



TO: Bob Fotheringham, Cache County

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SUBJECT: Water Conservancy District Creation Outline

The following steps are required to create a water conservancy district (a type of local district) encompassing all or a substantial portion of Cache County. There are two basic methods to initiate the creation of such a district: (1) by resolutions adopted by the Cache County Council and the legislative bodies of each municipality within Cache County that will be included in the district, or (2) by a petition signed by owners of real property located in or by voters residing in the area of the proposed district. Each method is described separately below.

I. Petition Method

- A. **Step One: Filing a Request.** Prior to filing the petition, citizens must file, with the clerk of the county and the clerks or recorders of each affected municipality, requests that the particular county or municipality provide the service which is to be provided by the proposed water conservancy district (the "Request"). Essentially, the petition method requires the county and each municipality to consent to the formation of the water conservancy district, or agree to provide the desired service, before a petition may be filed. Utah Code Ann. § 17B-1-204.
- i. *Request Requirements.*
- a. Each Request must be signed by (a) owners of private real property constituting at least 10% by area and 7% by value of all of the privately owned real property located in the applicable area (all unincorporated land in the county is one applicable area and the land within each included municipality will constitute an applicable area -- there will be as many applicable areas as there are included municipalities, in whole or in part, plus one, for the unincorporated area), or (b) registered voters residing in the subject applicable area equal in number to at least 10% of the number of votes cast in the area for the office of governor at the last general election. Utah Code Ann. § 17B-1-204.

- b. Each Request must (a) include the typed or printed name and current residence address of each person signing the Request, (b) describe the entire area of the proposed water conservancy district, (c) include a map of the proposed district, (d) specify the service proposed to be provided, (e) specify the type of the proposed specialized local district (water conservancy district), (f) if the Request is filed by property owners, indicate the address of each property for which an owner is signing, and (g) designate up to five signers as sponsors, one of whom is designated as the contact sponsor, with the mailing address and phone number of each. Utah Code Ann. § 17B-1-205.
- B. Step Two: Request Certification. Within 30 days after the filing of the Request, the county clerk or the clerk or recorder of the affected municipality must determine, in good faith, whether the Request complies with the statutory requirements detailed above and, if the determination is affirmative, must “certify” the Request and deliver it to the appropriate legislative body. The certification or, alternatively, a rejection must be mailed or delivered to the contact sponsor. If rejected, the Request may be corrected and refiled. If the clerk and/or recorder fails to certify the Request within 30 days, the Request will be deemed to have been certified by that entity. Utah Code Ann. § 17B-1-206.
- C. Step Three: Public Hearings. Within 45 days of the certification of a Request, the legislative body of the county and of each municipality is required to hold a public hearing to allow public input on whether the requested service is needed in the proposed area, whether the service should be provided by the county, the municipality or the proposed district, and other matters related to the Request. Utah Code Ann. § 17B-1-210.
 - i. *Notice of Public Hearing.* The legislative bodies must mail a notice to each registered voter or each owner of real property located within the proposed district OR must publish a notice of the hearing in a newspaper of general circulation and, for two weeks prior to the hearing, on the Utah Public Notice Website. Utah Code Ann. § 17B-1-211.
 - a. All notices must identify each governing body involved in the hearing (multiple governing bodies may hold a joint public hearing as long as a quorum of each public body is present); state the date, time, place and purpose of the hearing; and either describe or include a map of the proposed district.
 - b. A newspaper notice must be no less than ¼ page in size, use type no smaller than 18 point, and be surrounded by a ¼-inch border. If possible, the notice must appear in a newspaper of general interest that is published at least one day per week, and in a portion of the newspaper *other* than where legal notices and classified ads appear.

- c. The newspaper notice must be published at least once each week for four consecutive weeks, with the final publication being no fewer than 5 days and no more than 20 days before the hearing.

ii. *Hearing Requirements.*

- a. The county and municipal legislative bodies may hold a joint hearing if all other requirements are met. Also, the legislative bodies may hold one or a set of hearings to ensure that no substantial group of residents will need to travel an unreasonable distance in order to attend.
- b. A quorum of each governing body holding a hearing must be present throughout the hearing. The hearing must be held on a weeknight, other than a holiday, commencing no earlier than 6:00 p.m.

