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MOAB SEVENTH JUDICIAL DISTRICT COURT
GRAND COUNTY, STATE OF UTAH

FRIENDS OF THE ABAJOS, a Utah nonprofit corporation, d.b.a. KANE CREEK DEVELOPMENT WATCH; and LIVING RIVERS, a Utah nonprofit corporation,

Plaintiffs,

v.

DEIDRE M. HENDERSON, in her capacity as Lieutenant Governor of the State of Utah; KANE CREEK PRESERVATION AND DEVELOPMENT, LLC, a Delaware limited liability company; ECHO CANYON, a Utah preliminary municipality; and CRAIG WESTON, in his individual and official capacities,

Defendants.

COMPLAINT

(Tier 2)

Civil No. _____

Judge _____

Plaintiffs Friends of the Abajos d.b.a. Kane Creek Development Watch (“Watch”) and Living Rivers (collectively, “Plaintiffs”), by and through undersigned counsel, hereby allege and complain against Defendants Deidre M. Henderson, in her capacity as Lieutenant Governor of the State of Utah (“Lieutenant Governor”); Kane Creek Preservation and Development, LLC

(“Developer”); Echo Canyon preliminary municipality (“Echo”); and, Craig Weston in his personal and official capacities (“Weston”) (collectively, “Defendants”), as stated in the paragraphs below.

INTRODUCTION

1. The right to local self-government is a fundamental principle reflected in American jurisprudence and enshrined in the Utah Constitution. *See State v. Stanford*, 66 P. 1061, 1062 (Utah 1901).

2. Indeed, the Legislature was given the “power . . . to create the county government, [but] not to administer such a system when created,” and certainly “not to run and operate . . . local government to the disfranchisement of the people.” *Id.*

3. Utah’s traditional incorporation process reflects this principle. Normally, incorporation is an exercise of local self-government, initiated by residents of unincorporated territory after the population reaches at least 100 residents. *See Utah Code §§ 10-2-201; 10-2a-201.5–10-2a-220*. Once initiated, the traditional incorporation process involves multiple public hearings and an election in which residents vote on whether to incorporate and the incorporated entity’s form of government. *Id.* §§ 10-2a-204 to 10-2a-207; 10-2a-210 to 10-2a-215.

4. Until the population of an unincorporated area is ready to incorporate, the area is governed by the democratically elected county government. County ordinances govern land use and zoning decisions, and county governments provide municipal services, such as fire and police protection, water and sanitation services, and more. *Utah Code §§ 17-27a-102, 17-34-1*.

5. During the 2024 legislative session, the Utah Legislature distorted this process to benefit large property owners in Utah’s rural counties (excepting first- and second-class counties from eligibility), to the detriment and exclusion of those rural counties’ citizens.

6. Specifically, the Legislature enacted the Preliminary Municipality Law (“PML”), which created an unprecedented process for incorporating an entirely new pseudo-municipal entity: a so-called “preliminary municipality.” *See* Utah Code §§ 10-2a-501 to -510.

7. The touchstone for incorporating a preliminary municipality under the PML is property ownership (and wealth)—not population or self-representation.

8. Unlike the traditional municipal incorporation process, which can be initiated by a resident only after the area to be incorporated has a population of at least 100, the preliminary municipality process allows for incorporation without any actual residents.

9. To qualify, the unincorporated area must be contiguous, owned by no more than three persons (all of whom consent to incorporation), and at least 50% of the area must be undeveloped. Utah Code § 10-2a-502(2). The person seeking incorporation also must have the financial wherewithal to post a bond or similar security to cover major infrastructure improvements.

10. Once initiated, this special incorporation process is controlled by large property owners and developers who need not even be residents of the unincorporated area, much less the county the development will be located in. *See* Utah Code §§ 10-2a-501 to -510. There are no required elections on whether to incorporate as a preliminary municipality or on the preliminary municipality’s governing structure. And the property owner has sole authority to appoint a voting majority—four out of five members—of the preliminary municipality’s board, which functions as its governing body. Neither the county itself nor county residents get any say whatsoever during the process of determining feasibility and incorporating a so-called “preliminary municipality.”

11. The county receives nominal input, and only after the preliminary municipality is incorporated: being able to designate one member on the preliminary municipality’s governing board following incorporation. *Id.* §§ 10-2a-508; 10-2a-509.

12. Once incorporated, the preliminary municipality’s unelected and politically unaccountable board generally “has all the powers and duties of a municipality,” with limited exceptions only for imposing taxes and exercising eminent domain. Utah Code § 10-2a-509(4).

13. The county thus loses all authority to govern land use and zoning decisions once the preliminary municipality incorporates, as a preliminary municipality’s unelected board “has the same authority as another municipality to make decisions regarding zoning and land use.” *Id.* § 10-2a-509(5)(b)(iii).

14. In short, the PML takes government out of the hands of local elected county officials—who are accountable to county residents and citizens—and gives it to unelected private developers.

15. Developer intends to develop unincorporated land in a sensitive riparian corridor along the Colorado River in Grand County, Utah—which presently exists in a mostly natural state—into a massive housing, resort, and retail development (“Development”). The Development has faced significant opposition from the Grand County residents who would be impacted by it, and who previously utilized the county land use and political processes to make their voices heard.

