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## UTAH DEPARTMENT OF COMMERCE

### Division of Public Utilities

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CHRIS PARKER  
Division Director

## Action Request Response

**To:** Public Service Commission of Utah

**From:** Utah Division of Public Utilities

Chris Parker, Director  
Brenda Salter, Assistant Director  
Abdinasir Abdulle, Utility Technical Consultant Supervisor  
Shauna Benvegna-Springer, Utility Technical Consultant  
Gary Smith, Utility Technical Consultant  
Tamra Dayley, Utility Analyst

**Date:** March 20, 2023

**Re:** **Docket No. 23-2639-01**, Application of Kane Creek Preservation and Development, LLC for a Certificate of Convenience and Necessity to Operate as a Public Utility Rendering Sanitary Sewer Service

## Recommendation (Approval)

The Division of Public Utilities (Division) recommends that the Utah Public Service Commission (Commission) issue a Certificate of Public Convenience and Necessity (CPCN) to Kane Creek Preservation and Development, LLC (Company or KCPD) for a maximum of 599 residential and commercial sewer connections.

## Issue

The Company filed its application for a CPCN with the Commission on February 17, 2023, indicating that it qualifies for a CPCN to provide a sanitary sewer system. The Commission issued the Division an Action Request on February 17, 2023, requesting the Division review the application and file a recommendation by March 20, 2023.

## Background

The Company is a Delaware limited liability corporation registered as a foreign entity with the Utah Division of Corporations (UDC) on June 23, 2021, and has a current "Active" or

Division of Public Utilities

Heber M. Wells Building • 160 East 300 South • P.O. Box 146751 Salt Lake City, UT 84114-6741  
[www.dpu.utah.gov](http://www.dpu.utah.gov) • telephone (801) 530-7622 • toll-free in Utah (877) 874-0904 • fax (801) 530-6512

good standing status with UDC. The Company plans to serve a 176.4-acre<sup>1</sup> mixed-use service territory along the Colorado River in the unincorporated Grand County, two miles west of Moab City.

## **Discussion**

The Company applied for a Construction Permit with the Division of Water Quality (DWQ). The DWQ has reviewed its system and approved the system content plan but has not officially approved the sewer system.<sup>2</sup> In discussions with the Division, DWQ indicated that the proposed sanitary sewer system would be sound and reasonable.

No existing sewer system is available for the KCPD project, either with Moab City or Grand County, because of “rugged intervening terrain,” distance, canyons, and plateaus.<sup>3</sup> The KCPD project is surrounded by BLM land and Utah State property with no future plans for development.

The Company worked with Grand County Commissioners to facilitate the establishment of a particular special service district, Kane Springs Improvement District. During the County Commission’s regular meeting<sup>4</sup> under “Citizens to be Heard,” “Craig Smith, attorney for KCPD, spoke on behalf of the Kane Springs Improvement District (Item H) and referenced a comment letter offered to the Commission in support of a board of directors made up of resident applicants and county commissioners...”<sup>5</sup> The Commission passed a resolution on September 6, 2022. The County Commissioners tabled the resolution.<sup>6</sup> The establishment of the special service district is not yet final, based on discussions with Grand County staff.

To meet the requirements of DWQ, the Division will act as the body politic for the project.

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<sup>1</sup> The application in Docket No. 23-2639-01, page 1 describes the project as “180 acres of real property.” In their management biographies accompanying the application, Craig Weston, Trent Arnold, and Tom Gottlieb to use the real property as a “177-acre master-planned residential community” The master plan map states that in the Area Schedule Table, the project is 176.4 acres which the Company confirmed.

<sup>2</sup> Shauna Benvegnu-Springer, The Division discussed the sewer system with Glenn Lischeske, DWQ Engineer, on February 27, 2023.

<sup>3</sup> 23-2639-01, KCPD Application for CPCN, page 2, February 14, 2023.

<sup>4</sup> Grand County Commission Regular Meeting, September 6, 2022, Minutes, Item H, page 7 of 14.

<sup>5</sup> Grand County Commission Regular Meeting, September 6, 2022, Minutes, Item I, page 8 of 14.

<sup>6</sup> Ibid.

As outlined in the Commission Rules R746-401 and R746-700, the Company understands that construction plans and a proposed tariff with just and reasonable rates must be submitted to the Commission before beginning construction and operation.

The biographies of KCPD management appear to demonstrate the skills and knowledge necessary for the project's success. All three general partners have in-depth experience, including residential and resort development exceeding 30 years, entrepreneurship, start-ups, and investment platforms experience. Their projects have been located throughout the US and worldwide. Academic knowledge includes construction and facilities management, accounting, business management, and investment management.

## **Conclusion**

The Division has reviewed the application for CPCN and has held meetings with Company representatives and the Division of Water Quality. The Division recommends that the Commission approve the Kane Creek Preservation and Development, LLC application for CPCN, with a maximum of 599 residential and commercial connections.

cc: L. Jay Springer, Smith Hartvigsen, PLLC  
J. Craig Smith, Smith Hartvigsen, PLLC  
Patricia Schmid, Assistant Attorney General  
Glenn Lischeske, DWQ