



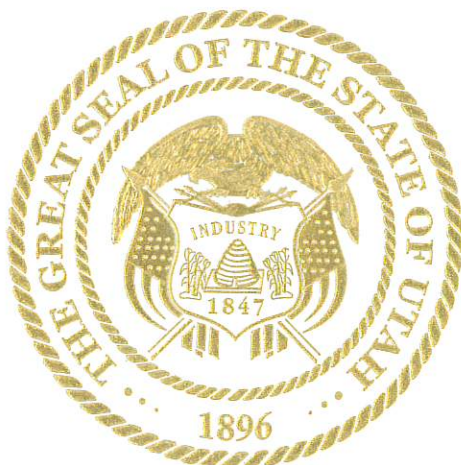
OFFICE OF THE LIEUTENANT GOVERNOR

CERTIFICATE OF CREATION

I, Deidre M. Henderson, Lieutenant Governor of the State of Utah, hereby certify that there has been filed in my office a notice of creation for the KANE SPRINGS IMPROVEMENT DISTRICT, located in GRAND COUNTY, dated OCTOBER 3, 2022, complying with Section §17B-1-215, Utah Code Annotated, 1953, as amended.

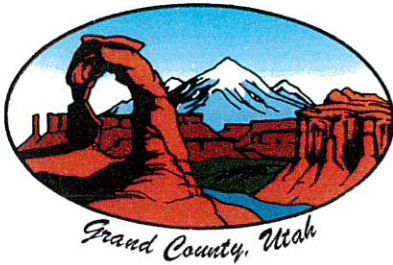
Now, therefore, notice is hereby given to all whom it may concern that the attached is a true and correct copy of the notice of creation, referred to above, on file with the Office of the Lieutenant Governor pertaining to the KANE SPRINGS IMPROVEMENT DISTRICT, located in GRAND COUNTY, State of Utah.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed the Great Seal of the State of Utah this 3rd day of October, 2022 at Salt Lake City, Utah.



A handwritten signature in black ink, reading "Deidre M. Henderson".

DEIDRE M. HENDERSON
Lieutenant Governor



Gabriel Woytek
Grand County Clerk/Auditor
125 East Center Street
Moab, Utah 84532
(435) 259-1322
gwoytek@grandcountyutah.net

September 23, 2022

**NOTICE OF IMPENDING BOUNDARY ACTION –
KANE SPRINGS IMPROVEMENT DISTRICT**

Lieutenant Governor Deidre Henderson
350 North State Street, Suite 220
Salt Lake City, Utah 84114-2325

Honorable Lieutenant Governor Henderson,

In accordance with Utah State Code §17B-1-215, Grand County hereby certifies the Petition to Create Kane Springs Improvement District (the “Petition”), whose proposed boundary is located entirely within Grand County, with this Notice of Impending Boundary Action and copy of the final local entity plat. Pursuant to statute, the Petition is ready for the Lt. Governor to issue a certificate of incorporation to create the Kane Springs Improvement District (the “District”).

After adoption of a resolution by the Grand County Commission on September 6th, 2022 granting approval for the creation of the Kane Springs Improvement District, the Grand County Clerk/Auditor certified the Petition on September 13th, 2022. The election requirement of §17B-1-214(1) does not apply because of §17B-1-214(3)(a).

In response to your letter to the Grand County Commission on September 15th, 2022, the claims of procedural defect made by the Smith Hartvigsen Law Firm are inaccurate or immaterial. The facts are as follows:

1. On May 6, 2022, Kane Creek Preservation and Development, LLC and Kane Springs, LLC (the “Owners”) submitted its Request to Grand County for Sanitary Sewer Service;
2. The Request was submitted by, or on behalf of, the owners of 100% of the private property within the proposed District, and the owners holding 100% of the value of land within the proposed District;
3. There are no known residents of the proposed District;
4. Utah Statute § 17B-1-210 requires a public hearing for the benefit of “residents of the proposed District” to hear public comment on whether the requested service is needed or should be provided by the County;