16. The Development is planned to be located on approximately 176 acres of unincorporated, privately owned land (“Property”), located less than one mile outside of Moab City boundaries in an area known as Kane Creek or Kings Bottom.

17. The Property is bisected by Kane Creek Road,¹ a public Class B road under split jurisdiction: it is maintained by Moab City for the portion within city limits, and Grand County for the portion lying between Moab City limits and San Juan County. The County-maintained portion includes the area where the Property is located. The portion of Kane Creek Road located on the Property is paved, but it is not a full-width two-lane road and has no shoulder.

18. There is only one way to access the Property by car: via Kane Creek Road. Further, the only streets that provide access to Kane Creek Road are located in Moab City.

19. Kane Creek Road is also a gateway and access road for numerous public recreation points and trailheads and is traversed daily by Grand County residents for leisure and necessity, as well as numerous businesses. For several of these residents and businesses, some of whom are named below, it is the only route to access their property and/or livelihood.

20. The Development will also require significant water use, as Developer has claimed the ability to use up to 422 acre-feet of water for municipal use and irrigation in connection with the Development. However, on information and belief, Developer's water rights that it relies on to make this claim have gone unused since at least the early 1990s, meaning they are technically forfeited under Utah law, and the unused water has been put to use by subsequent appropriators. Thus, the Development's renewed use of long-dormant water rights would result in additional strain on the limited water supply in the Moab and Kane Creek areas.

21. In addition to facing significant public opposition, the Development conflicts with Grand County's carefully planned land use and zoning ordinances, which seek to balance local economic interests with environmental considerations.

¹ This road is referred to on some maps as Kane Creek Boulevard, particularly in the portion within Moab City limits, and also in some areas as Kane Springs Road.

22. As described in further detail below, Watch, its members, and others have engaged actively in the county-level zoning and land use decision-making process, helping to alert Grand County officials to numerous concerns with the Development, centering around its noncompliance with county ordinances, public safety risks, detrimental impact on nearby residents and the local economy, and myriad other issues.

23. Frustrated by perceived delays to obtain the necessary approvals to develop the Property through the standard county-level zoning and land use channels, which drew participation from sustained local opposition, Developer and its allies invoked the preliminary municipality process to circumvent Grand County and its residents.

24. On June 9, 2025, the Lieutenant Governor issued a certificate of incorporation for Echo to be incorporated and operate as a preliminary municipality on the Property.

25. If allowed to continue, Echo's unelected board—none of whom are residents of Grand County—will continue to wrest land use and zoning control from Grand County, its democratically elected officials, and its citizens, and place it in the hands of private developers, i.e., themselves.

26. Moreover, similar developer-owned and controlled preliminary municipalities will continue to spring up throughout Utah's rural counties. This blatant disregard for local governance and accountability violates the Utah Constitution.

27. Plaintiffs seek a declaration that the PML violates several provisions of the Utah Constitution; preliminary and permanent injunctive relief preventing Echo from operating as a government entity; and preliminary and permanent injunctive generally enjoining all Defendants from applying, enforcing, and/or effectuating the unconstitutional PML.

PARTIES

Plaintiffs

28. Plaintiff Watch is a grassroots citizen group based in Grand County, Utah. It was established in January 2024 with the express mission of preventing the Development and the numerous detrimental impacts it will cause. Watch is dually focused on (a) mitigating impacts from the Development on the unique area it would decimate, the surrounding ecosystem, and adjoining public lands, as well as (b) preventing additional strain on the water supply of the Colorado River and its tributaries, which are chronically over appropriated.

29. Watch is registered as a ‘doing business as’ entity of Friends of the Abajos (“Friends”), a Utah-based 501(c)(3) nonprofit organization with the broader mission of protecting treasured and sensitive natural areas in Southern Utah. Friends is also based in Grand County and serves as Watch’s fiscal sponsor.

30. Watch has an email list of over 8,000 concerned individuals, over 10,900 followers on Instagram, over 650 donors, a petition against the Development with roughly 18,000 signatures (1,460 of whom reside in Grand County), and at least three dozen active volunteers who have donated hundreds of hours of their time to supporting Watch’s efforts.

31. Plaintiff Living Rivers is a Utah nonprofit corporation founded in 2000. It is a public-interest environmental organization based in Grand County and dedicated to protecting and restoring ecosystems in the Colorado River Basin. Living Rivers promotes river restoration and seeks to revive natural habitats impacted by industrial, commercial, and similar uses on the Colorado Plateau.

32. Living Rivers’ members engage in recreational, conservation, and citizen science activities on the Colorado River itself and within the entire Colorado River Basin. Its members

comprise a group of citizens and supporters concerned about the potential negative and extensive impacts of unlawful and/or unauthorized water diversions on local recreation, wildlife, water quality and quantity, ecosystem health, and aesthetic values.

Defendants

33. Defendant Deidre M. Henderson (“Lieutenant Governor”) is the Lieutenant Governor of Utah. Under the PML, the Lieutenant Governor is responsible for facilitating the process of establishing a preliminary municipality, including issuing a certificate of incorporation. *See* Utah Code §§ 10-2a-502 to 10-2a-509. Defendant Henderson is being sued in her official capacity.