D. Step Four: Individual Legislative Resolutions. Within 60 days after the last hearing of the county or municipality, each respective legislative body must adopt a resolution indicating whether it will provide the requested service to the portion of the proposed water conservancy district over which it has jurisdiction. In other words, the county or municipality may consent to the creation of the local district moving forward or, if not, it must itself provide the service. If the legislative body fails to adopt such a resolution within the allotted time, it is deemed to have declined to provide the service. Additionally, if the county or municipality commits to provide the service but does *not* undertake substantial measures to do so within 120 days after adoption of the resolution, it will be considered to have declined to provide the service. Utah Code Ann. § 17B-1-212.

E. Step Five: Filing of Petition: After the county and the municipalities adopt resolutions declining to provide the service, or are deemed to have declined to provide the service, a petition proposing the creation of the water conservancy district may be filed with the county clerk (the "Petition"). Utah Code Ann. § 17B-1-203.

i. *Petition Requirements.*

- a. The Petition must be signed (a) by the owners of private real property covering at least 33% of the total area and equal in value to at least 25% of the value of all privately owned real property within the proposed district as a whole and each applicable area (i.e. each municipality and the unincorporated area), or (b) by registered voters residing within the proposed district in number equal to at least 33% of the total number of votes cast in the proposed district as a whole and in each applicable area, respectively, for the office of governor at the last general election. Signatures on a Request may be used on a Petition if the Request notifies the signer of such future use in conspicuous language and

the signer does not withdraw his or her signature before the Petition is filed. Utah Code Ann. § 17B-1-207.

- b. The Petition must include all of the elements of the Request listed in Section I.A.i.b above. Additionally, a Petition must group signatures separately by unincorporated county and municipality, and state the number of members that the board of trustees of the proposed local district will have. Utah Code Ann. § 17B-1-208.
 - c. A Petition may *not* propose the creation of a district whose area includes some or all of an area for which the county or a municipality adopted a resolution stating that it would provide the requested service *unless* the county or municipality failed to take substantial measures to provide the requested service within 120 days after adoption of the resolution. Also, a Petition may *not* be filed more than 12 months after the county or a municipality declines to provide the service (Step Four, above).
- F. Step Six: Petition Certification. No later than five days after the Petition is filed, the county clerk must mail a copy of the Petition to the clerk or recorder of each municipality to be included in the proposed district. No later than 35 days after the Petition is filed, each clerk or recorder is to determine whether the Petition meets the legal requirements discussed above, and report back to the county clerk. Within 45 days after the filing of the Petition, the county clerk is to confirm that the Petition complies with all statutory requirements, “certify” the Petition, and deliver it to the county council. A copy of the certification must also be mailed or delivered to the contact sponsor. If the Petition is not certified within 45 days, it will be deemed to have been certified. If the Petition is rejected, it may be corrected and refiled. Utah Code Ann. § 17B-1-209.
- G. Step Seven: Election. After the Petition is certified, and election on the question of whether the district should be created is to be held by the county clerk at the next special or regular general election that is more than 45 days after the certification of the Petition. Utah Code Ann. § 17B-1-214.
- i. *Exceptions.* An election is *not* required if:
 - a. The Petition contains signatures of owners of at least 67% by area and 50% by value of the total private real property located within the proposed local district as a whole and within each applicable area, or
 - b. The Petition contains signatures of resident registered voters equal in number to at least 67% of the number of votes cast in the proposed local district as a whole and in each applicable area, respectively, for the office of governor at the last general election.

