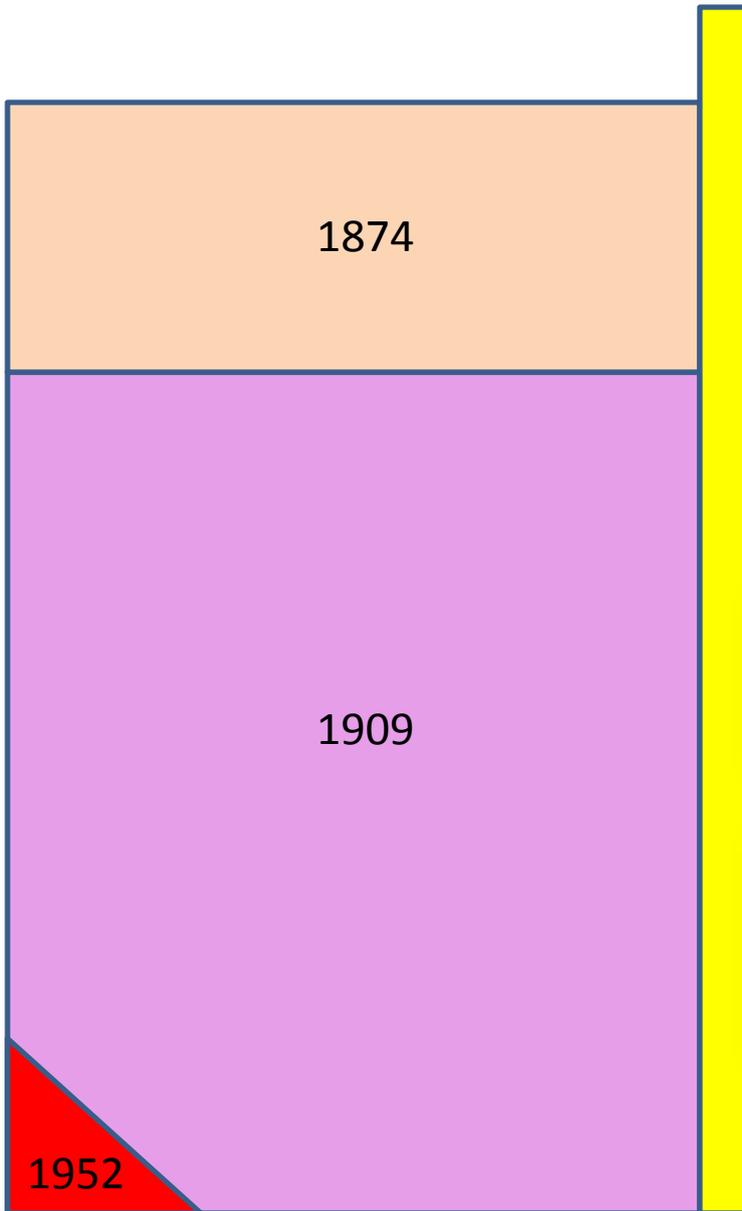
- By 1952 it was discovered the Cemetery had been interring bodies on approximately 10 feet of land that actually belonged to the Veterans Administration.
- Within the 1952 Act was also authorization for the Veteran's Administration to transfer the 10 foot strip to the Cemetery.



1952 – PART II



The Issue:



Administrator of Veterans Affairs
TO
Mount Olivet Cemetery

Deeded
September 18, 1952
10.6' x 2813.65'
0.68 acres

SEC. 2. The deed of conveyance shall provide that the parcel of land so conveyed shall be used only for cemetery purposes and that if the Mount Olivet Cemetery Association ceases to use such parcel for those purposes or attempts to alienate all or any part of such parcel, title thereto shall revert to the United States.

force or effect.

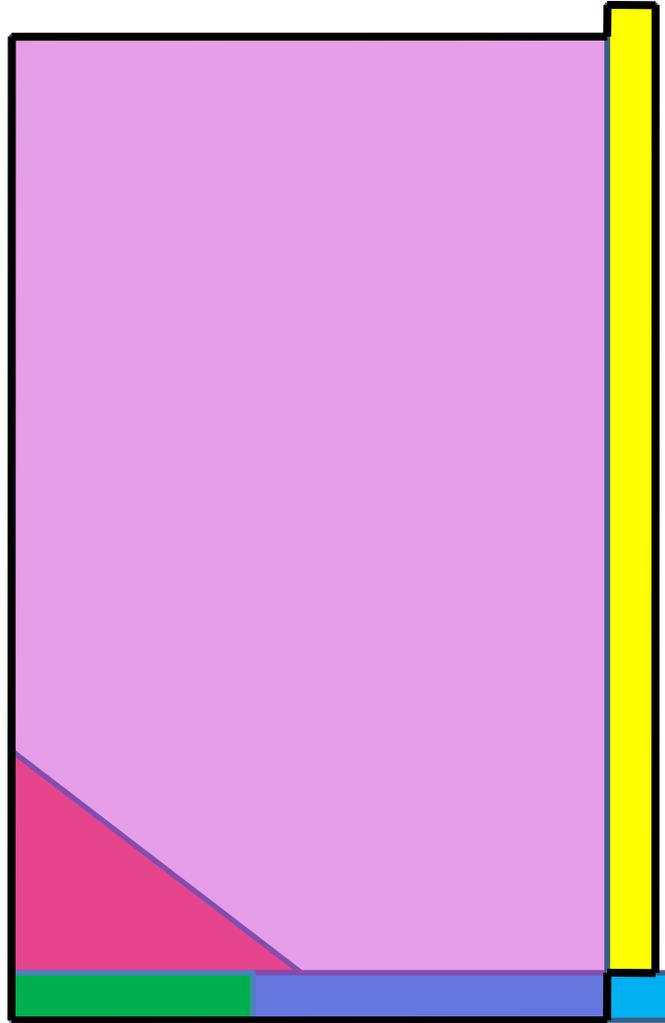
4. The land herein conveyed shall be used only for cemetery purposes.

5. Upon a breach of any of the foregoing conditions or provisions title shall forthwith revert to and revest in the United States.

TO HAVE AND TO HOLD the foregoing described premises, with all the privileges

This parcel of land not part of 1909 Act
but has Reversionary Interest.

Lands to be identified in survey



RESEARCH REVEALED

- 72+ plats, maps, drawings
- 12 Acts of Congress and associated reports
- Sources included: BLM, Utah State Archives, D.O.T., University of Utah, Salt Lake County, City of Salt Lake, Fort Douglas Museum, Mt. Olivet Cemetery, Private Surveyor Records (Recorded and Unrecorded), Internet