34. Defendant Kane Creek Preservation and Development LLC (“Developer”) is a Delaware limited liability company founded in April 2021. It became registered to do business in Utah in June 2021. According to public filings, the purpose of Developer is the development of Utah real estate, and its principal place of business is located in Utah County. Developer owns the majority of the Property. Developer is also one of two applicants² who filed the initial request to create the preliminary municipality that would become Echo, the final petition for incorporation, and related documents.

35. Defendant Echo Canyon (“Echo”) purports to be a “preliminary municipality” organized pursuant to Utah Code § 10-2a-501 *et seq.* The Lieutenant Governor issued a certificate ostensibly incorporating Echo as a preliminary municipality on or about June 9, 2025.³

² There was originally a second applicant but, according to public records, it is now a defunct and voluntarily dissolved entity, and no longer owns any portion of the Property.

³ Plaintiffs do not concede the validity of Echo’s status, functions, or acts as a preliminary municipality, nor its ability to otherwise act as a legitimate governmental capacity.

36. Defendant Craig Weston (“Weston”), named in both his personal and official capacity, is the primary sponsor who submitted the initial feasibility request to create the preliminary municipality that would become Echo. He also signed the final petition for incorporation and related documents. According to public filings, Weston is the General Partner of Developer. He also currently serves as Chair of Echo’s governing board.

JURISDICTION AND VENUE

37. This Court has subject matter jurisdiction over this action under Utah Code §§ 78A-5-102 and 78B-6-401; Article VIII, Section 5 of the Utah Constitution; and Rules 57 and 65A of the Utah Rules of Civil Procedure.

38. This Court can grant declaratory and equitable relief under Utah’s Declaratory Judgment Act, Utah Code § 78B-6-401 *et seq.*, and through its general equitable powers to enforce the Utah Constitution.

39. This Court has personal jurisdiction over all Defendants. The Lieutenant Governor is a state official sued in her official capacity who resides and conducts her official business in the state. Although Developer is registered in Delaware, its principal place of business is in Utah, rendering it sufficiently “at home” in this state for purposes of personal jurisdiction. Echo is ostensibly a government entity created under Utah law, and located entirely within the state. Weston is, on information and belief, a Utah citizen and full-time resident of the state.

40. Venue is proper in the Seventh Judicial District, Grand County, because the cause of action arises in Grand County. Utah Code §§ 78B-3a-201, 78B-3a-202, 78B-3a-203(3).

STANDING

41. Due to the PML and the creation of Echo as a preliminary municipality thereunder, Grand County businesses, residents, and landowners have been stripped of their constitutional

right to meaningfully express their opposition to the Development, or otherwise participate, as affected residents before County planning, land use, and other decision-making bodies. This is because Developer, Weston, and their affiliates are no longer required to receive approval from the Grand County Commission and/or other County departments and decision-making bodies for the bulk of their Development actions. Further, because Echo itself has no residents, there are no individuals who have the ability to effectively participate in the public decision-making process; that is, as residents to whom the Echo officials are politically accountable.

42. As detailed below, Plaintiffs Watch and Living Rivers have numerous members who are property owners, residents, taxpayers, and regular recreational enthusiasts in Grand County, including in the areas immediately surrounding Echo and the Development, who are directly injured by the PML and the loss of their ability to meaningfully oppose the land use, zoning, and other decisions in regard to the Development

Watch

43. Watch includes among its members several small businesses who rely on the Property as part of what they offer their clients in Grand County's unique adventure and recreation tourism economy. Watch's members also regularly enjoy activities like hiking, boating, birdwatching, photography, and general recreating at the Property and surrounding area. All of these activities will be negatively impacted, if not made impossible, by the Development, which will facilitate the transformation of the Property from a large open space area with healthy groves of old-growth cottonwood trees and a vibrant and intact riparian ecological system, to an exclusive community of multimillion-dollar vacation homes, clubhouses, and private amenities.

44. The Development's use of water further impacts Watch's members, whose activities occur within an extremely arid hydrologic region. Simply put, the activities of Watch's constituents require water. The springs, tributaries, riparian corridors, and river in the immediate

Kane Creek area is what gives this area its unique splendor: it is the reason aquatic species thrive there, the reason terrestrial ones congregate there, the reason tourists the globe over and native Moabites alike are drawn to recreating and other activities there, and the reason that individuals formed Watch to protect the Kane Creek/Kings Bottom area.

45. The constitutionally dubious use of Echo by Weston, Developer, and their affiliates to build the Development exacerbates the injury to Watch's members because the members are no longer able to exercise their opposition to the Development through petitioning their elected representatives because the Echo officials are not politically accountable to any Grand County residents—indeed, they are not politically accountable to anyone.