5. However, Grand County does not provide sanitary sewer service, so the Request and the public hearing were both mere formalities under statute;
6. Grand County posted notice of the public hearing via publication of the Commission Agenda with Public Hearing on its website, on the Utah Public Notice Website, in physical form in the Courthouse - and posted a public notice of public hearing in a newspaper of general circulation (the Times Independent) on April 26 and May 2, which notice is above and beyond that required by Utah Code § 17B-1-211(1) and well in advance of the two-week requirement therein:
 - a. [Public Notices - Times Independent](#);
7. The Notice included both a summary of the Request and purpose of the Public Hearing, a copy of the entire Request, the deadline for making public comment (aka protest) about the proposed District, the approval authority (the Grand County Commission), the date, time, and place for the hearing, and a map of the proposed District boundaries, all as required by Utah Code § 17B-1-211(2); see:
 - a. [Agenda](#);
 - b. [Public Notice of Public Hearing](#);
 - c. [Request for Sanitary Sewer Service](#);
8. On June 7, 2022, the Grand County Commission held a public hearing on the Request, held the public hearing open until June 15, 2022 for public comment (aka protest), and properly announced the same (both on the public notice and at the public hearing);
9. In doing so, Grand County complied with law and policy related to opening and closing public hearings - Utah statute does not mandate a formal vote of the Commission to do either;
10. In addition, the specific requirements of Utah Code § 17B-1-210(5) apply only to public hearings on resolutions;
11. Grand County received no public comment about the Request, before, during, or after the public hearing;
12. No persons are legally entitled to protest the Request since Grand County does not provide sanitary sewer service, there are no known residents of the district, and all owners of real property within the proposed District made the Request;
13. On June 21, 2022, Grand County denied the Request finding that it does not provide sanitary sewer service;
14. Regardless, Utah Code § 17B-1-212 expressly states that if the County fails to act, the Request shall be deemed denied;
15. On June 23, 2022, the Owners submitted their Petition to Create Kane Springs Improvement District ("Petition"), which Petition was supplemented upon request by Grand County on August 9, 2022;
16. On August 2, 2022, the Owners, through their attorney, submitted proposed documents for the County's consideration to "facilitate" the process of finalizing creation of the proposed district, via [letter](#);

17. On September 6, 2022, the Owners, through their attorney, submitted a letter to the County expressing support for a proposed Resolution establishing a Board of Trustees for the District comprised of three Owner agents and two County Commissioners, as set forth as one of two alternatives in the County's agenda posted four days earlier;
18. On September 6, 2022, the Grand County Commission and Clerk certified the Petition as complete and compliant with Utah Code, and the Grand County Commission adopted a Resolution creating the District and appointing the Grand County Commission as the Board of Trustees of the District, pursuant to Utah Code § 17B-2a-404(3)(a)(i);
19. Grand County received no public comment about the Resolution, before, during, or after the public meeting at which it was adopted;
20. Neither the Owners nor their attorney expressed any concern about the public hearing on the Request, or notice of the same, at any time between June 3 and September 6, despite numerous communications with the Clerk and the Commission, including the two express written communications linked above; and
21. The Owners only expressed concern after the County Commission exercised its lawful right to appoint themselves as the Board of Trustees at the time of formation.

Thus, Grand County substantially complied with all public notice and public hearing requirements - and even went above and beyond those requirements by publishing notice of the public hearing far in advance of the two-week requirement in a newspaper of general circulation in the County, which provides actual notice to more County residents than the Utah Public Notice Website.

However, to the extent your office finds the failure to post the public notice on the Utah Public Notice Website for two full weeks is a procedural error, it should be deemed immaterial. Under longstanding Utah law, minor procedural defects that do not cause prejudice are inconsequential and, here, shall not affect the incorporation of the District. *See Bank of America v. Adamson*, 391 P.3d 196 (UT 2017) (citing *Timm v. Dewsnup*, 86 P.3d 699 (UT 2003)). In this instance, there is no prejudice since there are no persons legally entitled to protest the Request; Grand County does not provide sanitary sewer service; Utah law forces a denial of service if there was no public notice, no public hearing, and no action by the County; there are no known residents of the district; and all owners of real property within the proposed District made the Request.

Thus, for the reasons above, the Grand County Clerk/Auditor certifies that all applicable requirements of Title 17B, Chapter 1, Part 2 and Title 17B, Chapter 2a, Part 4 have been met, and the District is entitled to a certification of incorporation from your office.

Thank you for your attention to this matter,



Gabriel Woytek
Grand County Clerk/Auditor

Supporting Documents Included:

1. Petition to Create the Kane Springs Improvement District
2. Public Notice – *Moab Times-Independent*
3. June 7, 2022 Agenda of the Grand County Commission
4. Request for Sanitary Sewer Service
5. August 2, 2022 Letter from Owners
6. September 6, 2022 Letter from Owners
7. Grand County Resolution 3330: Certifying the Petition to Create an Improvement District, Creating the Kane Springs Improvement District, and Appointing the County Legislative Body as the Board of Trustees
8. Certification of the Petition to Create Kane Springs Improvement District
9. Letter from Utah State Retirement Office that identifies the potential provisions that the local entity shall comply with under Title 49, Utah State Retirement and Insurance Benefit Act, per §67-1a-6.5(3)(d)



