



**December 14, 2015**

Agenda of the Kane County  
Board of Commissioners' Regular Session  
in the Kane County Commission Chambers  
76 North Main, Kanab, Utah

The Commission meeting will begin at **10:00 am**

CALL MEETING TO ORDER:

PRAYER:

PLEDGE OF ALLEGIANCE:

WELCOME:

Approve the Consent Agenda:

Check Edit Reports

Approval of Commission Meeting Minutes November 9, 2015 and November 16, 2015

**10:00 am**

**REGULAR SESSION:**

- 1 Extra Miler Award /Commissioner Jim Matson
- 2 Press Release /Commissioner Doug Heaton
- 3 Planning & Zoning: Zone Change Request R-1 to R-2; Parcel #6-148 (all of lot 148, Vermillion Cliffs Estates)/ LUA Shannon McBride
- 4 Public Hearing: Regarding 2016 Kane County Budget
- 5 Public Hearing: Regarding 2015 Budget Opening
- 6 Resolution R-2015-23, Kane County Budget /Clerk/Auditor Karla Johnson
- 7 Resolution R-2015-24, Budget Opening/Clerk/Auditor Karla Johnson
- 8 Ordinance O-2015-9, Changes to 9-21B-4 (B); Building permits/Attorney Rob VanDyke
- 9 Public Defender Contract And Administration Process /Clerk Karla Johnson & Attorney Rob Van Dyke
- 10 Capital Improvement List Updates/ Clerk Karla Johnson
- 11 2016 Commission Meeting Schedule/ Clerk Karla Johnson
- 12 Adopt Kane County Zoning Map (revised)/ LUA Shannon McBride
- 13 Lot Joinder; Douglas & Darlene Crowe, Elk Ridge Estates, Unit 1, Lots 23&24, and vacate a utility easement/LUA Shannon McBride
- 14 Revise Kane County Resource Management Plan: Adopt "Glen Canyon Region" in Section Two: Regional Resources/LUA Shannon McBride
- 15 Amending the Development Agreement for Canyon Land Resort, parcel # 187-05-3/ LUA Shannon McBride
- 16 Re-Conveyance of Lots 3 & 4, of Bryce Summit Subdivision; Wayne Schwalback, Good Earth Development, LLC/ LUA Shannon McBride

**Other Business:**

- Reports
- Schedules
- Assignments

**Closed Session:**

- Discussing an individual's character, professional competence, or physical or mental health.
- Strategy sessions to discuss collective bargaining, pending or reasonably imminent litigation, or the purchase, exchange lease or sale of real property.
- Discussions regarding security personnel, devices or systems.
- Investigative proceedings regarding allegations of criminal misconduct.

**NOTICE OF SPECIAL ACCOMMODATION DURING PUBLIC MEETINGS:**

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this meeting should notify Karla Johnson at (435) 644-2458 or Keiren Chatterley at (435) 644-4959.

Agenda items may be accelerated or taken out of order without notice as the Administration deems appropriate.

MINUTES  
OF THE KANE COUNTY  
BOARD OF COMMISSIONERS' MEETING  
**November 9, 2015**  
IN THE KANE COUNTY COMMISSION CHAMBERS,  
76 NORTH MAIN, KANAB, UTAH

The items listed under Consent Agenda will be considered as a group and acted upon by one motion with no separate discussion of said items, unless the Commission so requests. In that event, the item will be removed from the Consent Agenda for separate discussion. The Commission meeting will begin at **10:00 am**

**Present:** Commissioner Douglas K Heaton, Commissioner Jim Matson, Commissioner Dirk Clayson, Clerk/Auditor Karla Johnson, Attorney Rob VanDyke, Chief Deputy Clerk Keiren Chatterley, Deputy Clerk Linda Millett, and SUNews Reporter Carol Sullivan.

**Also Present:** HR Rhonda Gant, C&S Craig Hansen, LUA Shannon McBride, District Court Clerk Holly Ramsay, TC Ken Gotzen-Berg, and GIS Lou Pratt

CALL MEETING TO ORDER: Commissioner Douglas K Heaton

PRAYER: Commissioner Jim Matson

PLEDGE OF ALLEGIANCE: Commissioner Douglas K Heaton

WELCOME: Commissioner Douglas K Heaton

CITIZEN PUBLIC INPUT: None

**10:00 AM      Regular Meeting:**

Approve the Consent Agenda:

Check Edit Reports

Approval of Sept. 21, 2015 Commission Mtg. Minutes, October 26, 2015  
Commission Mtg. Minutes

**Motion** to Approve the Consent Agenda was made by Commissioner Matson, and the Motion carries with all Commissioners present voting in favor.

**10:15 AM      PUBLIC HEARING:**

**Motion** to enter Public Hearing was made by Commissioner Clayson

**Consider the Vacation or Abandonment of Kane County Roads as follows: K2860, in full, K2865, in full, and K2855 from the point of beginning in SW ¼ of the NE1/4 of T41S, R7W, sec 23 continuing to the point into the SW corner of the NE1/4 of T41S, R7W Sec 26 where abandonment will terminate. As per UCA 72-3-108.**

GIS Lou Pratt addressed the Commission with a consideration to Vacate or Abandon the following Kane County Roads: K2860, in full, K2865, in

full, and K2855 from the point of beginning in SW ¼ of the NE1/4 of T41S, R7W, sec 23 continuing to the point into the SW corner of the NE1/4 of T41S, R7W Sec 26 where abandonment will terminate. As per UCA 72-3-108. He pointed out the roads on a map. A private land owner has requested closing of roads that go across his land, and has locked gates to keep people off of these roads. This area is mostly located on the Glendale Bench area. New roads have been established and opened, and signage provided, to give access to public lands in the area.

**Motion** to exit Public Comment was made by Commissioner Clayson,

**Motion** to Vacate/Abandon roads K2860, in full, K2865, in full, and K2855 from the point of beginning in SW ¼ of the NE1/4 of T41S, R7W, sec 23 continuing to the point into the SW corner of the NE1/4 of T41S, R7W Sec 26 where abandonment will terminate. As per UCA 72-3-108, as shown on the map, was made by Commissioner Clayson. The **Motion** carries with all Commissioners present voting in favor.

Attorney VanDyke suggested that this Vacation/ Abandonment of Roads be recognized and passed as an Ordinance at the next Commission Meeting. All were in Agreement.

**10:30 AM:**

**Visitor Use /Concessions at Zion Natl. Park / Zion Superintendant  
Jeff Bradybough & Jack Burns**

Zion National Park Superintendant Jeff Bradybough & Jack Burns reported on the Visitor Use and Concessions. At a Collaboration Clinic in August they reported on visitation & growth. Waiting lines are up to 45 minutes to an hour for services. Mutual calls, fire calls, EMS & SAR calls are up over 40%. This year has the highest wilderness permits on record. Between 2010-2014, visitation at Zion National Park went up by one half million. Visitation is up almost that much this year alone, and an extended season was required to open 3 weeks earlier and stay open 2 weeks later, through Thanksgiving, to accommodate visitors' to the park. Park officials see the need for a pro-active visitor use management plan for the future. This needs to address the understanding of visitor capacity issues such as: guest parking, road congestion, heavy trail usage, trampling of vegetation and soils, the accommodation of increased guest numbers in concession areas, and other concerns. A visitor use task force will be used to identify issues & actions, and mitigate issues. One goal is to assist the visitors expectations through signage, video on website and local hotels, and trip planning ideas and advice. This study will begin in 2016. It will come at some expense, but it will be worth it for reaching the goal to promote, conserve and serve Zion National Park and it's visitors.

## **District Court Retirement - Holly Ramsay Retirement & Sick Leave**

Commissioner Jim Matson presented the District Court Retirement of Holly Ramsay. Commissioner Clayson explained the court services which have been performed in the past through a contract with Kane County. Over time, it has evolved to where the services are no longer profitable for the county. District Court has been asked to take over and fulfill the court's duties in the secured south end of the building, near the 6<sup>th</sup> District Courtroom. There will be 5 offices there including the court clerk's office and a consultation room for the attorneys. Sixth District Court will continue with a contract for space, but not for labor. Holly's duties will transition into the Court Clerk Position. HR Rhonda Gant explained the acquired sick leave and retirement benefits which Ms Ramsay has accrued over her years of employment with Kane County. To receive these benefits, she is required to retire with the county. December 1, 2015 will be the Court Primary date. Holly has already been hired by the Sixth District Court.

**Motion** to Approve the District Court Retirement of Holly Ramsay was made by Commissioner Matson. A one-time benefit payout to Ms Ramsay will be given, as she is only retiring from the county. She will receive a payout of 25% of her accrued sick leave. HR will process the payout on her last paycheck for the county. She will receive a payout of her retirement, with her choice for type of distribution. The Motion carries with all Commissioners present voting in favor.

### **Legislative Action**

#### **Approve Rural Unimproved Subdivision Lazy J Ranch: Ken Hardison, Parcel #3-4.5-31-1**

LUA Shannon McBride presented the RUSD of the Lazy J Ranch: Ken Hardison, Parcel #3-4.5-31-1 for Commission Approval. He got an easement from the /BLM for access on his property. Everything has been cleared for the project.

**Motion** to Approve the Rural Unimproved Subdivision Lazy J Ranch: Ken Hardison, Parcel #3-4.5-31-1 was made by Commissioner Heaton, and the Motion carries with Commissioners Matson and Heaton voting in favor. Commissioner Clayson abstaining due to possible conflict of interest.

### **Legislative Action**

#### **Approve Rural Unimproved Subdivision: Verla Troy, Eugene Hepworth, & Laurel Gourdin, Parcel #8-6-35-4**

LUA Shannon McBride presented the RUSD: Verla Troy, Eugene Hepworth, & Laurel Gourdin, Parcel #8-6-35-4 for Approval. This is a family property, desiring separation.

**Motion** to Approve the Rural Unimproved Subdivision: Verla Troy, Eugene Hepworth, & Laurel Gourdin, Parcel #8-6-35-4 was made by Commissioner Clayson, and the Motion carries with all Commissioners present voting in favor.

**Other Business:**

\* Commissioner Heaton reported on a UACD presentation he made last Thursday, and the Freedom Festival recently in Cedar City. The Freedom Festival was attended by approx 150 for seminars, and the concert had a couple of thousand attendees. Both were successful. Commissioner Clayson is working on a letter of support to Garkane for updating transmission lines.

Commissioner Matson announced a requested meeting for Bryce Canyon water rights control with James Greer.

Commissioner Heaton reported on the Forest Service plans for multiple use on forest lands.

\* Schedules and assignments were coordinated.

**12:00 PM Closed Session**

**Motion to enter Closed Session was made by Commissioner Clayson.**

- a. Strategy sessions to discuss collective bargaining, pending or reasonably imminent litigation, or the purchase, exchange lease or sale of real property.

WHEREUPON MEETING ADJOURNED

---

Commission Chairman Douglas K Heaton

---

Clerk/Auditor Karla Johnson



**November 16, 2015**

Minutes of the Kane County Board of  
Commissioners' Work Meeting  
& Regular Session in the  
Kane County Commission Chambers  
76 North Main, Kanab, Utah

The Commission meeting will begin at **10:00 am**

Present: Commissioner Douglas K Heaton, Commissioner Jim Matson, Commissioner Dirk Clayson, Clerk/Auditor Karla Johnson, Attorney Rob VanDyke, Chief Deputy Clerk Keiren Chatterley, Deputy Clerk Linda Millett

Also Present: Sheriff Tracy Glover, Fire Warden Earl Levanger, TC Ken Gotzen-berg, HR Rhonda Gant, GIS Lou Pratt, and C&S Craig Hansen.

CALL MEETING TO ORDER: Commissioner Douglas K Heaton

PRAYER: Commissioner Douglas K Heaton

PLEDGE OF ALLEGIANCE: Commissioner Jim Matson

WELCOME: Commissioner Douglas K Heaton

PUBLIC COMMENT: None

## **WORK AGENDA**

**10:00 am**

### **ITEMS FOR DISCUSSION:**

#### **Catastrophic Wildfire Report**

Fire Warden Earl Levanger reported on current projects being done such as the Mulch Fest and cleanup on Demo Lots. He is looking to finish work in Bryce Woodlands, and move on to other areas of the county. They will begin removal of red cedar and mow the grasses and brush in selected areas. They will leave the aesthetics, but remove the fire hazards. The goal is to educate the land owners on prevention and preparedness for wildfire. This program is called 'ready, set, go!' The program will be funded by the State Catastrophic Wildfire monies, if they meet certain criteria. A discussion ensued. Sheriff Glover joined those at the table to discuss the need to use some of the Sheriff Department equipment for fighting fires, if needed.