46. Watch includes several local businesses and business owners among its members that would be detrimentally impacted by the Development. One such member is Matt Lajeunesse, a resident and taxpayer of Grand County, who owns Tandem BASE Moab. Moab is one of the few locations in the world to offer commercial BASE jumping. The primary BASE jumping location the business takes clients to is Tombstone Rock, which is located roughly a half mile from the south end of the Property and can only be accessed by Kane Creek Road. It is only one of three locations the BLM allows Tandem BASE Moab to jump from, and is its most popular booking based on the proximity to Moab. Moreover, BASE jumping is heavily dependent on weather, temperature, and wind conditions. Thus, jump timing is often spontaneous. Traffic delays and closures resulting from the Development, its construction, and related actions will make it next to impossible to hit Tandem BASE Moab's jump windows. If Tandem BASE Moab is unable to hit its jump window on a regular basis due to the Development, the company's reputation, goodwill, and business will be harmed. Mr. Lajeunesse legitimately and reasonably expects that if the Development moves forward it may put him out

of business; at the very least, it will lead to a substantial loss in revenue. Mr. Lajeunesse will lose exposure to other customers and sponsors that he receives by conducting jumps at Tombstone.

47. Another business owner is Andy Lewis. Mr. Lewis is a resident and taxpayer of Grand County, an internationally acclaimed slackliner and BASE jumper, and owner of BASE Jump Moab. His business and livelihood rely on full access to Kane Creek Road, both as the access point for Tombstone and because the road is the landing location for BASE Jump Moab's Tombstone tandem jumps. The increased traffic from the Development, including both construction and new residents, would make BASE jumping at Tombstone and Kane Creek extremely difficult, if not impossible. It will also impact Mr. Lewis's livelihood by preventing him from creating video content from BASE jumps conducted there, a source of advertising and publicity for his business and personal brand.

48. Another Watch Member whose livelihood relies on Kane Creek Road is David Wilson, resident and taxpayer of Grand County, who owns a rental and consulting business catering to backcountry bicycle tourists (i.e., bikepackers). Two of the main routes that Mr. Wilson's clients rely on use Kane Creek Road. As it is, the traffic is usually tolerable, but can become frustrating to cyclists during busy weekends. If the Development comes to fruition, it will exacerbate congestion and possibly lead to conflict, injury, and even death to non-motorized users of the road. If Mr. Wilson is forced to cease recommending that clients take the routes relying on Kane Creek Road due to safety concerns, many of those clients are predicted not to use his business, thereby devastating his livelihood.

49. Watch Member Larry David Helman, resident and taxpayer of Grand County, runs Extreme 4x4 Tours, which regularly takes clients on tours over Hurrah Pass, an area that can only be accessed via Kane Creek Road. If the Development moves forward, taking clients through this

construction zone, in one of the most beautiful sections of the tour, will substantially detract from the quality of the services Extreme 4x4 Tours is able to offer and will clearly make it less enjoyable for its clients. Additionally, if substantial delays or road closures become a regular occurrence because of this project, Mr. Helman will likely have to reduce or remove the Hurrah Pass Tour from the company's offerings, becoming highly detrimental to Extreme 4x4 Tours' bottom line.

50. Another business relying on Kane Creek Road for its clients to reach Hurrah Pass is Moab Cliffs and Canyons, a climbing and canyoneering guide service based in Grand County. Like all guide services, the trips run on very specific time windows that clients plan their day around. The Development will cause serious construction delays for multiple years and will effectively stop Moab Cliffs and Canyons from being to operate a large portion of its trips. Additionally, any of its clients who camp at Hunter Canyon or the Ledge sites on Kane Creek Road and get delayed by construction will seriously impact trip timing and other clients, creating a cascade effect that is likely to lead to lost business for Moab Cliffs and Canyons.

51. Another guide business that would be impacted is Elevate Outdoors, owned by Watch Member Faith Dickey, who is a resident and taxpayer of Grand County. Roughly one-fourth of Ms. Dickey's guiding activities require her to access areas down Kane Creek Road, meaning she passes through the Property often. Several of Elevate Outdoors' trips have already been delayed by construction trucks associated with the Development, and Ms. Dickey is extremely concerned about future delays when the road is likely to be closed, or when thru traffic becomes heavily delayed during construction. The nature of Elevate Outdoors' business is that certain trips span a precise amount of time, so delays could cause Ms. Dickey to miss other clients on days when she has two or more outings scheduled. Furthermore, clients of Elevate Outdoors have already had their experiences negatively impacted by the clearing and fill

activities that have already occurred on the Property, actions that will only become further exacerbated if the Development moves forward.

52. Watch has several members who reside and/or own property on Kane Creek Road in Moab, northeast of the Property. Based on the location of these individuals' property, they would be directly impacted by the Development and its ancillary activities, including heavy trucks for additional fill and construction, as well as traffic from a substantial number of expected new residents and visitors using the road. This is because the new and expanded uses would necessarily drive by these members' homes, negatively impacting quality of life. They include Rick Lynch, resident and taxpayer of Grand County, whose property is located at or about 704 Kane Creek Boulevard. Mr. Lynch is concerned about his own safety and the safety of the public from overburdening the road with increased traffic from construction and the Development.

53. Watch members Kalen Jones & Susan Harrington, residents and taxpayers of Grand County, reside even closer to the Property than Mr. Lynch, at or about 864 Kane Creek Boulevard. In addition to the same negative quality of life and vehicular access issues Mr. Lynch would face, Mr. Jones and Ms. Harrington would face additional hardship from the development because they ride their bicycles on Kane Creek Boulevard, both recreationally in the summer and winter on the section adjacent to the Colorado River, and as transportation to access Moab throughout the year. Increased traffic will negatively affect their experience, and with the narrow to non-existent shoulders, the increased traffic will create a safety hazard for non-motor vehicle users, such as them. Further, Mr. Jones and Ms. Harrington recreate at least once a week in places near the proposed Development where the sight and sound of construction and new buildings, as well as additional traffic, will negatively affect their experience.