Utah Retirement Systems

Retirement Office

560 East 200 South | Salt Lake City, UT 84102-2021
801-366-7700 | 800-365-8772 | Fax: 801-366-7734

www.urs.org

Daniel D. Andersen
Executive Director

PEHP Health & Benefits

560 East 200 South | Salt Lake City, UT 84102-2004
801-366-7500 | 800-365-8772 | Fax: 801-366-7596

www.pehp.org

R. Chet Loftis
Managing Director

September 23, 2022

Sent Via Email to: commission@grandcountyutah.net

Kane Springs Improvement District
c/o Gabriel Woytek
Grand County Clerk/Auditor
126 East Center Street
Moab, UT 84532

RE: Eligibility for Participation of a Newly Created Entity in the Utah State Retirement Systems

Dear Mr. Woytek:

When a governmental entity is being incorporated or created, Utah law requires the Utah State Retirement Office ("Office") to provide a letter to that entity identifying the potential provisions under Utah Code Title 49, Utah State Retirement and Insurance Benefit Act ("Retirement Act"), with which it shall comply. See Utah Code Ann. § 67-1a-6.5(3)(d). This letter serves as the official notice for Kane Springs Improvement District, a newly created improvement district.

Based upon the information provided, the Office has determined that Kane Springs Improvement District is an "employer" under the Retirement Act as a political subdivision of the state by virtue of its status as an improvement district. Accordingly, Kane Springs Improvement District must comply with the participation requirements of the Retirement Act.

This does not mean that Kane Springs Improvement District must provide retirement benefits to its employees. However, at the present time and throughout the future, Kane Springs Improvement District is required by law to participate with URS if and when it offers any type of retirement benefit to its employees.

Kane Springs Improvement District may not currently have employees or may have not yet elected to provide a retirement benefit to its employees. Please be aware, it is not the obligation of the Office to monitor the activities of Kane Springs Improvement District. By law, it is Kane Springs Improvement District's obligation to apply for membership with URS if and when it chooses to provide a retirement benefit to its employees.

Once Kane Springs Improvement District begins participation with URS, its public employees will be covered under either the Tier 1 or Tier 2 public employee retirement systems, as described in the Retirement Act. If Kane Springs Improvement District employs public safety or firefighter service employees, those employees will be covered under the separate Tier 1 or Tier 2 systems for public safety and/or firefighter service employees described in the Retirement Act.

In addition, Participating Employers of URS are required by Utah Code Ann. § 49-11-606 to "cover all employees eligible for service credit under this title." As such, once admitted as a participating employer, Kane Springs Improvement District will be required to cover all eligible employees, pursuant to the eligibility rules found in the Retirement Act.

Please note that the above-referenced laws are those used to determine eligibility for participation and are not the only laws with which a participating employer must comply. Participating employers are required to "inform themselves of their rights and obligations" under Title 49 and should become familiar with all provisions of the Retirement Act. Once Kane Springs Improvement District is admitted into the system, URS provides education about the requirements with which Kane Springs Improvement District must comply as a participating employer.

Additionally, please be aware that should Kane Springs Improvement District fail to participate with URS while offering another retirement benefit to its employees, Kane Springs Improvement District's employees may have a claim against it for service credit under the Retirement Act, which the Office is required to enforce. Under the Retirement Act, such a claim would include all past employer contributions, interest, and in some cases, penalties. See Utah Code Ann. § 49-11-601(3).

Please do not hesitate to contact me if you have any questions.

Sincerely,

/s/ Daniel D. Andersen

Daniel D. Andersen
Executive Director
Utah State Retirement Office

cc: Dee Larsen, URS General Counsel
James D. Hammer, URS Employer Services Director

**GRAND COUNTY, UTAH
RESOLUTION NO. 3330 (2022)**

**CERTIFYING THE PETITION TO CREATE AN IMPROVEMENT DISTRICT,
CREATING THE KANE SPRINGS IMPROVEMENT DISTRICT, AND
APPOINTING THE COUNTY LEGISLATIVE BODY AS THE BOARD OF
TRUSTEES**

WHEREAS, Utah law, at Title 17B, Chapter 1 (Provisions Applicable to All Local Districts) and the Utah Improvement District Act, codified at Utah Code §§ 17B-2a-401 *et seq.*, allows property owners to create a local district to finance the construction, maintenance and operation of improvements, including sewer, water, and stormwater drainage systems and rights-of-way, required to serve development where the county refuses or otherwise fails to provide such services;