### **Contract – Law Enforcement with Orderville**

Sheriff Tracy Glover reported on a Contract for Law Enforcement provided by Kane County and Orderville. The cost for this service has gone up, but will be partly funded by revenue through their Justice Court. A discussion ensued.

### **Contract – Law Enforcement with Glendale**

Sheriff Tracy Glover presented the Contract for Law Enforcement with Glendale. Discussions have been held, and an agreement has been reached for these services. A discussion ensued.

### **MOU- Kane County & Garkane Power for transfer of a Bucket Truck**

Sheriff Tracy Glover reported on the transfer of a bucket truck from Garkane Power to Kane County. The need for a policy for operators, and a restricted list of operators was discussed. Garkane will do some training on the use of the truck. Roads Dept. Bert Harris will oversee the use and upkeep of the truck. A discussion ensued. TC Ken Gotzen-berg will coordinate with Raymond Chavez to arrange for the training of operators. Insurance coverage and requirements will be looked into. A discussion ensued.

### **MOU- Kane County & Washington County for the Purpose of Screening Hub for Inmates at Booking Under JRI**

Sheriff Tracy Glover reviewed the new JRI process, which will screen those people booked into the county jail. An agreement will create a hub with other counties to decide on treatment, monitoring, and rehabilitation of these offenders. Washington County and Kane County will work together on the JRI process. Attorney VanDyke has some concerns with this process. There is some funding available to cover some, but not all, of the costs for this program. A discussion ensued. Sheriff Glover recommends the signing of this MOU.

**Commissioner Heaton presented a Proposed Agreement/Ordinance by a Kane County group of citizens, requesting approval for night hunting with a Spotlight for Coyote control.**

Sheriff Glover and the Commission expressed the need for a revision of the Ordinance. Commissioner Heaton asked for review of the proposed Ordinance by Attorney VanDyke and Sheriff Glover. A discussion ensued.

### **Kane County Courthouse Remodel**

Commissioner Dirk Clayson stated that the Kane County Courthouse remodel construction will begin next week.

### **MOU Kane County & US Forest Service**

Commissioner Jim Matson asked for a continuance on this item

### **Other Business:**

- Reports-Clerk/Auditor Karla Johnson requested that two of the Kane County Commissioners attend the Election Canvas at 10 am on Tuesday, Nov. 17<sup>th</sup>.

### **REGULAR SESSION:** (Immediately Following Work Meeting)

#### **Approve Contract – Law Enforcement with Orderville**

Sheriff Tracy Glover presented the Contract for Law Enforcement with Orderville, for Approval by the Commission. This item was previously discussed.

**Motion** to Approve the Contract for Law Enforcement with Orderville Town was made by Commissioner Clayson, and the Motion carries with all Commissioners present voting in favor.

#### **Approve Contract – Law Enforcement with Glendale**

Sheriff Tracy Glover presented the Contract for Law Enforcement with Glendale, Utah which was previously discussed.

**Motion** to Approve the Contract for Law Enforcement with Glendale was made by Commissioner Clayson, and the Motion carries with all Commissioners present voting in favor.

**Approve MOU- Kane County & Garkane Power for transfer of a Bucket Truck**

Sheriff Tracy Glover asked for Approval of the MOU between Kane County and Garkane Power for transfer of a bucket truck.

**Motion** to Approve the MOU between Kane County and Garkane Power for transfer of a bucket truck was made by Commissioner Clayson, with a thank you letter being sent to Garkane for this donation. The Motion carries with all Commissioners present voting in favor.

**Approve MOU- Kane County & Washington County for the Purpose of a Screening Hub for Inmates at Booking Under JRI**

Sheriff Tracy Glover presented the MOU between Kane County & Washington County for the Purpose of a Screening Hub for Inmates at Booking Under JRI for approval by the Commission.

**Motion** to Approve the MOU between Kane County & Washington County for the Purpose of a Screening Hub for Inmates at Booking Under JRI was made by Commissioner Clayson. The Motion carries with all Commissioners present voting in favor.

**A Closed Session was not needed at this time.**

**Whereupon Meeting Adjourned**

---

Commission Chairman Douglas K Heaton

---

Clerk/Auditor Karla Johnson

KANE COUNTY COMMISSION AGENDA REQUEST:

Regular or Work Meeting

Date of Commission Meeting Requested: 12-14-15

Dept. /Business Name: Commission

Topic/Re: Extra Miler Award

Dept. Head/Owner: Tim Matson

Meeting Requested by: " "

Contact name & #: \_\_\_\_\_

Notes: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

KANE COUNTY COMMISSION AGENDA REQUEST:

Regular or Work Meeting

Date of Commission Meeting Requested: 12-14-15

Dept. /Business Name: Commission

Topic/Re: Press Release

Dept. Head/Owner: Commissioner Heaton

Meeting Requested by: " "

Contact name & #: \_\_\_\_\_

Notes: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

KANE COUNTY COMMISSION AGENDA REQUEST:

Regular or Work Meeting

Date of Commission Meeting Requested: Dec. 14, 2015

Dept. /Business Name: Planning & Zoning,  
Land Use Authority

Topic/Re: Zone change request; R-1 to R-2; parcel # 6-148  
(Legal: All of Lot 14A Vermillion Cliffs Estate)

Dept. Head/Owner: Shannon McBride

Meeting Requested by: Shannon McBride

Contact name & #: shannon 644-4966 or Mary 4951

Notes: See app & map attached.

Fee: 250<sup>00</sup>  
Paid: 15028 *Sm*

NOV 23 2015

REQUEST FOR ZONE CHANGE

Owner Name: JAMES Legler Date: 11/6/15  
Address: 4925 E Grande Vermillion Ave Phone: 928 713 0187  
City: Canterbury State: UT Zip: 84741

LOCATION AND LEGAL DESCRIPTION AND PARCEL # OF SUBJECT PROPERTY:

6-143  
Legal: All of Lot 178 Vermillion Cliff Estates

Current Zone: R-1  
Proposed Zone: R-2

INTENDED USE AND REASON FOR ZONE CHANGE: I own 2.4 acres of land and would like to utilize it to my fullest ability to include raising horses, mules, and hounds.

I (we) certify that the proposed Zone Change will conform to the Kane County Zoning Ordinance and that no changes will be made without prior approval.

Signature of owner or authorized Representative: 

PLANNING COMMISSION ACTION: APPROVE \_\_\_\_\_ DENY \_\_\_\_\_

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PLANNING COMMISSION CHAIRMAN \_\_\_\_\_ Date \_\_\_\_\_

Fee: 250<sup>00</sup>  
Paid: 15028 *Sum*

NOV 23 2015

REQUEST FOR ZONE CHANGE

Owner Name: Traut Legler Date: 11/6/15  
Address: 4925 E Grande Vermillion Ave Phone: 928 713 0187  
City: Kanab State: UT Zip: 84741

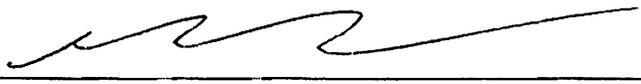
LOCATION AND LEGAL DESCRIPTION AND PARCEL # OF SUBJECT PROPERTY:

6-148  
Legal: All of Lot 1-18 Vermillion Cliff Estates

Current Zone: R-1  
Proposed Zone: R-2

INTENDED USE AND REASON FOR ZONE CHANGE: I own 2.4 acres of land and would like to utilize it to my fullest ability to include raising horses, mules, and hounds.

I (we) certify that the proposed Zone Change will conform to the Kane County Zoning Ordinance and that no changes will be made without prior approval.

Signature of owner or authorized Representative: 

PLANNING COMMISSION ACTION: APPROVE \_\_\_\_\_ DENY \_\_\_\_\_

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PLANNING COMMISSION CHAIRMAN \_\_\_\_\_ Date \_\_\_\_\_

Google Maps



Imagery ©2015 Google, Map data ©2015 Google 200 ft



## Land Use Authority

180 West 300 North  
Kanab, Utah 84741  
(435) 644-4966 or 644-4951  
Fax (435) 644-4963  
smcbride@kane.utah.gov

### Zone Change Staff Report

December 04, 2015

An application for a Zone Change request from Residential-1 to Residential- 2 has been submitted by property owner, Travis Legler, parcel #6-148 consisting of 2.4 acres, 4925 E. Grande Vermillion Ave, Vermillion Cliffs, Kane County, Utah. He owns and operates a hunting guide business consisting of 14 hound dogs at the time of my site visit.

**FINDINGS:** Kane County Land Use Ordinance, Residential Zones, Title 9-6A-(F) and 9-6A-6, states all permitted and conditional uses (Uses Table). The different permitted and conditional uses can be found and compared through this table. The parcel (6-148) is currently zoned R-1. Mr. Legler is requesting Residential-2 zoning. The uses in the Residential 2 zone are less restrictive pertaining to house hold pets in the amount of usage. The number of allowed house hold pets is (6) on R-1 and goes up to (12) animals on R-2.

Notices were mailed and all Utah State Code requirements have been met as found in §17-27a-205, §17-27a-206 and §17-27a-501, §17-27a-502 and 503. A sign was posted to passers-by. The notice was posted in three public places, the State and County web-sites and published in the local paper.

This is a corner lot surrounded by both Commercial and Residential zones. This would not be a spot zone change, due to the fact that 5 other lots in Vermillion Cliffs have R-2 zoning and the lot is over 2 acres. I have never received any complaints on this property until a few weeks ago. At such time I red-tagged Mr. Legler on November 16, 2015 for too many animals on his property. That very same day he came in my office and filled out a compliance report. Mr. Legler had been told by the Sheriff's department that the County did not have an animal limit. I showed him Chapter 6 and let him know the regulations. There are two letters attached against the zone change with noise complaints. I had one neighbor call and wanted to remain anonymous but was in favor of the zone change because she wanted the dogs to have a good home. I had one email that did not say either way. As Kane County Planning Administrator, after reviewing the local ordinance and state code and not finding any problems while walking to the door and hearing no barking I am recommending the zone change.

**The zone change must be recommended to the KC Commissioners for final approval (§17-27a-503).**

KANE COUNTY

Resolution R-2015-23

A RESOLUTION ADOPTING THE 2016 FISCAL YEAR COUNTY BUDGET

WHEREAS, The Board of Commissioners for Kane County, Utah in a regular meeting, lawful notice of which had been given, finds that a public hearing was held on December 14, 2015 according to the state statute for adoption of the budget for fiscal year 2016

THEREFORE, The Kane County Board of Commissioners hereby adopts the following resolution:

BE IT RESOLVED, That the 2016 Kane County General Fund budget in the amount of \$8,499,836 and the total Kane County Budget of \$ 33,489,986 the original of which is on file in the Office of the Kane County Auditor and a copy of which is attached to this resolution, is hereby adopted as and for the Kane County fiscal year 2016 beginning January 1, 2016 and ending December 31, 2016

This Resolution was adopted by the Kane County Board of Commissioners on December 14, 2015.

---

Commission Chairman, Douglas K. Heaton

---

Attest: Karla Johnson /Clerk-Auditor

KANE COUNTY

Resolution R-2015-24

A RESOLUTION ADOPTING THE 2015 FISCAL YEAR COUNTY BUDGET OPENING

WHEREAS, The Board of Commissioners for Kane County, Utah in a regular meeting, lawful notice of which had been given, finds that a public hearing was held on December 14, 2015 according to the state statute for Adjusting the 2015 Budget through a Budget Opening; and,

WHEREAS, The Board of Commissioners for Kane County, in joint with the Kane County Auditor are responsible to accurately, and fairly portray the County Financial Records through the Budget Opening Process,

THEREFORE, The Kane County Board of Commissioners hereby adopts the following resolution:

BE IT RESOLVED, That the Kane County Board of Commissioners adjust the 2015 fiscal Year Budget through the Budget opening Process and adjust for proper presentation of the Kane County Financial records by adjusting for Grants, Payroll Corrections, Medical Premiums as a Current Expense, Employee Census, Accruals, Receivables, and other corrections as necessary.