54. There are also individuals with private property inholdings located within federal land south of the Property on Kane Creek Road. For these individuals, Kane Creek Road, including the portion bisecting the Property, is their only means to access services from their property, and vice-versa. These include Watch Members Cody and Ashlynn Priano, who frequently access, use, and stay at property in Grand County owned by their mother. The Priano property is approximately 4.5 miles from the south end of the Property, measured by travel distance on Kane Creek Road. The Development would negatively impact the Prianos by impeding access to their property, access from the property to Moab and all necessary services, through increased traffic and ancillary impacts from the construction and growth.

55. Watch also represents numerous members that utilize Kane Creek Road for recreational access. For instance, T. Scott Groene, resident and taxpayer of Grand County, has used the road to visit the Property and the immediate vicinity for at least two decades. The Development and its use of forfeited water rights would negatively impact Mr. Groene by likely leading to reduced flows in springs in the immediate surrounding area, including Gatherer Canyon, Moonflower Canyon, and Kane Springs Canyon. Mr. Groene visits all of these places regularly and his enjoyment of the areas would be substantially reduced if the Development is built due to the viewshed, overcrowding, and the loss or diminution of the named springs.

56. Another Watch member whose interests would be detrimentally impacted by the Development is Dan Kent, resident and taxpayer of Grand County. Mr. Kent has worked with other Moabites throughout his life to protect the Kane Creek Corridor and surrounding areas. Mr. Kent uses Kane Creek Road to access public lands on a weekly basis, at minimum. He has accessed and used Kane Springs itself, at the mouth of Gatherer Canyon for drinking water for nearly forty years. Mr. Kent and his family and friends find solace, joy, and deep calm from

drinking and bathing in the water of Hunter Canyon, which they access both in the winter and summer. Mr. Kent is further concerned about endemic and endangered plants that rely on these rare spring environments, including Moonflower Canyon and Gatherer Canyon. The risk of all the aforementioned springs diminishing or drying up entirely brings Mr. Kent deep anxiety and sadness at the prospect of the loss of these species and the loss of his and his loved ones' enjoyment of these areas. In addition, Mr. Kent uses the area for exercise, including riding his bike down Kane Creek Road and hiking near the Property. The increased traffic, noise, and emissions from Developer's and Weston's planned actions would negatively impact his ability to exercise and enjoy this precious time. Lastly, Mr. Kent is concerned about the petroglyph panels located on the Property. Since efforts to build the Development began, he has noticed the sites becoming vandalized while also becoming more difficult to view based on the current development activities. If the Development moves forward, these negative impacts to Mr. Kent will only be further exacerbated.

57. Watch member Connie Massingale, resident and taxpayer of Grand County, is a certified avocational archaeologist who is familiar with and connected to the numerous cultural sites located within and in the immediate vicinity of the Property. She has completed rigorous coursework to receive her archaeological certifications and has intimate knowledge of the petroglyph panels, artifacts, and other cultural resources located on the Property and in the immediate vicinity. Ms. Massingale has been going to the Kane Creek/Kings Bottom Area, including within and adjacent to the Property, for more than fifty years. Ms. Massingale also brought many family members and her children to view and learn from the cultural sites, extending from roughly forty years ago to the present day. During the last twenty years as a Grand County resident, she has accessed the sites at least once a month. During these same

timeframes, and extending into the present day, she also relies on Kane Creek Road to access numerous sites in the Behind the Rocks Area for hiking, exploration, and other recreation. Ms. Massingale is highly concerned about the likelihood that these cultural sites will become damaged by Defendants' conduct and has already witnessed heightened risks of this occurring. In addition to the educational value from the cultural sites, she and others feel a deep and documented connection to the land from the ancient peoples who left these sites and artifacts; this connection is at risk of destruction from the Development.

58. Watch also has members who own water rights that are reasonably likely to be impacted, impaired, and/or otherwise affected implicated by the Development and Defendants' planned use of water. Namely, Dr. Steven and Jeanne Rouzer live less than three miles away from the Property and own two water rights that appropriate water using wells. On information and belief, the Rouzers' wells are shallower than all but one of Developers' water rights that appropriate groundwater, and there is thus a reasonable probability that the Rouzers' water rights could be negatively impacted by the Development's use of those rights, including but not limited to causing a drawdown of water that would otherwise be available. The Rouzers are Grand County residents and taxpayers.

59. The individuals and businesses named in Paragraphs 46–58, above, consent to Watch bringing this action on their behalf, having given approval generally though supporting all of Watch's efforts to engage in any legal process available to oppose and prevent the Development. All named individuals have also given explicit approval and consent to Watch to bring this action to advance and protect their interests as Grand County citizens, who are disenfranchised by Echo's very existence.