II. Resolution Method.

- A. Step One: Adoption of Resolution. The legislative body of the county, since the district will include unincorporated land, *and* of each municipality to be included in the proposed water conservancy district may adopt a resolution proposing the creation of a district (a “Resolution”). Utah Code Ann. § 17B-1-203.
- i. *Resolution Requirements.* The Resolution must (a) describe the entire area of the proposed district, (b) be accompanied by a map of the proposed district, (c) describe the service proposed to be provided by the district, (d) specify the type of specialized local district being proposed (a water conservancy district), (e) explain the anticipated method of paying the costs of providing the proposed service, (f) estimate the average financial impact on a household within the proposed local district if the district is created, and (g) state the number of members that the board of trustees of the proposed district will have. If multiple Resolutions are adopted by multiple legislative bodies proposing the creation of the same district, each municipal legislative body adopting such a resolution must mail a copy of the Resolution to the county council before the first public hearing is held.
- B. Step Two: Public Hearing. Within 45 days after adoption of the Resolution, the legislative body of each county and municipality that adopts a Resolution must hold a public hearing, or a joint hearing, to allow the public to ask questions of and obtain further information from the governing body holding the hearing regarding issues contained in or raised by the Resolution. Utah Code Ann. § 17B-1-210.
- i. *Notice of Public Hearing.* A notice of the public hearing must be mailed or published following the same requirements as listed in Section I.C. above. Additionally, all notices must contain the entire text *or* an accurate summary of the subject Resolution and state the deadline for filing protests (60 days after the last public hearing).
 - ii. *Hearing Requirements.* The hearing must follow the same requirements as listed in Section I.C. above. In addition, at the beginning and end of each public hearing, the governing body is required to announce the deadline for filing protests and generally explain the protest procedure and requirements.
- C. Step Three: Protest Period. If adequate protests (defined below) are filed, the governing body that adopted a Resolution may not hold or participate in an election on the matter, may not take any further action in furtherance of the Resolution, and may not adopt a similar Resolution within two years. Within five days of receiving adequate protests, a municipal body must notify the county clerk. An election may still be held for the creation of the district in affected areas where adequate protests were *not* received. Utah Code Ann. § 17B-1-213.

- i. *Adequate Protest Requirements.* “Adequate protests” are protests filed with the county clerk, or municipal clerk or recorder, as appropriate, within 60 days of the last public hearing which are signed (a) by owners of private real property located within the applicable area equal to at least 25% by area and at least 15% by value of all private real property within the applicable area, or (b) by registered voters residing in the applicable area in number equal to at least 25% of the number of votes cast in the applicable area for the office of president of the United States at the most recent election.

D. Step Four: Election. If adequate protests are not timely received, an election on the question of whether the water conservancy district will be created is to be held by the county clerk at the next special or regular general election that is more than 60 days after the latest public hearing. There are exceptions to the election requirement under the Resolution method, but none of them apply to this situation. Utah Code Ann. § 17B-1-214.

III. Certificate of Incorporation from Lieutenant Governor

- A. Filing with Lieutenant Governor. Within 10 days (1) after an election canvass which results in a majority voting in favor of creation or (2) after certification of a Petition if an election is not required to be held, the county council must file with the lieutenant governor a copy of a notice of impending boundary action and a copy of an approved final local entity plat, the requirements of which are detailed in Utah Code Ann. § 67-1a-6.5. Pursuant to Utah Code Ann. § 67-1a-6.5, the lieutenant governor will then issue a certificate of incorporation. The county council must submit the original certificate of incorporation, as well as the original notice of impending boundary action and the original approved final local entity plat, to the county recorder. Until these documents are recorded, the district may not levy or collect property taxes or assessments or charge or collect any fees for services. Utah Code Ann. § 17B-1-215.

IV. Miscellaneous Matters

- A. Costs and Expenses. Each county and municipality is required to bear its own expenses in following these procedures, but the district may be required to reimburse, within a year after its creation, the costs and expenses associated with the preparation, certification, and recording of the approved final local entity plat and accompanying documents. Utah Code Ann. § 17B-1-216.
- B. Activity Required. A local district may be dissolved if it does not begin to engage in activities within five years of its creation. For full details see Utah Code Ann. § 17B-1-217.