This Resolution was adopted by the Kane County Board of Commissioners on December 14, 2015.

\_\_\_\_\_  
Commission Chairman, Douglas K. Heaton

ATTESTED: \_\_\_\_\_  
County Clerk / Auditor, Karla Johnson

Attachment: Detail of Adjustments.

KANE COUNTY COMMISSION AGENDA REQUEST:

Regular or Work Meeting

Date of Commission Meeting Requested: Dec. 14, 2015

Dept. /Business Name: Ordinance O-2015-9

---

Topic/Re: Changes to 9-21B-4 (B); Building Permits

---

---

Dept. Head/Owner: Rob VanDyke - Attorney

Meeting Requested by: Attorney VanDyke

Contact name & #: \_\_\_\_\_

Notes: \_\_\_\_\_

---

---

---

---

# ORDINANCE 0-2015-9

## Proposed changes to 9-21B-4(B): BUILDING PERMITS

B. No building permit shall be issued for the construction or alteration of any residential or commercial building or structure within a subdivision or planned unit development until the infrastructure is completed and approved by the Kane County engineer

unless the following conditions are met:

1. The property on which the building will be located is owned by the developer and that it cannot be transferred or reservations taken on the property until the infrastructure is completed and approved by the Kane County Engineer.
2. The Preliminary Plat and Construction Plans shall be approved by the Land Use Authority and Kane County Engineer, respectively.
3. The developer must provide financial assurance, in accordance with Article I of this chapter, prior to issuance of the building permit. The financial assurance shall be maintained until the infrastructure is completed and approved by the Kane County Engineer.
4. The developer provides a 'hold harmless' agreement, acceptable by Kane County, that the developer takes all liability in connection with building prior to the completion and approval of the infrastructure and will not a) seek to obtain a certificate of occupancy until the infrastructure is completed and approved by the Kane County Engineer b) not sell, transfer or take a reservation on the property until the infrastructure is completed and approved by the Kane County Engineer; and c) not hold Kane County liable for costs or damages in connection with the developer starting construction on the building regardless of the final outcome of the overall project.

KANE COUNTY COMMISSION AGENDA REQUEST:

Regular or Work Meeting

Date of Commission Meeting Requested: 12-14-15

Dept. /Business Name: County Attorney + Clerk/  
Auditor

Topic/Re: Public Defender Contract + Administration  
Process

Dept. Head/Owner: Attorney VanDyke + Clerk/Auditor Johnson

Meeting Requested by: \_\_\_\_\_

Contact name & #: \_\_\_\_\_

Notes: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## AGREEMENT FOR PUBLIC DEFENDER SERVICES

AGREEMENT between Kane County, a political subdivision of the State of Utah, and WILLIAM H. LEIGH ("Public Defender"), for the provision of public defender services in Kane County from January 1, 2013 through December 31, 2013, and can be renewed one (1) year at a time after that.

WHEREAS, Kane County is obligated to provide legal counsel for indigent individuals charged with committing a crime or crimes within the County who face a substantial probability of deprivation of liberty;

AND WHEREAS, Kane County is required to provide legal counsel who is competent and able to provide such individuals with a legally adequate defense;

AND WHEREAS, Public Defender (attorney) is a member of the Utah State Bar in good standing, and is competent, able, and willing to provide such individuals (except individuals charged with committing a capital offense) with a legally adequate defense;

AND WHEREAS, Kane County desires to provide a Public Defender for the indigent in compliance with the United States Supreme Court case Gideon vs. Wainwright and its progeny;

NOW THEREFORE, the parties hereby mutually agree as follows:

1. Upon appointment, Public Defender shall represent individuals charged with committing a crime or crimes (except individuals charged with committing a capital offense) who face a substantial probability of deprivation of liberty, and who are so situated that representation by the Public Defender does not constitute a conflict of interest. Such individuals are hereafter referred to as "clients."
2. Representation shall commence upon notice from the appointing court to the Public Defender that the client has requested legal counsel and has been found to be indigent, and shall continue until the matter has been legally completed, or until the Public Defender is excused from further representation by the Court. Courts which may appoint the Public Defender include the Sixth Judicial District Court in and for Kane County, the Kane County Justice Court, other justice courts within Kane County in felony pretrial proceedings, and the Sixth Judicial District Juvenile Court.
3. If the Public Defender has information that a client is not indigent, or that the client's financial circumstances have changed during the course of representation to the point that

the client no longer requires the Public Defender's services, the Public Defender shall present such information to the court.

4. Public Defender shall provide clients with timely, competent legal representation, and undivided loyalty, commensurate with at least the minimum standards of an adequate legal defense, as defined by the American Bar Association (ABA) and the Utah State Bar Association.
5. Public Defender shall advise prisoners incarcerated in the Kane County Jail, in accordance with the constitutional standards established by the United States Supreme Court, with the requirements of Utah law so that such prisoners are provided with adequate, effective, and meaningful access to the courts in lieu of Kane County providing such prisoners with access to a law library.
6. Public Defender shall represent indigent suspects at lineups both before and after arrest.
7. Appeals: Public Defender shall represent client in the first appeal of right and such other remedies, before or after conviction, considered by the Public Defender to be in the clients' best interests, except for subsequent appeals and discretionary writ proceedings. Public Defender shall be entitled to receive \$750.00 for each fully completed appeal of right made to the Utah Court of Appeals.
8. Public Defender shall keep clients informed about the status of pending matters and promptly comply with clients' requests for information.
9. Public Defender shall advise clients of all hearings and appearances.
10. Public Defender shall represent individuals for whom the previous public defender was appointed prior to the date of this contract and whose legal proceedings have not been completed.
11. Public Defender shall make himself available in Kanab at least weekly <sup>as needed</sup> to meet with incarcerated clients, unless expressly excused in writing by Kane County and/or any specified court. Public Defender shall make himself available telephonically to meet with clients during regular business hours. Public Defender shall appear for preliminary hearings and other hearings that are held on an expedited basis.
12. Public Defender shall attend the Sixth Judicial District Court in and for Kane County on all law and motion dates unless expressly excused, and shall attend the Sixth Judicial District Juvenile Court and justice courts as required.

13. Public Defender shall meet with clients prior to appearing in court, in order to avoid unnecessary delays in court proceedings. Upon request, Kane County will make facilities available for the Public Defender to meet with clients who are not incarcerated.
14. Public Defender shall accept collect telephone calls from incarcerated clients, subject to reimbursement by Kane County.
15. Public Defender shall, upon request, furnish a verified statement of time and expenses as required by Utah Code Annotated §77-32a-14.
16. Public Defender shall perform all other duties required by law or ordered by the court.
17. Public Defender shall make reasonable efforts to prevent a conflict of interest with any client. In the event a conflict, Public Defender shall pay \$750.00 for conflict counsel if the conflict is due to Public Defender actions, for example, if the public defender was previously opposing counsel to the client in a civil matter All other conflicts will be paid the County from the public defenders budget.
18. Kane County agrees to pay Public Defender the sum of \$58,942.00 per year, in 12 equal monthly installments, due and payable on the first business day of each month for the services to be performed during that month.
19. Public Defender shall not be responsible for costs and expenses of subpoenaing witnesses on behalf of clients nor for the costs of necessary transcripts.
20. In any specified court is required to appoint any other attorney to provide indigent representation as a result of Public Defender's absence or failure to fulfill any duty set forth herein, said attorney shall be compensated by Kane County, and that amount of compensation shall be deducted from the compensation to be paid to Public Defender pursuant to this agreement.
21. This agreement expressly excludes capital cases.
22. Kane County may, upon 30 days written notice to Public Defender, terminate this agreement for any reason. Public Defender may, upon 30 days written notice to Kane County, terminate this agreement for any reason.
23. Ordinary Expenses: All ordinary expenses, including but not limited to copying costs, telephone costs, secretarial staff, legal research and travel, etc., shall be included within the total payment amount of the agreement, and the attorney shall not be entitled to

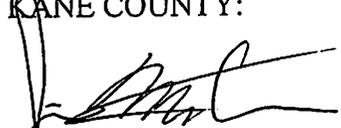
reimbursement for any such ordinary expenses, except collect calls from the inmate to Public Defender will be paid per paragraph number 14.

24. Assignment: The Public Defender contract may not be assigned by the attorney to any other attorney without prior written consent of Kane County.
25. Standing in: Public Defenders may allow a partner, associate, or other attorney to “stand in” in lieu of Public Defender as long as the attorney is licensed and in good standing with the Utah State Bar.
26. Attorney in Good Standing: The Public Defender certifies that he is an attorney in good standing with the Utah State Bar, and licensed to practice in the State of Utah. Moreover, Attorney shall remain in good standing with the Utah State Bar, and shall remain licensed to practice law in the State of Utah at all times during the agreement.
27. Breach: If the Public Defender violates any portion of this agreement, and fails to fully correct the violation after two weeks written notice by the County, the Public Defender shall be in breach of contract, and the County shall be entitled to immediate termination of the contract upon the issuance of written notice.
28. Public Defender shall disclose to Kane County at least 30 days prior to executing this agreement of all current Public Defender contracts that he may have, and shall notify Kane County within 30 days prior to entering any other Public Defender contracts.
29. Hold harmless and indemnification clauses: Public Defender hereby agrees to hold Kane County and its employees harmless from any actions arising under or related to this contract. Public Defender covenants to indemnify Kane County for any harm including, but not limited to, Court costs and legal fees related to Public Defender’s wrongful acts or omissions related to this contract.
30. Legal research data base: The Kane County Attorney’s Office shall assist the Public Defender in acquiring access to the “Case Maker” data base offered by the Utah State Bar and shall not be required to pay for any such legal research data base for the use by the Public Defender. Kane County Attorney shall not provide any passwords to assist the Public Defender in gaining improper access to any legal data base.
31. Insurance: Public Defender hereby agrees to carry legal malpractice insurance and to provide proof of the same to Kane County.

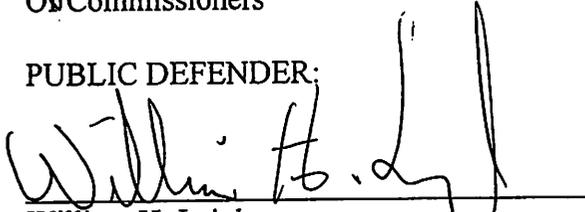
32. Public Defender covenants to neither solicit nor accept money or anything of value from client, family or friends wishing to pay on behalf of client without first having gained permission from the Court.
33. Public Defender covenants to avoid the appearance of soliciting for other attorney's by either referring or steering clients, family or friends of clients, wishing to pay legal fees or costs on behalf of the client to a friend, family member, partner or associate of a Public Defender.
34. In the event the Public Defender receives any money or items from an appointed client or from any source before, during or after representation, other than under this contract, and subsequently applies for public funds for defense, Public Defender shall notify the Clerk/Auditor in writing and shall disclose the full details of all such transactions to the court.
35. Attorney Fees, Court Costs, and Collection Costs: Upon breach, the party in violation of the contract shall be responsible for the payment of all attorney fees, court costs, and collection fees associated with the breach.
36. This agreement constitutes the full agreement of the parties, and may only be extended, altered, or modified in writing.

IN WITNESS WHEREOF, the parties have executed this Agreement for Public Defender Services this 13 day of Dec., 2012.

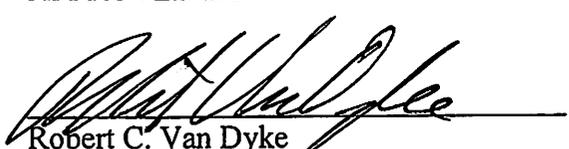
KANE COUNTY:

  
\_\_\_\_\_  
Jim Matson, Chair Kane County Board  
Of Commissioners

PUBLIC DEFENDER:

  
\_\_\_\_\_  
William H. Leigh

APPROVED BY:

  
\_\_\_\_\_  
Robert C. Van Dyke  
Deputy Kane County Attorney

# **KANE COUNTY CONTRACT FOR PUBLIC DEFENDER SERVICES**

AGREEMENT between Kane County, a political subdivision of the State of Utah, and WILLIAM H. LEIGH (“Public Defender”), for the provision of public defender services in Kane County from January 1, 2014 through December 31, 2014, and can be renewed one (1) year at a time after that.