60. The direct participation of the individuals and businesses named in Paragraphs 46–58, above, is not necessary to resolving the action because their ultimate goals and interests are in complete alignment with Watch’s goals and positions in this suit, which includes invalidating the use of Echo as a “preliminary municipality” with governmental land use authority to render decisions concerning the Development, without being accountable to any Grand County residents.

61. Due to the creation of Echo as a preliminary municipality, the ability of the Grand County businesses, residents, and landowners named above to meaningfully express their opposition to the Development as affected residents before planning, land use, and other decision making bodies is no longer available because Developer, Weston, and their affiliates no longer have to receive approval from the Grand County Commission and/or other County departments and decision-making bodies for the bulk of their Development actions.

62. Because, on information and belief, Echo itself has no residents within its boundaries, there are no individuals who have the ability to effectively participate in the public decision-making process. In other words, there are no residents to whom the Echo officials are politically accountable.

63. Prior to the creation of Echo, Grand County residents like Watch’s members had the ability to engage on matters impacting the alteration, endangerment, impact, and destruction of the Kane Creek/Kings Bottom Area—though the Grand County land use and development approval processes. The removal of the ability to meaningfully participate in the public process before a decision-making body accountable to residents and interested parties is a significant concern and detrimentally affects the ability of Watch to assert and protect its members’ interests as businesses, residents, and property owners.

64. Accordingly, Watch has associational standing to bring this action on behalf of its members, including those named in the foregoing paragraphs.

Living Rivers

65. Living Rivers has been working to advocate and build enthusiasm for the rivers and canyons of the Colorado Plateau since 2000. A critical part of this mission includes restoration and protection of the Colorado River Basin and its sensitive canyon and riparian ecosystems. Since 2002, Living Rivers has been designated the Colorado Riverkeeper by the Waterkeeper Alliance, an internationally renowned network of individuals and groups dedicated to clean, healthy, and abundant water. Further, because Living Rivers is based in Moab, preventing the Development and its destruction of the Kane Creek/Kings Bottom Area carries even greater importance to its leadership, staff, and members.

66. Multiple members of Living Rivers are Grand County residents and taxpayers who oppose the Development because of its significant planned water use, who can no longer petition or interact with their elected representatives at the County level to express their concerns or meaningfully participate in the land use process, due to the creation of Echo.

67. In particular, the following Living Rivers members are Grand County residents and taxpayers who own water rights that, on information and belief, would be impacted by the Development's significant new appropriations in the Colorado River Basin:

- a. Jennifer Speers, as principal of Ground Sentry Company, Inc., which owns and uses four water rights near Dewey, in Grand County, for irrigation, domestic, and stockwatering. Two of these water rights draw directly from the Colorado River; the other two draw from wells located in the immediate vicinity of the River.
- b. Peter Q. Lawson, who uses rights diverting from a groundwater well for irrigation and domestic uses on his ranch in the Professor Valley area of Grand County.

c. Karen Robinson, who uses rights diverting from a groundwater well for irrigation in the Spanish Valley area of Grand County.

d. Robert A. Phillips, who uses rights diverting from a groundwater well for irrigation in the Spanish Valley area of Grand County.

68. In addition, Holiday River Expeditions (“Holiday”) is a Living Rivers member and licensed outfitter, operating backcountry river and bike trips across the Colorado and Green River basins. Holiday provides thousands of clients annually with backcountry experiences on the Colorado and Green Rivers. Holiday employs dozens of seasonal and permanent staff, a large percentage of whom are Grand County residents and taxpayers. If the Development moves forward and is built to its full potential using long-dormant water rights from the Colorado River and sources adjacent thereto, it has the potential to lower the amount of water available in the River at certain times of the year. Lower river levels impact Holiday’s ability to conduct its business as it has been, and creates a reasonable probability of business harm, including but not limited to lost revenue, goodwill, and reputation. Holiday’s employees are also by and large opposed to the Development. Holiday is opposed to the Development, as are many of its employees, and the creation of Echo has removed the ability of Holiday to seek redress from the Grand County authorities.

69. The individuals and business named in Paragraphs 67–68, above, consent to Living Rivers bringing this action on their behalf, having given approval generally though supporting Living Rivers’ efforts to engage in legal processes to prevent the Development and Defendants’ use of forfeited water rights. All named individuals have also given explicit approval and consent to Living Rivers to bring this action to advance and protect their interests.

70. Due to the creation of Echo as a preliminary municipality, the ability of the Living Rivers members and Grand County residents named above to meaningfully express their opposition to the Development as affected residents before planning, land use, and other decision making bodies is no longer available because Developer, Weston, and their affiliates no longer have to receive approval from the Grand County Commission and/or other County departments and decision-making bodies for the bulk of their Development actions.

71. Because, on information and belief, Echo itself has no residents within its boundaries, there are no individuals who have the ability to effectively participate in the public decision-making process. In other words, there are no residents to whom the Echo officials are politically accountable.

72. Prior to the creation of Echo, Grand County residents like Watch's members had the ability to engage on matters impacting the alteration, endangerment, impact, and destruction of the Kane Creek/Kings Bottom Area—though the Grand County land use and development approval processes. The removal of the ability to meaningfully participate in the public process before a decision-making body accountable to residents and interested parties is a significant concern and detrimentally affects the ability of Watch to assert and protect its members' interests as businesses, residents, and property owners.