WHEREAS, Utah Code § 17B-2a-404(3)(a)(i) provides that the legislative body of a county whose unincorporated area is partly or completely within a county district¹ may elect, at the time of the creation of the district, to be the board of trustees of the district even though a member of the legislative body of the county may not meet the requirements of Section 17B-1-302(1);

WHEREAS, Utah Code § 17B-2a-905(1)(a)(i)(A) provides that the board of trustees of a service area located entirely within the unincorporated area of a single county may, as stated in the resolution that initiated the process of creating the service area, consist of the county legislative body;

WHEREAS, Utah Code § 17B-1-209(2)(a), requires the Grand County Clerk certify whether the petition complies with the requirements of Subsection 17B-1-203 no later than 35 days after the day on which a petition is filed;

WHEREAS, on May 6, 2022, Kane Creek Preservation and Development, LLC submitted its Request to Grand County for Sanitary Sewer Service;

WHEREAS, on June 21, 2022, after public hearing, the Grand County Commission ("County Commission") declined to provide service proposed to be provided by Kane Springs Improvement District ("Proposed District");

WHEREAS, on June 23, 2022, Kane Creek Preservation and Development, LLC and Kane Springs, LLC (together, the "Applicants") submitted their Petition to Create Kane Springs Improvement District ("Petition"), including signatures from owners of 100% of the land area

¹ Utah Code § 17B-2a-404(1)(a) defines "county district" as "an improvement district that does not include within its boundaries any territory of a municipality."

and value within the proposed boundaries of the Proposed District, which Petition was supplemented upon request by Grand County with proof of signatory authority pursuant to Utah Code § 17B-1-203(1)(a) and 209(3)(a)(ii)(B) on August 9, 2022;

WHEREAS, no election is required for creation of the Kane Springs Improvement District pursuant to Utah Code § 17B-1-214;

WHEREAS, once created, the Kane Springs Improvement District will be a separate legal entity that Grand County is not financially obligated to support; and

WHEREAS, the County Commission has considered the petition and supporting documents in a public meeting on September 6, 2022.

NOW, THEREFORE, BE IT RESOLVED by the Grand County Commission, as follows:

1. The Grand County Clerk hereby certifies that the Petition to Create Kane Springs Improvement District, dated June 23, 2022, as supplemented on August 9, 2022, complies with the requirements of Utah Code § 17B-1-203(1)(a);
2. The “Kane Springs Improvement District” is hereby created and so named;
3. The Kane Springs Improvement District’s initial service area is depicted and described in **Exhibit A**;
4. In compliance with local and state law, the Kane Springs Improvement District shall provide sanitary sewer collection and treatment service and may provide culinary water service and construction and maintenance of rights of way within its service area;
5. The Kane Springs Improvement District (hereinafter the “District”) shall be governed by the legislative body of Grand County;
6. The District’s status, powers, and duties are as follows:
 - a. The District is a political subdivision of the state, separate and distinct from Grand County.
 - b. The District shall have all power and authority allowed by Title 17B, Chapter 1 (Provisions Applicable to All Local Districts) and the Utah Improvement District Act.
 - c. The District alone shall be responsible for all of the services undertaken by the District, without any recourse to Grand County or other local government entities.
 - d. Notwithstanding the foregoing, the District, acting in its sole discretion, may at times cooperate with other local government entities and enter into contracts to carry out district functions as allowed by Utah Code § 17B-1-103(2) and to perform projects through Interlocal Agreements pursuant to Utah Code § 11-13-101 *et seq.*

- e. If the District uses an officer, employee, property, equipment, office, or facility of Grand County, the District shall reimburse Grand County a reasonable amount for such use subject to Utah Code § 17B-1-103(2) and (3).
 - f. The District shall avoid any action that could jeopardize the perceived independence of the District from the County or other local government entities.
1. The Grand County Surveyor is hereby directed to review the final local entity plat included in **Exhibit A**, pursuant to Utah Code § 17-23-20 and determine whether it complies with final local entity plat requirements set forth therein; and
 7. The Grand County Clerk is hereby directed to submit a notice of impending boundary action, as defined in Utah Code § 67-1a-6.5, to the Lt. Governor no later than ten days following adoption of this Resolution, including the approved final local entity plat.