WHEREAS, Kane County is obligated to provide legal counsel for indigent individuals charged with committing a crime or crimes within the County who face a substantial probability of deprivation of liberty;

AND WHEREAS, Kane County is required to provide legal counsel who is competent and able to provide such individuals with a legally adequate defense;

AND WHEREAS, Public Defender (attorney) is a member of the Utah State Bar in good standing, and is competent, able, and willing to provide such individuals (except individuals charged with committing a capital offense) with a legally adequate defense;

AND WHEREAS, Kane County desires to provide a Public Defender for the indigent in compliance with the United States Supreme Court case Gideon vs. Wainwright and its progeny;

NOW THEREFORE, the parties hereby mutually agree as follows:

1. Upon appointment, Public Defender shall represent individuals charged with committing a crime or crimes (except individuals charged with committing a capital offense) who face a substantial probability of deprivation of liberty, and who are so situated that representation by the Public Defender does not constitute a conflict of interest. Such individuals are hereafter referred to as “clients.”
2. Representation shall commence upon notice from the appointing court to the Public Defender that the client has requested legal counsel and has been found to be indigent, and shall continue until the matter has been legally completed, or until the Public Defender is excused from further representation by the Court. Courts which may appoint the Public Defender include the Sixth Judicial District Court in and for Kane County, the

Kane County Justice Court, other justice courts within Kane County in felony pretrial proceedings, and the Sixth Judicial District Juvenile Court.

3. If the Public Defender has information that a client is not indigent, or that the client's financial circumstances have changed during the course of representation to the point that the client no longer requires the Public Defender's services, the Public Defender shall present such information to the court.
4. Public Defender shall provide clients with timely, competent legal representation, and undivided loyalty, commensurate with at least the minimum standards of an adequate legal defense, as defined by the American Bar Association (ABA) and the Utah State Bar Association.
5. Public Defender shall advise prisoners incarcerated in the Kane County Jail, in accordance with the constitutional standards established by the United States Supreme Court, with the requirements of Utah law so that such prisoners are provided with adequate, effective, and meaningful access to the courts in lieu of Kane County providing such prisoners with access to a law library.
6. Public Defender shall represent indigent suspects at lineups both before and after arrest.
7. Appeals: Public Defender shall represent client in the first appeal of right and such other remedies, before or after conviction, considered by the Public Defender to be in the clients' best interests, except for subsequent appeals and discretionary writ proceedings. Public Defender shall be entitled to receive \$750.00 for each fully completed appeal of right made to the Utah Court of Appeals.
8. Public Defender shall keep clients informed about the status of pending matters and promptly comply with clients' requests for information.
9. Public Defender shall advise clients of all hearings and appearances.
10. Public Defender shall represent individuals for whom the previous public defender was appointed prior to the date of this contract and whose legal proceedings have not been completed.
11. Public Defender shall make himself available in Kanab at least weekly as needed to meet with incarcerated clients, unless expressly excused in writing by Kane County and/or any specified court. Public Defender shall make himself available telephonically to meet

- with clients during regular business hours. Public Defender shall appear for preliminary hearings and other hearings that are held on an expedited basis.
12. Public Defender shall attend the Sixth Judicial District Court in and for Kane County on all law and motion dates unless expressly excused, and shall attend the Sixth Judicial District Juvenile Court and justice courts as required.
  13. Public Defender shall meet with clients prior to appearing in court, in order to avoid unnecessary delays in court proceedings. Upon request, Kane County will make facilities available for the Public Defender to meet with clients who are not incarcerated.
  14. Public Defender shall accept collect telephone calls from incarcerated clients, subject to reimbursement by Kane County.
  15. Public Defender shall, upon request, furnish a verified statement of time and expenses as required by Utah Code Annotated §77-32a-14.
  16. Public Defender shall perform all other duties required by law or ordered by the court.
  17. Public Defender shall make reasonable efforts to prevent a conflict of interest with any client. In the event a conflict, Public Defender shall pay \$750.00 for conflict counsel if the conflict is due to Public Defender actions, for example, if the public defender was previously opposing counsel to the client in a civil matter. All other conflicts will be paid the County from the public defenders budget.
  18. Kane County agrees to pay Public Defender the sum of \$59,827.00 per year, in 12 equal monthly installments, due and payable on the first business day of each month for the services to be performed during that month.
  19. Public Defender shall not be responsible for costs and expenses of subpoenaing witnesses on behalf of clients nor for the costs of necessary transcripts.
  20. In any specified court is required to appoint any other attorney to provide indigent representation as a result of Public Defender's absence or failure to fulfill any duty set forth herein, said attorney shall be compensated by Kane County, and that amount of compensation shall be deducted from the compensation to be paid to Public Defender pursuant to this agreement.
  21. This agreement expressly excludes capital cases.
  22. Kane County Drug Court. As part of this agreement, the Public Defender shall also provide limited representation for all clients accepted into the Kane County Drug Court

Program in order to ensure that the clients' legal rights are protected. The Public Defender shall advise Drug Court clients of their legal options, program conditions, and possible sentencing outcomes. Public Defender representation shall commence upon notice to the Public Defender from the Sixth Judicial District Court that an individual is scheduled for a Drug Court Review hearing, and representation shall continue until a client is graduated from, or terminated from, the Drug Court Program. The Public Defender shall attend Drug Court staffing sessions and court sessions, provide input and recommendations on clients' progress and advancement, and shall be available through all phases of the program to advise participants on Drug Court rules, sanctions, legal consequences and penalties, and possible mitigation of charges.

23. Termination. Kane County may, upon 30 days written notice to Public Defender, terminate this agreement for any reason. Public Defender may, upon 30 days written notice to Kane County, terminate this agreement for any reason.
24. Ordinary Expenses: All ordinary expenses, including but not limited to copying costs, telephone costs, secretarial staff, legal research and travel, etc., shall be included within the total payment amount of the agreement, and the attorney shall not be entitled to reimbursement for any such ordinary expenses, except collect calls from the inmate to Public Defender will be paid per paragraph number 14.
25. Assignment: The Public Defender contract may not be assigned by the attorney to any other attorney without prior written consent of Kane County.
26. Standing in: Public Defenders may allow a partner, associate, or other attorney to "stand in" in lieu of Public Defender as long as the attorney is licensed and in good standing with the Utah State Bar.
27. Attorney in Good Standing: The Public Defender certifies that he is an attorney in good standing with the Utah State Bar, and licensed to practice in the State of Utah. Moreover, Attorney shall remain in good standing with the Utah State Bar, and shall remain licensed to practice law in the State of Utah at all times during the agreement.
28. Breach: If the Public Defender violates any portion of this agreement, and fails to fully correct the violation after two weeks written notice by the County, the Public Defender shall be in breach of contract, and the County shall be entitled to immediate termination of the contract upon the issuance of written notice.

29. Public Defender shall disclose to Kane County at least 30 days prior to executing this agreement of all current Public Defender contracts that he may have, and shall notify Kane County within 30 days prior to entering any other Public Defender contracts.
30. Hold harmless and indemnification clauses: Public Defender hereby agrees to hold Kane County and its employees harmless from any actions arising under or related to this contract. Public Defender covenants to indemnify Kane County for any harm including, but not limited to, Court costs and legal fees related to Public Defender's wrongful acts or omissions related to this contract.
31. Legal research data base: The Kane County Attorney's Office shall assist the Public Defender in acquiring access to the "Case Maker" data base offered by the Utah State Bar and shall not be required to pay for any such legal research data base for the use by the Public Defender. Kane County Attorney shall not provide any passwords to assist the Public Defender in gaining improper access to any legal data base.
32. Insurance: Public Defender hereby agrees to carry legal malpractice insurance and to provide proof of the same to Kane County.
33. Public Defender covenants to neither solicit nor accept money or anything of value from client, family or friends wishing to pay on behalf of client without first having gained permission from the Court.
34. Public Defender covenants to avoid the appearance of soliciting for other attorney's by either referring or steering clients, family or friends of clients, wishing to pay legal fees or costs on behalf of the client to a friend, family member, partner or associate of a Public Defender.
35. In the event the Public Defender receives any money or items from an appointed client or from any source before, during or after representation, other than under this contract, and subsequently applies for public funds for defense, Public Defender shall notify the Clerk/Auditor in writing and shall disclose the full details of all such transactions to the court.
36. Attorney Fees, Court Costs, and Collection Costs: Upon breach, the party in violation of the contract shall be responsible for the payment of all attorney fees, court costs, and collection fees associated with the breach.

37. This agreement constitutes the full agreement of the parties, and may only be extended, altered, or modified in writing.

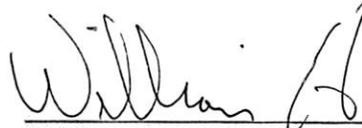
IN WITNESS WHEREOF, the parties have executed this Agreement for Public Defender Services this 9<sup>th</sup> day of December, 2013.

KANE COUNTY:



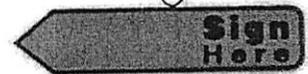
Dirk Clayson, Chair  
Kane County Commission

PUBLIC DEFENDER:



William H. Leigh

APPROVED AS TO FORM:

  
Robert C. Van Dyke  
Deputy Kane County Attorney

# **KANE COUNTY CONTRACT FOR PUBLIC DEFENDER SERVICES**

AGREEMENT between Kane County, a political subdivision of the State of Utah, and WILLIAM H. LEIGH (“Public Defender”), for the provision of public defender services in Kane County from January 1, 2015 through December 31, 2015, and can be renewed one (1) year at a time after that.

WHEREAS, Kane County is obligated to provide legal counsel for indigent individuals charged with committing a crime or crimes within the County who face a substantial probability of deprivation of liberty;

AND WHEREAS, Kane County is required to provide legal counsel who is competent and able to provide such individuals with a legally adequate defense;

AND WHEREAS, Public Defender (attorney) is a member of the Utah State Bar in good standing, and is competent, able, and willing to provide such individuals (except individuals charged with committing a capital offense) with a legally adequate defense;

AND WHEREAS, Kane County desires to provide a Public Defender for the indigent in compliance with the United States Supreme Court case Gideon vs. Wainwright and its progeny;

NOW THEREFORE, the parties hereby mutually agree as follows:

1. Upon appointment, Public Defender shall represent individuals charged with committing a crime or crimes (except individuals charged with committing a capital offense) who face a substantial probability of deprivation of liberty, and who are so situated that representation by the Public Defender does not constitute a conflict of interest. Such individuals are hereafter referred to as “clients.”
2. Representation shall commence upon notice from the appointing court to the Public Defender that the client has requested legal counsel and has been found to be indigent, and shall continue until the matter has been legally completed, or until the Public Defender is excused from further representation by the Court. Courts which may appoint the Public Defender include the Sixth Judicial District Court in and for Kane County, the

- Kane County Justice Court, other justice courts within Kane County in felony pretrial proceedings, and the Sixth Judicial District Juvenile Court.
3. If the Public Defender has information that a client is not indigent, or that the client's financial circumstances have changed during the course of representation to the point that the client no longer requires the Public Defender's services, the Public Defender shall present such information to the court.
  4. Public Defender shall provide clients with timely, competent legal representation, and undivided loyalty, commensurate with at least the minimum standards of an adequate legal defense, as defined by the American Bar Association (ABA) and the Utah State Bar Association.
  5. Public Defender shall advise prisoners incarcerated in the Kane County Jail, in accordance with the constitutional standards established by the United States Supreme Court, with the requirements of Utah law so that such prisoners are provided with adequate, effective, and meaningful access to the courts in lieu of Kane County providing such prisoners with access to a law library.
  6. Public Defender shall represent indigent suspects at lineups both before and after arrest.
  7. Appeals: Public Defender shall represent client in the first appeal of right and such other remedies, before or after conviction, considered by the Public Defender to be in the clients' best interests, except for subsequent appeals and discretionary writ proceedings. Public Defender shall be entitled to receive \$1,250.00 for each fully completed appeal of right made to the Utah Court of Appeals.
  8. Public Defender shall keep clients informed about the status of pending matters and promptly comply with clients' requests for information.
  9. Public Defender shall advise clients of all hearings and appearances.
  10. Public Defender shall represent individuals for whom the previous public defender was appointed prior to the date of this contract and whose legal proceedings have not been completed.
  11. Public Defender shall make himself available in Kanab at least weekly as needed to meet with incarcerated clients, unless expressly excused in writing by Kane County and/or any specified court. Public Defender shall make himself available telephonically to meet

with clients during regular business hours. Public Defender shall appear for preliminary hearings and other hearings that are held on an expedited basis.