73. The direct participation of the individuals named in Paragraphs 67–68, above, is not necessary to resolving the action because their ultimate goals and interests are in complete alignment with Living Rivers' goals and positions in this suit, which includes invalidating the use of Echo as a “preliminary municipality” with governmental land use authority to render decisions concerning the Development, without being accountable to any Grand County residents.

74. Accordingly, Living Rivers has associational standing to bring this action on behalf of its members, including those named in the foregoing paragraphs.

GENERAL ALLEGATIONS

A. Grand County Regulates Land Use and Development in Unincorporated Areas, Strategically Balancing its Residents' Economic and Environmental Interests.

75. Grand County (sometimes, “County”), with a population of approximately 9,700, is a county of the fifth class. Moab is the County’s seat and largest city, with a population of about 5,268. Thus, approximately 4,022 Grand County residents live in unincorporated territory.

76. Grand County is statutorily authorized to control land use and development in unincorporated areas within its boundaries. Utah Code § 17-27a-102.

77. Grand County has adopted a General Plan that prioritizes the County’s natural environment and economy. As the plan describes, “[s]ustainability and stewardship are cornerstone values of the Plan.”

78. The Land Use Code of Grand County (“GCLUC”) is one of the primary means by which the County implements the General Plan’s goals. The GCLUC provides land use controls for all unincorporated areas in the County. Utah Code § 17-27a-102(1)(b); GCLUC §§ 1.3, 7.1.1.

79. Until the Lieutenant Governor issued a certificate allowing Echo to incorporate, land use and development on the Property and in Kane Creek/Kings Bottom was governed by the GCLUC.

80. Under state law, Grand County also is authorized to provide municipal-like services to unincorporated areas within the County, and to pay for those services through taxes and fees. Utah Code § 17-34-1.

81. Until the Lieutenant Governor issued a certificate of incorporation for Echo, Grand County was responsible for, *inter alia*, road maintenance services, emergency services,

land use planning, building permit and inspection, and planning for flooding and other natural disasters on the Property and surrounding area.

B. Overview and Background of the Property

82. The Property is located a few miles west of Moab's central business district, and is less than one mile outside the Moab City limits.

83. The Property is bisected by Kane Creek Road, a public Class B road maintained by and under split jurisdiction: it is within Moab City's jurisdiction for the portion within city limits, and Grand County for the portion of the road lying between Moab City limits and San Juan County. The County-managed portion includes the area where the Property is located. The portion of Kane Creek Road located on the Property is paved, but it is not a full-width two-lane road, and has no shoulder.

84. There is only one way to access the Property by car: via Kane Creek Road. Further, the only streets that provide access to Kane Creek Road are located in Moab City.

85. Kane Creek Road is also a gateway and access road for numerous public recreation points and trailheads and is traversed daily by Grand County residents for leisure and necessity, as well as and used by numerous businesses. For several of these residents and businesses, some of whom are named below, it is the only route by which they can access their property and/or livelihood.

86. The Property includes approximately 70 acres of low-lying riparian floodplain along the Colorado River; the remainder consists of redrock bench located above the floodplain, roughly to the southeast and across Kane Creek Road from the riparian area.

87. The Property exemplifies a relative rarity in the desert: a lush riparian floodplain with large old-growth cottonwoods, coyote willows, and tamarisk. The uplands contain single leaf ash, pinion, Juniper, and other characteristic flora.

88. On information and belief, there are frequent wildlife sightings in and around the Property, including porcupine, deer, bald eagles, peregrine falcons, muskrats, and occasionally mountain lions. Further, the Property implicates endangered species, with the riparian part of the property displaying prime habitat for the endangered Southwest Willow Flycatcher. The section of the Colorado River bordering the Property is known critical habitat for Colorado pikeminnow, razorback and flannelmouth sucker, and humpback and bonytail chub.

89. The Property is also unique because of its relative proximity to Moab, providing a haven for Watch's members, as well as other Grand County residents, to find solace and enjoy nature in the midst of the Moab area's surging growth and high frequency of tourists.

90. Further, the Property and the immediate vicinity contain valuable archaeological and cultural sites. The Property itself contains several petroglyph panels and scattered solo petroglyphs, many of which are likely to date back thousands of years.⁴

91. In addition, the immediate vicinity of the Property contains numerous documented archaeological sites, including pit houses, at least one grave, pottery, and other artifacts—namely on land located immediately south of the Property and directly across the river.⁵ On information and belief, most of the sites and petroglyphs were documented through a Cultural Resource Summary conducted by the Bureau of Land Management (“BLM”) in 1980.

⁴ Photographs of some of the petroglyph panels are attached hereto as Exhibit A.

⁵ A map depicting the location of many of these petroglyph and archaeological sites in relation to intensive extraction and fill activities proposed and being conducted on the Property is attached hereto as Exhibit B.

92. A partial cultural resource inventory was conducted in or about March 2020 on the riparian portion of the Property. However, it was not comprehensive and did not include any portions of the Property located east of Kane Creek Road. On information and belief, a comprehensive survey has never been conducted on the Property to fully ascertain whether archaeological sites or artifacts exist within the Property boundaries.