ADOPTED by the Grand County Commission in open session of a public meeting this 6th day of September 2022 by the following vote:

Those voting aye: Kovash, Hadler, Hedin, McGann, Stock

Those voting nay:

Those absent: Clapper

Grand County Commission



Jacques Hadler, Chair

ATTEST:



Gabriel Woytek, Clerk/Auditor

Exhibit A

*Proposed Local Entity Plat including:
Legal Description and Depiction of Proposed Service Area*



88 E Center Street
Moab, UT 84532
435.259.8171

STANDARD LEGEND

PROJECT TYPE:
LOCAL ENTITY BOUNDARY

PROJECT ADDRESS:
KANE CREEK BLVD, MOAB,

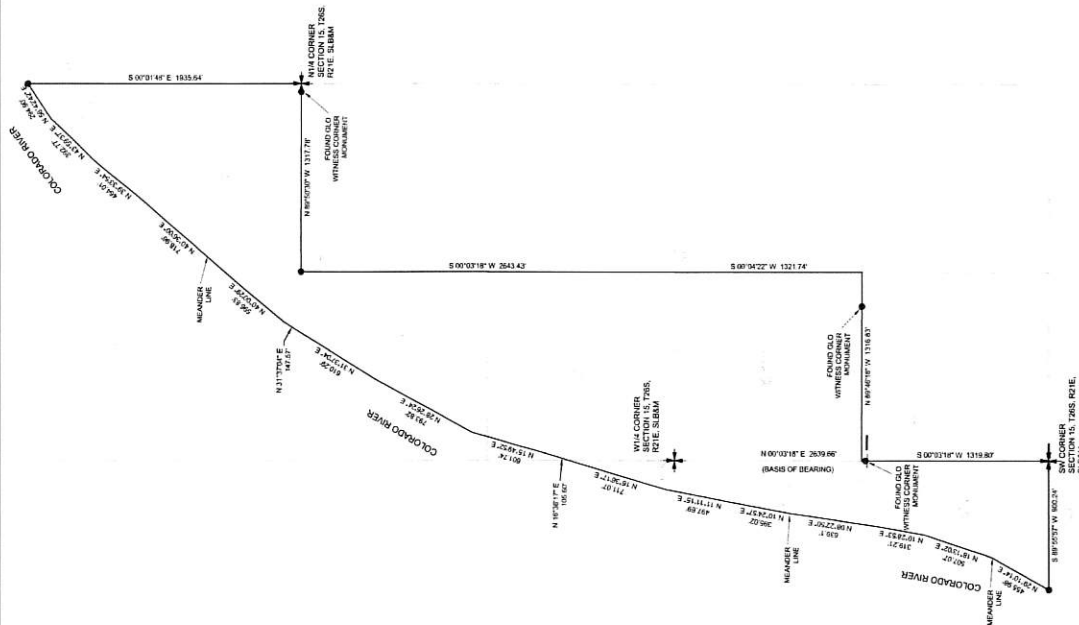
PROJECT LOCATION:

PREPARED FOR:

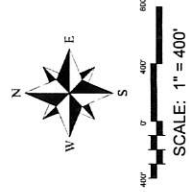
CONCLUSIONS

DATE 9/6/22

JOB NUMBER: 191-72



FINAL LOCAL ENTITY PLAT
KANE SPRINGS IMPROVEMENT DISTRICT
GRAND COUNTY, UTAH
LOCATED IN SECTIONS 10, 15, & 16, T26S, R21E, S16&M



SURVEYOR'S CERTIFICATION

I, Lucas Blake, do hereby certify that I am a Professional Land Surveyor, and that I hold License No. 7540504, in accordance with Title 58, Chapter 22, of the Professional Engineers and Land Surveyors Act. Further, I certify that by authority of the owners I have compiled a survey of the property described on this Local Entity Plat as Kane Springs Improvement District. In accordance with Section 17-23-20, have verified all measurements and monumented corners as shown on said plat.



Lucas Blake

BOUNDARY LEGAL DESCRIPTION

[illegible]

SURVEYOR NOTES

IS NORTH 00°03'18" EAST BETWEEN

THE INTENT OF THE SURVEY IS CREATE A BOUNDARY OF THE KANE SPRINGS IMPROVMENT DISTRICT
REFERENCED AND LOCATED MONUMENTS OF BLM SURVEY PLAT DATED FEBRUARY 7, 2012.

APPROVAL AND ACCEPTANCE BY GRAND COUNTY COMMISSION

ON THIS 27 DAY OF September, 2022.

[Signature]

COUNTY SURVEYOR CERTIFICATE OF APPROVAL

APPROVED BY THE GRAND COUNTY SURVEYOR THIS

DAY	DAY OF	MONTH	YEAR
27	DAY OF	September	2021

12



100

COUNTY RECORDER

STATE OF UTAH, GRAND COUNTY, RECORDED AT THE REQUEST OF

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COUNTY ALABAMA