12. Public Defender shall attend the Sixth Judicial District Court in and for Kane County on all law and motion dates unless expressly excused, and shall attend the Sixth Judicial District Juvenile Court and justice courts as required.
13. Public Defender shall meet with clients prior to appearing in court, in order to avoid unnecessary delays in court proceedings. Upon request, Kane County will make facilities available for the Public Defender to meet with clients who are not incarcerated.
14. Public Defender shall accept collect telephone calls from incarcerated clients, subject to reimbursement by Kane County.
15. Public Defender shall, upon request, furnish a verified statement of time and expenses as required by Utah Code Annotated §77-32a-14.
16. Public Defender shall perform all other duties required by law or ordered by the court.
17. Public Defender shall make reasonable efforts to prevent a conflict of interest with any client. In the event a conflict, Public Defender shall pay \$750.00 for conflict counsel if the conflict is due to Public Defender actions, for example, if the public defender was previously opposing counsel to the client in a civil matter. All other conflicts will be paid the County from the public defenders budget.
18. Kane County agrees to pay Public Defender the sum of \$60,844.10 per year, in 12 equal monthly installments, due and payable on the first business day of each month for the services to be performed during that month.
19. Public Defender shall not be responsible for costs and expenses of subpoenaing witnesses on behalf of clients nor for the costs of necessary transcripts.
20. In any specified court is required to appoint any other attorney to provide indigent representation as a result of Public Defender's absence or failure to fulfill any duty set forth herein, said attorney shall be compensated by Kane County, and that amount of compensation shall be deducted from the compensation to be paid to Public Defender pursuant to this agreement.
21. This agreement expressly excludes capital cases.
22. Kane County Drug Court. As part of this agreement, the Public Defender shall also provide limited representation for all clients accepted into the Kane County Drug Court

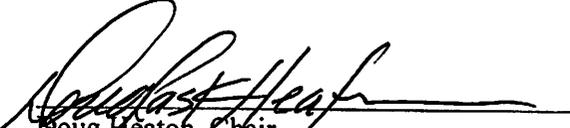
Program in order to ensure that the clients' legal rights are protected. The Public Defender shall advise Drug Court clients of their legal options, program conditions, and possible sentencing outcomes. Public Defender representation shall commence upon notice to the Public Defender from the Sixth Judicial District Court that an individual is scheduled for a Drug Court Review hearing, and representation shall continue until a client is graduated from, or terminated from, the Drug Court Program. The Public Defender shall attend Drug Court staffing sessions and court sessions, provide input and recommendations on clients' progress and advancement, and shall be available through all phases of the program to advise participants on Drug Court rules, sanctions, legal consequences and penalties, and possible mitigation of charges.

23. Termination. Kane County may, upon 30 days written notice to Public Defender, terminate this agreement for any reason. Public Defender may, upon 30 days written notice to Kane County, terminate this agreement for any reason.
24. Ordinary Expenses: All ordinary expenses, including but not limited to copying costs, telephone costs, secretarial staff, legal research and travel, etc., shall be included within the total payment amount of the agreement, and the attorney shall not be entitled to reimbursement for any such ordinary expenses, except collect calls from the inmate to Public Defender will be paid per paragraph number 14.
25. Assignment: The Public Defender contract may not be assigned by the attorney to any other attorney without prior written consent of Kane County.
26. Standing in: Public Defenders may allow a partner, associate, or other attorney to "stand in" in lieu of Public Defender as long as the attorney is licensed and in good standing with the Utah State Bar.
27. Attorney in Good Standing: The Public Defender certifies that he is an attorney in good standing with the Utah State Bar, and licensed to practice in the State of Utah. Moreover, Attorney shall remain in good standing with the Utah State Bar, and shall remain licensed to practice law in the State of Utah at all times during the agreement.
28. Breach: If the Public Defender violates any portion of this agreement, and fails to fully correct the violation after two weeks written notice by the County, the Public Defender shall be in breach of contract, and the County shall be entitled to immediate termination of the contract upon the issuance of written notice.

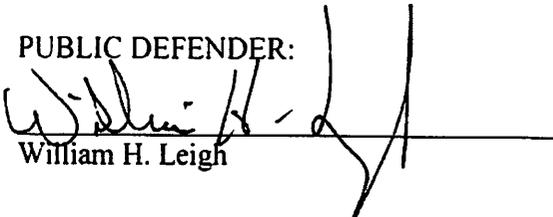
29. Public Defender shall disclose to Kane County at least 30 days prior to executing this agreement of all current Public Defender contracts that he may have, and shall notify Kane County within 30 days prior to entering any other Public Defender contracts.
30. Hold harmless and indemnification clauses: Public Defender hereby agrees to hold Kane County and its employees harmless from any actions arising under or related to this contract. Public Defender covenants to indemnify Kane County for any harm including, but not limited to, Court costs and legal fees related to Public Defender's wrongful acts or omissions related to this contract.
31. Legal research data base: The Kane County Attorney's Office shall assist the Public Defender in acquiring access to the "Case Maker" data base offered by the Utah State Bar and shall not be required to pay for any such legal research data base for the use by the Public Defender. Kane County Attorney shall not provide any passwords to assist the Public Defender in gaining improper access to any legal data base.
32. Public Defender covenants to neither solicit nor accept money or anything of value from client, family or friends wishing to pay on behalf of client without first having gained permission from the Court.
33. Public Defender covenants to avoid the appearance of soliciting for other attorney's by either referring or steering clients, family or friends of clients, wishing to pay legal fees or costs on behalf of the client to a friend, family member, partner or associate of a Public Defender.
34. In the event the Public Defender receives any money or items from an appointed client or from any source before, during or after representation, other than under this contract, and subsequently applies for public funds for defense, Public Defender shall notify the Clerk/Auditor in writing and shall disclose the full details of all such transactions to the court.
35. Attorney Fees, Court Costs, and Collection Costs: Upon breach, the party in violation of the contract shall be responsible for the payment of all attorney fees, court costs, and collection fees associated with the breach.
36. This agreement constitutes the full agreement of the parties, and may only be extended, altered, or modified in writing.

IN WITNESS WHEREOF, the parties have executed this Agreement for Public Defender Services this 9<sup>th</sup> day of February, 2015.

KANE COUNTY:

  
Doug Heaton, Chair  
Kane County Commission

PUBLIC DEFENDER:

  
William H. Leigh

APPROVED AS TO FORM:

  
Robert C. Van Dyke  
Kane County Attorney

KANE COUNTY COMMISSION AGENDA REQUEST:

Regular or Work Meeting .

Date of Commission Meeting Requested: 12-14-15

Dept. /Business Name: Clerk / Auditor Karla Johnson

---

Topic/Re: Capital Improvement List Updates

---

---

Dept. Head/Owner: Clerk/Auditor Karla Johnson

Meeting Requested by: \_\_\_\_\_

Contact name & #: \_\_\_\_\_

Notes: \_\_\_\_\_

---

---

---

---

# Five County Association of Governments

1070 West 1600 South, Building B  
St. George, Utah 84770

Fax (435) 673-3540



SOUTHWEST UTAH

Post Office Box 1550  
St. George, Utah 84771

Office (435) 673-3548

**\*\* MEMORANDUM \*\***

**COPY**

**TO: COMMISSIONERS, MAYORS, AND REPRESENTATIVES OF SPECIAL DISTRICTS IN THE FIVE COUNTY REGION**

**CC: COUNTY CLERKS; CITY/TOWN MANAGERS AND CLERKS**

**FROM: DIANE LAMOREAUX, <sup>DL</sup>COMMUNITY DEVELOPMENT PROGRAM SPECIALIST  
GARY ZABRISKIE, <sup>GZ</sup>COMMUNITY IMPACT BOARD REGIONAL PLANNER**

**DATE: OCTOBER 26, 2015**

**SUBJECT: CAPITAL IMPROVEMENTS LIST UPDATES**

It is time again to update and submit your local Capital Improvements Lists which are used when applying for funding from the U.S. Department of Housing and Urban Development (HUD) and/or the Utah Permanent Community Impact Fund Board (CIB).

**This will be your jurisdiction's only opportunity to submit updated Capital Improvements Lists** to be used for Community Development Block Grant (CDBG) applications submitted in January 2016. The lists will also be used for applications submitted to the CIB in June 2016, October 2016 or February 2017.

The regional Consolidated Plan, required by HUD, includes tables identifying all capital improvement priorities in the Five County area. The plan also provides for general regional goals and policies regarding community, economic, and housing development. Jurisdictions and agencies that may apply for funding from HUD are required to participate in the development and updating of the Consolidated Plan.

Additionally, the CIB Regional Planner maintains a database of CIB Capital Improvements Lists for each county. To be eligible to apply to the CIB for funding, a project must be on the current year's CIB prioritized list, unless a bonafide emergency exists.

There are two elements of the Capital Improvements Lists: a **1-year action plan** and a **2-5 year project list**. The 1-year action plan should only include projects that your jurisdiction intends to apply for within the next year. For the 1-year action plan, planned funding sources should be clearly identified with cost estimates shown. Projects on your 2-5 year project list are those anticipated to occur two to five years out. For those projects, the cost estimates may be more generalized with "likely" funding sources shown.

(Over)

---

BEAVER

GARFIELD

IRON

KANE

WASHINGTON

**County Commissioners, Mayors, City/Town Managers and Representatives of Special Service Districts**

**October 26, 2015**

**Page two**

Your jurisdiction must prioritize projects on your 1-year action plan as "high" (H), "medium" (M) or "low" (L) needs. You can list more than one project as a high, medium or low need, but you must prioritize each one sequentially downward in priority as H-1, H-2, H-3, etc.

We have combined the list collection process so that only one set of lists is necessary to be submitted annually by each jurisdiction. Five County AOG staff will extract information from the lists received to develop separate consolidated lists for CDBG and CIB funding.

If a proposed project is not included in your submitted Capital Improvements Lists, you will not be able to make application to CDBG or CIB for funding of that project in the upcoming fiscal year. **A PROJECT MUST BE INCLUDED IN THE CAPITAL IMPROVEMENTS LISTS TO BE ELIGIBLE TO APPLY FOR EITHER CDBG OR CIB FUNDING.**

A public meeting will be scheduled and held in each county in February 2016 in which you or your representative will be invited to attend to review the 1 year CIB list and establish the consensus priorities within your county.

Copies of lists submitted by your jurisdiction last year are enclosed for reference purposes. Blank tables are provided for developing your jurisdiction's new 1-year action plan and 2-5 year project list. Forms can also be provided to you via e-mail upon request. They are also posted for download on the Five County AOG web site at: [www.fivecounty.utah.gov/cil.html](http://www.fivecounty.utah.gov/cil.html)

Please submit a hard copy or e-mail your updated lists to the Five County Association of Governments office. ***THESE LISTS MUST BE RETURNED TO OUR OFFICE NO LATER THAN FRIDAY, JANUARY 8, 2016. Projects on lists received after the January 8<sup>th</sup> deadline will not be eligible for funding.***

**TECHNICAL ASSISTANCE AVAILABLE**

The CDBG Program Specialist and the CIB Regional Planner at the Five County Association of Governments are available upon request to meet with representatives of your jurisdiction to assist in assessing your local capital facilities and infrastructure needs. It is our hope that by meeting and discussing your jurisdiction's specific needs, applications to both CDBG and CIB will be more mature and of higher quality.

If you have questions or would like to request staff to meet with your jurisdiction, please contact Diane Lamoreaux at 435-673-3548 or via e-mail: [dlamoreaux@fivecounty.utah.gov](mailto:dlamoreaux@fivecounty.utah.gov)

We appreciate your efforts to help update Capital Improvements Lists for jurisdictions in the Five County region. Thank you.

dl  
Enclosures





KANE COUNTY COMMISSION AGENDA REQUEST:

Regular or Work Meeting

Date of Commission Meeting Requested: 12-14-16

Dept. /Business Name: 2016 Commission

Topic/Re: 2016 Commission Mtg. Schedule

Dept. Head/Owner: Chief Dpty. Clerk Keiren Chatterley

Meeting Requested by: Karla Johnson

Contact name & #: \_\_\_\_\_

Notes: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## PUBLIC NOTICE

### COMMISSION MEETING SCHEDULE

The Kane County Board of Commissioners will meet at 10:00 AM in regular session for the 2016 year on the following dates:

January	11,25	July	11,18	The County Budget Hearing will be Dec 12, 2016 at 10:00 AM.
February	8,22	August	8, 22	
March	14, 28	September	12, 26	
April	11,25	October *	3, 24	
May *	9,23	November	14, 28	
June	13, 27	December *	12, 19	

\* Months are adjusted for Holidays and or Training Meetings.

In addition to these meetings there will be WORK MEETINGS and SPECIAL MEETINGS called to accommodate the needs of the public and county operations. All items to be on the Agenda MUST be approved through a Commissioner and all documentation submitted to the Clerk's Office by noon on the THURSDAY prior to the meeting.

### MUNICIPAL BUILDING AUTHORITY (MBA)

The Municipal Building Authority of Kane County, Utah will hold regular meetings during the 2016 Calendar year from time to time as the Board of Trustees shall deem necessary. The Board may also hold meetings in conjunction with the regularly scheduled Commission Meetings.

### RESOURCE COMMITTEE

The Kane County Resource Committee of Kane County, Utah will hold regular meetings during the 2016 Calendar year from time to time as the Commission shall deem Necessary

All meetings of the above entities are open to the public unless closed pursuant to Sec 52-4-4 and 52-4-5 of the Utah Code Annotated 1953, as amended. A written Agenda of each meeting will be posted at the County Courthouse, 76 North Main, Kanab, Utah no later than 24 hours preceding such meeting. Agenda's may also be accessed at the Utah State Public Notices Website at <http://www.utah.gov/pmn/index.html>

PUBLISHED in the Southern Utah News December 24, 2015  
Karla Johnson, Kane County Clerk/Auditor

KANE COUNTY COMMISSION AGENDA REQUEST:

Regular or Work Meeting

Date of Commission Meeting Requested: 12-14-15

Dept. /Business Name: Planning & Zoning  
Land Use Authority

Topic/Re: Adopt Kane County Zoning map. (revised)

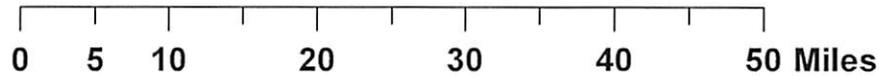
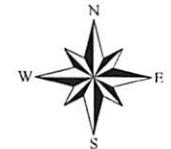
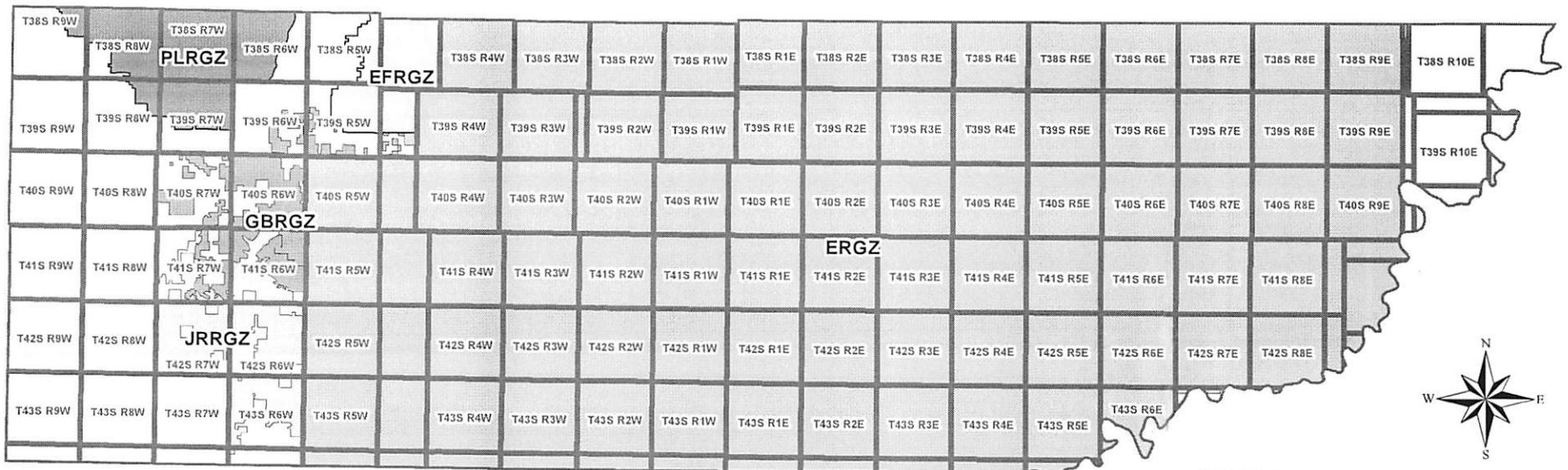
Dept. Head/Owner: Shannon McBride

Meeting Requested by: Shannon McBride

Contact name & #: 644-4966 or Mary 4951

Notes: (2) Maps attached - Kane Grazing Region & Kane Timber  
Region.

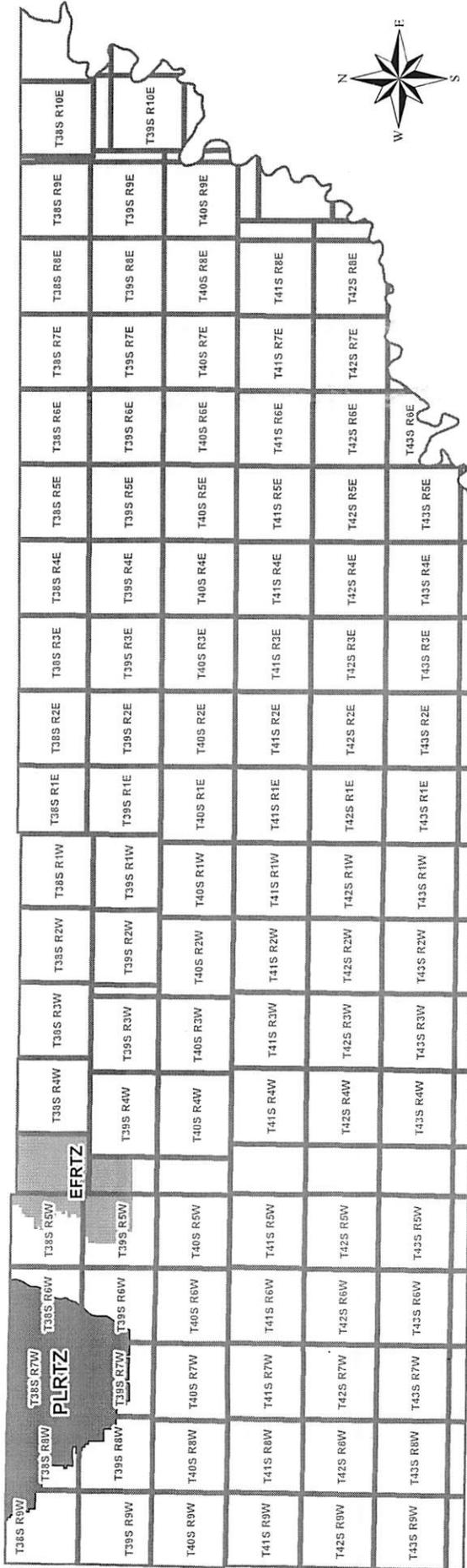
# KANE COUNTY REGIONS GRAZING ZONES



**Legend**

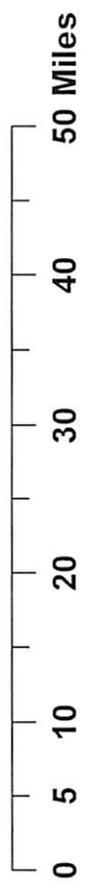
- KANE COUNTY
- REGION**
- EAST FORK REGION GRAZING ZONE
- ESCALANTE REGION GRAZING ZONE
- GLENDALE B REGION GRAZING ZONE
- JOHN R REGION GRAZING ZONE
- PANGUITCH LAKE REGION GRAZING

# KANE COUNTY REGIONS TIMBER ZONES



**Legend**

- KANE COUNTY
- EAST FORK REGION TIMBER ZONE
- PANGUITCH LAKE REGION TIMBER \*



KANE COUNTY COMMISSION AGENDA REQUEST:

Regular or Work Meeting

Date of Commission Meeting Requested: 12-14-15

Dept. /Business Name: Planning & Zoning  
Land Use Authority

Topic/Re: Lot Joinder; Douglas & Darlene Crowe, Elk Ridge Estates,  
Unit 1, Lots 23 & 24, new lot 23, and vacate a utility easement.

Dept. Head/Owner: Shannon McBride

Meeting Requested by: Shannon McBride

Contact name & #: 644-4966 or Mary 4951

Notes: App & Map attached

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Project # 15041  
Rec'd signed 11/18/15

Fee: \$1690<sup>00</sup>  
Paid: \$1512

List of Prop. Owners:

REQUEST FOR LOT JOINDER WITHIN A SUBDIVISION PLAT

Property Owner's Name: Douglas M Crowe

Date: 10/26/15 Address: 6740 Targhee Ct

Phone: (702) 279-9722 Cell Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

City: Las Vegas State: Nevada Zip Code: 89156

Location and Legal Description of Subdivision Plat:

Elk Ridge Estates, Unit No. 1 Lots 23 and 24

Reason for Lot Joinder Request:

To combine lot 23 and lot 24 into one lot

I (We) certify that the proposed subdivision plat will conform to the Kane County Subdivision Ordinance and that no changes will be made without prior approval.

Signature of Owner / Trustee: *Douglas M Crowe*

Signature of Owner / Trustee: \_\_\_\_\_

**Note: Once lots are joined they may not be subdivided again.**

Planning Commission Action: Approve \_\_\_\_\_ Deny \_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_

Planning Commission Chairman \_\_\_\_\_ Date: \_\_\_\_\_



KANE COUNTY COMMISSION AGENDA REQUEST:

Regular or Work Meeting

Date of Commission Meeting Requested: 12-14-15

Dept. /Business Name: Planning & Zoning  
Land Use Authority

Topic/Re: Rev. Kane County Resource Management Plan: Adopt  
"Glen Canyon Region" in Section Two: Regional Resources

Dept. Head/Owner: Shannon McBride

Meeting Requested by: Shannon McBride

Contact name & #: 644-4966 or Mary 4951

Notes: Document attached.

KANE COUNTY COMMISSION AGENDA REQUEST:

Regular or Work Meeting

Date of Commission Meeting Requested: 12-14-15

Dept. /Business Name: Planning & Zoning  
Land Use Authority

Topic/Re: Amending the Development Agreement for Canyon Land  
Resort, parcel #187-05-3

Dept. Head/Owner: Shannon McBride

Meeting Requested by: Shannon McBride

Contact name & #: 644-4966 or Mary 4951

Notes: ~~Agreement~~ Agreement and map attached Modified agreement  
coming from Rob Van Dyke, County Atty.



## STAFF REPORT

**DATE:** 12/03/2015

**PROJECT:** A request for amending the second amendment to the Development Agreement for the Canyon Land Resort Project, dated February 13, 2006 for parcel #187-OS-3 has been submitted by Tom Avant, Engineer on behalf of Canyon Land Resort, and Craig Smith, Canyon Land Resort Attorney. The owners want to build a recreation camp on open space; zoned Agriculture. Three building permits have been submitted for permanent (recreation camp) camping structures.

**FINDINGS:** Amending the open space development agreement was addressed in the original development agreement; additional changes are in your packets. The definition for open space in the Kane County Land Use Ordinance is: "Space reserved as parks, courts, playgrounds, golf courses and other similar open areas and those areas reserved to meet the density requirements of planned unit developments. Also, 9-20-3(C): The Land Use Authority shall require such arrangement of structures and open spaces within the site development plan deemed as necessary to minimize impact on adjacent properties. In 9-20-3(D): Twenty percent (20%) of the developable land within the PUD shall be preserved as open space for the benefit of residents of the development and the community. Continuing on, in 9-20-3(E): Preservation, maintenance and ownership of required open spaces within the development shall be accomplished by:

1. Dedication of the land as public park or parkway system in perpetuity; or
2. Granting to the county commission a permanent, open space easement on and over the said private open spaces to guarantee that the open spaces remain perpetually in recreational uses, with ownership and maintenance being the responsibility of an owners' association established with articles of association and bylaws which are satisfactory to the commission.

### **9-20-6: SCOPE OF LAND USE AUTHORITY ACTION:**

In carrying out the intent of this chapter the Land Use Authority shall consider the following principles:

- A. A certified surveyor or engineer licensed in the state shall be used to survey all properties for the planned unit development.
- B. It is the intent of this section that the control exercised by the Kane County Land Use Authority be the minimum necessary to achieve the purpose of this chapter.
- C. The Land Use Authority may approve or disapprove an application for a planned unit

development. In an approval, the land use authority may attach such conditions as it may deem necessary to secure compliance with this section.

**9-20-7: CONSTRUCTION LIMITATIONS:**

A. Upon approval of a planned unit development, construction shall proceed only in accordance with the plans and specifications approved by the Land Use Authority and in conformity with any conditions attached by the county commission to its approval.

B. Amendments to approved plans and specifications for a planned unit development shall be obtained only by following procedures for a planned unit development.

C. No permit shall be issued for any proposed building, structure or use within the project unless such building, structure or use is in accordance with the approved development plan and with any conditions imposed in conjunction with its approval. (Ord. 2013-5, 8-12-2013, eff. 8-27-2013)

The Kane County Land Use Ordinance, 9-21E-9, A-F and Utah Code Sections 17-27a-201, 202, 206, 208 amending the plat requirements have all been met even though the project is not amending the plat, the notices for amending a plat were still followed. The project has been posted in three public places, noticed in the local newspaper and on the county and state websites.

**STAFF RECOMMENDATION:** Kane County Attorney Rob VanDyke has corresponded with Tom Avant and Craig Smith on the amendment language. Kane County Land Use Administrator, Shannon McBride, was informed by Engineer Tom Avant that the reason the plat is **not** being amended is: time restraints involving the lien holders on the property. They are amending the development agreement in attempt to avoid amending the plat procedure. Without amending the plat it is difficult to track the open space percentage of 20% required by ordinance. Thus, I recommended that Mr. Avant design a ledger to keep track of the amount of open space in the development so as to maintain the 20% open space requirement. The best means for future development on the open space property would be, either: a lot line adjustment, or split off the parcels with a plat amendment for further development. This amendment to the development agreement needs to be sent to the Kane County Commissioners for further discussion; while maintaining that the County should not continue allowing these permanent commercial uses on open space, until an amendment to the plat has been approved. The amendment agreement should be limited to the open space definition in the Kane County Ordinance. I recommend clarifying the language in the development agreement.

I recommend a motion to send the proposed revisions to the development agreement to the Kane County Commissioners; with the caveat any future commercial buildings constructed in open space requires an amendment to the plat.

Thank you!

When Recorded return to:  
J. Craig Smith  
175 South Main Street, #300  
Salt Lake City, UT 84111

JCS Draft 11/21/15

**SECOND AMENDMENT TO  
DEVELOPMENT AGREEMENT  
FOR THE CANYON LAND RESORT PROJECT  
KANE COUNTY, UTAH  
Dated February 13, 2006**

This Second Amendment To The “Development Agreement For The Canyon Land Resort Project, Kane County, Utah dated February 13, 2006” (“**Amendment**”) is made this of \_\_\_\_\_, 2015 by and between Canyon Land Development, LLC a Utah Limited Liability Company (“**Master Developer**”) and KANE COUNTY a county and political subdivision of the State of Utah, (the “**County**”), (collectively, the “**Parties**”)

**RECITALS:**

- A. Master Developer and the County entered into a written Development Agreement on February 13, 2006 (“**2006 Development Agreement**”) a copy of which is attached hereto as **Exhibit 1** and is incorporated herein by reference and made a part hereof, under which the parties agreed on certain zoning and entitlements concerning properties owned by Master Developer; and
- B. Master Developer and the County entered into a First Amendment to the 2006 Development Agreement on September 9, 2013 (“**First Amendment**”) a copy of which is attached hereto as **Exhibit 2** and is incorporated herein by reference and made a part hereof, under which the parties agreed to amend the 2006 Development Agreement; and
- C. The Parties wish to clarify the approved uses of Common Area of the Project for support, accessory and recreational activities such as camping for guests of the Amangiri Resort; and
- D. The Parties desire to explicitly permit development for such accessory, support and recreational uses and subject that development to the benefits and burdens of the 2006 Development Agreement; and
- E. The Parties find it necessary and beneficial to amend the 2006 Development Agreement to facilitate the foregoing,

**NOW, THEREFORE**, in consideration of their mutual covenants, conditions and terms as more fully set forth below, Master Developer and the County agree to amend the 2006 Development Agreement as follows:

1. **Amendment of Paragraph 9.2 (Recreational and Accessory Uses in Common Areas)**. Paragraph 9.2 is amended in its entirety to read as follows:

**9.2 Recreational, Wellness, Support and Accessory Buildings, Facilities, Structures and Allowed Uses in Common Areas**. The Parties agree that Master Developer, or its successors and assigns, may utilize the common areas to construct, maintain and operate recreational wellness, support, accessory facilities, buildings and structures, including but not limited to, permanent and temporary facilities, buildings, and structures to facilitate the use of the common areas for wellness and spa facilities, camping type activities, and related uses consistent with the amenities, luxury, level of service, and overall experience provided at the Amangiri Hotel and Spa. Also, the common areas may be utilized for permanent and temporary buildings, facilities, and structures to provide gathering areas, meeting rooms, restrooms, lounges, kitchens, dining facilities, equestrian, mountain biking, hiking, climbing, treatment and spa facilities, and other recreational and wellness activities, as well as support, accessory, and storage buildings, structures and facilities for the Hotel and Spa, its guests, employees and others. Such buildings, structures and facilities, including those providing overnight accommodations in the common areas, shall not be included in calculating the residential density allowed in this Agreement. The Master Developer, or its successors and assigns, shall comply with all applicable building and land use regulations to obtain construction approval for such recreational, wellness, support, and accessory buildings, facilities, and structures, including the submission and approval of a site plan and building permits for such building facilities, and structures.

2. **Continuing Force and Effect of Development Agreement**: Except as specifically provided in this Amendment, all terms, conditions and provisions of the 2006 Development Agreement and the First Amendment thereto shall remain the same and of continuing force and effect.

3. **Binding Effect**: This Amendment shall be binding on the respective successors and assigns of the parties in the same manner as the 2006 Development Agreement and the First Amendment thereto.

4. **Construction**: This Amendment and its provisions shall be deemed as having been prepared jointly by both parties and shall not be construed for or against either.

**IN WITNESS WHEREOF**, this Amendment to the 2006 Development Agreement shall be deemed as executed and effective on the date first written above.

[Signatures on following page.]

**KANE COUNTY**

**CANYON LAND DEVELOPMENT, LLC**  
a Utah limited liability company

By \_\_\_\_\_  
Dirk Clayson, Chair  
Kane County Commission

By \_\_\_\_\_  
Homi Vazifdar, CEO and Director

Attest:

By \_\_\_\_\_  
Karla Johnson, County Clerk

4818-2448-7211, v. 1



KANE COUNTY COMMISSION AGENDA REQUEST:

Regular or Work Meeting

Date of Commission Meeting Requested: 12-14-15

Dept. /Business Name: Planning & Zoning  
Land Use Authority

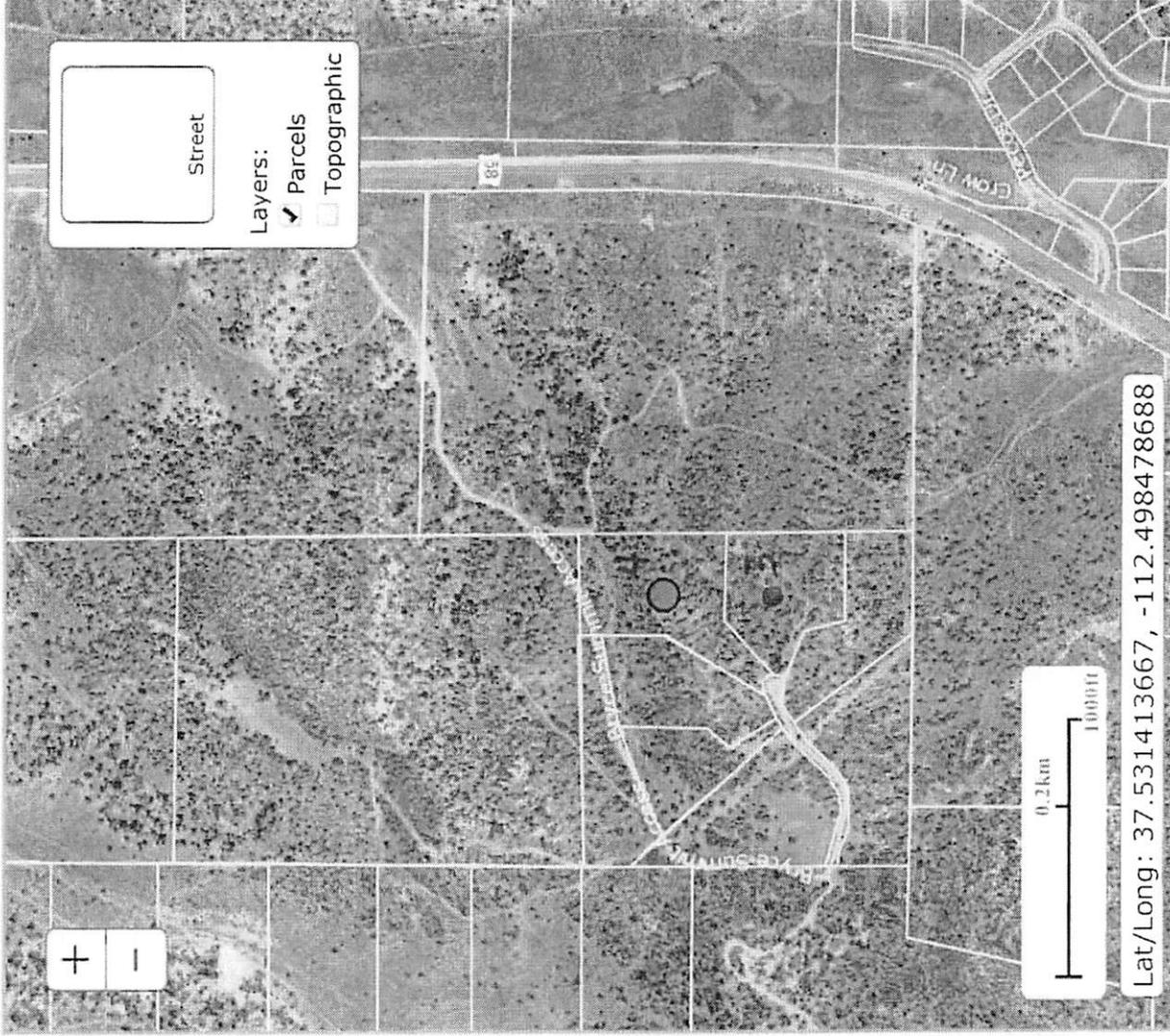
Topic/Re: Re-conveyance of Lots 3 & 4, of Bryce Summit  
Subdivision; Wayne Schwalback, Good Earth Development, LLC

Dept. Head/Owner: Shannon McBride

Meeting Requested by: Shannon McBride

Contact name & #: 644-4966 or Mary 4951

Notes: Trust Deed attached.



**Bryce Summit**  
**Good Earth Development, LLC**  
**Lots 3 & 4**

WHEN RECORDED MAIL DEED AND TAX NOTICE TO:

Kane County  
76 North Main  
Kanab, Utah 84741

Space Above This Line for Recorder's Use

**TRUST DEED**

With Assignment of Rents

THIS TRUST DEED made this 8<sup>th</sup> day of March, 2006, between Wayne Schwalbach and Meiqin Luong, as TRUSTOR, whose address is 11529 Regal Rock Place, Las Vegas, NV 89138, to SOUTHERN UTAH TITLE COMPANY, as TRUSTEE, and Kane County, as BENEFICIARY,

WITNESSETH:

That Trustor CONVEYS AND WARRANTS TO TRUSTEE IN TRUST, WITH POWER OF SALE, the following described property, situated in Kane County, State of Utah:

All of Lots 3 and 4, GOOD EARTH SUBDIVISION, according to the Official Plat thereof, on file in the Office of the County Recorder of Kane County, State of Utah.

TOGETHER WITH all improvements and appurtenances thereunto belonging.

SUBJECT TO easements, restrictions, rights of way and reservations currently appearing of record and those enforceable in law and equity.

Together with all buildings, fixtures and improvements thereon and all water rights, rights of way, easements, rents, issues, profits, income, tenements, hereditaments, privileges and appurtenances thereunto belonging, now or hereafter used or enjoyed with said property, or any part thereof, SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues, and profits;

FOR THE PURPOSE OF SECURING (1) construction of approved UDOT acceleration, deceleration and turn lane to access the Good Earth Subdivision; (2) the performance of each agreement of Trustor herein contained; (3) the payment of such additional loans or advances as hereafter may be made to Trustor, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Trust Deed; and (4) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof, together with interest thereon as herein provided.

(Continued on Page 2)

WS NCC

NOTE: Trustee must be a member of the Utah State bar; a bank, building and loan association or savings and loan association authorized to do such business in Utah; a corporation authorized to do a trust business in Utah; or a title insurance or abstract company authorized to do such business in Utah.

ENTRY 129113 RECORDED BY D. S. [unclear] 1700  
DATE April 28, 2006 AT 3:50PM N.J. KANE COUNTY RECORDER  
BY [unclear] BOOK 0302 PAGE 280 - 283

1700

TO PROTECT THE SECURITY OF THIS TRUST DEED, TRUSTOR AGREES:

1. To keep said property in good condition and repair; not to remove or demolish any building thereon, to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon; to comply with all laws, covenants and restrictions affecting said property; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to do all other acts which from the character or use of said property may be reasonably necessary, the specific numerations herein not excluding the general; and, if the loan secured hereby or any part thereof is being obtained for the purpose of financing construction of improvements on said property, Trustor further agrees:

(a) To commence construction promptly and to pursue same with reasonable diligence to completion in accordance with plans and specifications satisfactory to Beneficiary, and

(b) To allow Beneficiary to inspect said property at all times during construction.

Trustee, upon presentation to it of an affidavit signed by Beneficiary, setting forth facts showing a default by Trustor under this numbered paragraph, is authorized to accept as true and conclusive all facts and statements therein, and to act thereon hereunder.

2. To provide and maintain insurance, of such type and amounts as Beneficiary may require, on the improvements now existing or hereafter erected or placed on said property. Such insurance shall be carried in companies approved by Beneficiary with loss payable clauses in favor of and in form acceptable to Beneficiary. In event of loss, Trustor shall give immediate notice to Beneficiary, who may make proof of loss, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary instead of to Trustor and Beneficiary jointly, and the insurance proceeds, or any part thereof, may be applied by Beneficiary, at its option, to reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged.

3. To deliver to, pay for and maintain with Beneficiary until the indebtedness secured hereby is paid in full, such evidence of title as Beneficiary may require, including abstracts of title or policies of title insurance and any extensions or renewals thereof or supplements thereto.

4. To appear in and defend any action or proceeding purporting to affect the security thereof, the title to said property, or the rights or powers of Beneficiary or Trustee; and should Beneficiary or Trustee elect to also appear in or defend any such action or proceeding, to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum incurred by Beneficiary or Trustee.

5. To pay at least 10 days before delinquency all taxes and assessments affecting said property, including all assessments upon water company stock and all rents, assessments and charges for water, appurtenant to or used in connection with said property; to pay, when due, all encumbrances, charges, and liens with interest, on said property or any part thereof, which at any time appear to be prior or superior hereto; to pay all costs, fees, and expenses of this Trust.

6. Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation to do so and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: Make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and in exercising any such powers, incur any liability, expend whatever amounts in its absolute discretion it may deem necessary therefor, including cost of evidence of title, employ counsel, and pay his reasonable fees.

7. To pay immediately and without demand all sums expended hereunder by Beneficiary or Trustee, with interest from date of expenditure at the rate borne by the principal balance under the Note until paid, and the repayment thereof shall be secured hereby.

IT IS MUTUALLY AGREED THAT:

8. Should said property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, Beneficiary shall be entitled to all compensation, awards, and other payments or relief therefrom and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds, including the proceeds of any policies of fire and other insurance affecting said property, are hereby assigned to Beneficiary, who may, after deducting therefrom all its expenses, including, attorney's fees, apply the same on any indebtedness secured hereby. Trustor agrees to execute such further assignments of any compensation, award, damages, and rights of action and proceeds as Beneficiary or Trustee may require.

9. At any time and from time to time upon written request of Beneficiary, payment of its fees and presentation of this Trust Deed and the note of endorsement (in case of full reconveyance, for cancellation and retention), without affecting the liability of any person for the payment of the indebtedness secured hereby, Trustee may (a) consent to the making of any map or plat of said property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this Trust Deed or the lien or charge thereof; (d) reconvey, without warranty, all or any part of said property. The grantee in any reconveyance may be described as "the person or persons

entitled thereto", and the recitals therein of any matters or facts shall be conclusive proof of truthfulness thereof. Trustor agrees to pay reasonable Trustee's fees for any of the services mentioned in this paragraph.

10. As additional security, Trustor hereby assigns Beneficiary, during the continuance of these trusts, all rents, issues, royalties, and profits of the property affected by this Trust Deed and of any personal property located thereon. Until Trustor shall default in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder. Trustor shall have the right to collect all such rents, issues, royalties, and profits earned prior to default as they become due and payable. If Trustor shall default as aforesaid, Trustor's right to collect any of such moneys shall cease and Beneficiary shall have the right, with or without taking possession of the property affected hereby, to collect all rents, royalties, issues, and profits. Failure or discontinuance of Beneficiary at any time or from time to time to collect any such moneys shall not in any manner affect the subsequent enforcement by Beneficiary of the right, power and authority to collect the same. Nothing contained herein, nor the exercise of the right by Beneficiary to collect, shall be, or be construed to be, an affirmation by Beneficiary of any tenancy, lease or option, nor an assumption of liability under, nor a subordination of the lien or charge of this Trust Deed to any such tenancy, lease or option.

11. Upon any default by Trustor hereunder, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court (Trustor hereby consenting to the appointment of Beneficiary as such receiver), and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in its own name sue for or otherwise collect said rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine.

12. The entering upon and taking possession of said property, the collection of such rents, issues, and profits, or the proceeds of fire and other insurance policies, or compensation or awards for any taking or damage of said property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

13. The failure on the part of Beneficiary to promptly enforce any right hereunder shall not operate as a waiver of such right and the waiver by Beneficiary of any default shall not constitute a waiver of any other or subsequent default.

14. Time is of the essence hereof. Upon default by Trustor in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, all sums secured hereby shall immediately become due and payable at the option of Beneficiary. In the event of such default, Beneficiary may execute or cause Trustee to execute a written notice of default and of election to cause said property to be sold to satisfy the obligations hereof, and Trustee shall file such notice for record in each county wherein said property or some part or parcel thereof is situated. Beneficiary also shall deposit with Trustee, the note and all documents evidencing expenditures secured hereby.

15. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property on the date and at the time and place designated in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine (but subject to any statutory right of Trustor to direct the order in which such property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause he deems expedient, postpone the sale from time to time until it shall be completed and, in every case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed for longer than one day beyond the day designated in the notice of sale, notice thereof shall be given in the same manner as the original notice of sale. Trustee shall execute and deliver to the purchaser its Deed conveying said property so sold, but without any covenant or warranty, express or implied. The recitals in the Deed of any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale to payment of (1) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's and attorney's fees; (2) cost of any evidence of title procured in connection with such sale and revenue stamps on Trustee's Deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at the rate borne by the principal balance under the Note from date of expenditure (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto, or the Trustee, in its discretion, may deposit the balance of such proceeds with the County Clerk of the county in which the sale took place.

16. Upon the occurrence of any default hereunder, Beneficiary shall have the option to declare all sums secured hereby immediately due and payable and foreclose this Trust Deed in the manner provided by law for the foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceeding all costs and expenses incident thereto, including a reasonable attorney's fee in such amount as shall be fixed by the court.

17. Beneficiary may appoint a successor trustee at any time by filing for record in the office of the County Recorder of each county in which said property or some part thereof is situated, a substitution of trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority and title of the trustee named herein or of any successor trustee. Each such substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made, in the manner provided by law.

18. This Trust Deed shall apply to, inure to the benefit of, and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. All obligations of Trustor hereunder are joint and several. The term "Beneficiary" shall mean the owner and holder, including any pledgee, of the note secured hereby. In this Trust Deed, whenever the context requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

19. Trustee accepts this Trust when this Trust Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Trust Deed or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party, unless brought by Trustee.

20. This Trust Deed shall be construed according to the laws of the State of Utah.

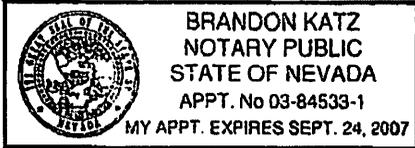
21. The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder by mailed to him at the address hereinbefore set forth.

22. Transfer of the Property or a Beneficial Interest in Trustor. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Trustor is sold or transferred and Trustor is not a natural person) without Beneficiary(s)' prior written consent, Beneficiary(s) may, at its option, require immediate payment in full of all sums secured by this Security Instrument.

Signature of Trustor(s)

Wayne Schwalbach

Meiqin Luong



NOTARY FOR AN INDIVIDUAL TRUSTOR

STATE OF NEVADA )  
County of CLARK ) ss

On the 8 day of March, A. D. 2006, personally appeared before me, Wayne Schwalbach and Meiqin Luong, the signer(s) of the within instrument, who duly acknowledge to me that they executed the same.

Notary Public

My Commission Expires: 9/24/2007

Notary Public residing at: LAS VEGAS, NV

REQUEST FOR FULL RECONVEYANCE

(To be used only when indebtedness secured hereby has been paid in full)

TO: TRUSTEE.

THE UNDERSIGNED, is the legal owner and holder of the Note and all other indebtedness secured by the within Trust Deed. Said Note, together with all indebtedness secured by said Trust Deed has been FULLY PAID and SATISFIED; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Trust Deed, to CANCEL said Note, and all other evidence of indebtedness secured by said Trust Deed delivered to you, together with the said Trust Deed, and to RECONVEY, without warranty, to the parties designated by the terms of said Trust Deed, all the Estate now held by you thereunder.

DATED this \_\_\_\_ day of \_\_\_\_\_.

Mail reconveyance to: \_\_\_\_\_



State of Utah

GARY R. HERBERT  
Governor

SPENCER J. COX  
Lieutenant Governor

DEPARTMENT OF TRANSPORTATION

CARLOS M. BRACERAS, P.E.  
Executive Director

SHANE M. MARSHALL, P.E.  
Deputy Director

Wayne Schwalbach  
11529 Regal Rock Place  
Las Vegas Nevada  
89138

Dear Wayne,

As per your request I have reviewed the original agreement that UDOT has with you regarding the Good Earth Subdivision located on SR 89 M.P. 103.28.

The original cooperative agreement with Kane County limited the number of lots to 5 that could be sold before turn lanes would need to be constructed. You have indicated that your development plans have changed and you no longer want to develop the additional lots to the north of the current development on the remaining portion of your land. You have asked that the agreement with the state be modified to include the few lots previously developed which is 7.

Since the time of the original agreement UDOT has improved the highway through this area. The improvements include wider shoulders and an additional lane which has made accessing the highway much safer. With these improvements the impact to the highway will be minimal and I view the impact of the sale of the remaining lots (for a total of 7 lots) minimal. It is important to understand that in the future if your plans change and you develop additional lots beyond the 7, UDOT will then reassess the impact of a new agreement with you and Kane County.

Sincerely,

Steve Kunzler  
UDOT Region 4  
ROW Coordinator

Shannon -

Rob said this "reconvey-  
ance" of Lots 3 & 4 has to  
go through P&Z for  
approval, then to County  
Commission for signature.  
Lou has the original deed  
to be signed, then sent to  
Brad Adair, So. Utah Title.  
I put it on December's agenda.  
M.R.