93. The Property was, at one time, used for commercial irrigation and livestock operations. However, significant irrigation and livestock use has not occurred since circa the 1980s. Some minimal livestock use may have persisted thereafter, but on information and belief, there has not been a consistent livestock presence since at least 2003.

94. On information and belief, a small campground was located on part of the Property between circa 2000 to circa 2020. The campground contained some limited improvements, including a shower and bathhouse, drinking water, and a few RV hookups.

95. Thus, while the Property was used for farming decades ago, in the Twenty-first Century it has existed largely in a natural state, apart from a small campground.

C. Developers Purchase Property in Grand County with the Intent to Develop it Into High Density Luxury Housing

96. Weston purchased a substantial portion of the Property in 2017.

97. On information and belief, after purchasing the Property, Weston initially intended to continue operating the small campground, while possibly incorporating some additional “glamping” facilities.

98. In 2020, Weston submitted a plan to Grand County to build and operate a larger luxury campground on the Property.

99. During the development process, Weston secured grading and floodplain development permits from Grand County to start filling the floodplain with dirt to bring the floodplain to a proper grade on which to build structures.

100. The area needs to be regraded by between four and twelve vertical feet to bring the ground above flood levels.

101. In 2021, Weston purchased additional land adjoining the Property, along with Thomas Gottlieb and Trent Arnold, and formed Developer to buy the additional parcel and develop the Property.

102. In or around October 2021, Weston informed a local newspaper he planned to use the Property to build a “research and innovation hub,” “workforce housing,” and a “plant sanctuary” for native plants, with a maximum of 50 housing units. Developer filed a preliminary plat reflecting that plan.

103. But in early 2022, Developer filed a revised site plan substantially expanding the project to include 582 housing units, 72,000-square feet of commercial space, three multi-story condos, and multiple other attractions that would be closed to the public.

104. Developer’s traffic study expected that 90% of the dwellings would be “recreational homes”—i.e., vacation homes—and the area would be a “resort-style” in which only “a small portion of the commercial space and amenities [would be] open to the public.” The development plan features “private luxury stores” and anticipated “it is unlikely the commercial space will draw consumers from Moab City based on the price point of goods and services on-site.”

D. The Developers Face Hurdles During the County Land Use Approval Process.

105. Because Developer proposed to develop unincorporated land in Grand County, the proposed Development was previously subject to the GCLUC and other County regulations.

106. The Development is at odds with multiple Grand County restrictions on land use and development, and therefore Weston, Developer, and their affiliates faced robust input and regulation by the County in order to assure compliance.

The Development's Noncompliance with Flood Control Regulations

107. The bulk of the riparian portion of the Property is located within a FEMA-designated Special Flood Hazard Area (“SFHA”).

108. Because of this designation, Grand County Ordinance No. 598 (“Ordinance 598”) applies, containing several regulations that apply to the Development.

109. Ordinance 598 generally requires that “new and substantially improved Critical Facilities shall be prohibited from all SFHAs, and areas within the 500-year floodplain.” The ordinance defines “Critical Facilities” as something that “provides services and functions essential to a community, especially during and after a disaster,” including “public utilities.”

110. On information and belief, Developer and Weston plan to locate portions of the wastewater and/or drinking water treatment facilities within the SFHA, which will not comply with Ordinance 598.

111. Ordinance 598 also requires that “new construction . . . of any residential structure shall have the lowest floor, utilities and equipment (including basement), elevated to 12 inches or more above the base flood elevation.” Thus, to build the Development as envisioned, Developer and its affiliates are required to fill and grade the portion of the Property within the SFHA to this elevation.

112. Further, the 12-inch elevation requirement must be certified by a “registered professional engineer, architect, or land surveyor.”

113. On information and belief, to meet these requirements, Developer and its affiliates must place up to 10 feet of structural fill over at least 70 acres within the SFHA, on which 310 high-end housing units will be built.

114. In order to provide the necessary fill material, Developer and its affiliates have proposed and have used fill material from so-called “borrow pits” located on the higher-elevation bench portions of the Property. This involves excavating the material from the borrow pits and trucking it downhill to the riparian areas of the Property, then processing and using that material as fill.

115. In circa 2020, Developer, Weston, and their contractor applied to the Grand County Engineer for a construction permit concerning the planned fill and grading, as well as floodplain development permits.

116. The two original Grand County “Excavating and Grading” permits were issued to Craig Weston in September of 2020 and January of 2021. Together, they permitted the importation of around 840,000 cubic yards of material. These appear to be based on an August 2020 “Mass Grading Exhibit” drawing. On information and belief, the two permits were based on a much earlier and smaller version of the development.

117. Between 2020 and 2023, the scope of the proposed Development increased dramatically.

118. In November 2023, Developer provided a revised “Grading Plan” as requested by the Grand County Engineer, to “Combine the activities of the two previously issued grading permits into a single document.”

119. The County Engineer approved this revision on or about November 22, 2023.

120. On information and belief, the County Engineer did not acknowledge, notice or consider in connection with the revision that Developer had increased the size of the area to be filled by approximately 30%, and the size of the borrow pits by 450% beyond what was approved by the original two permits.

121. On information and belief, the final approval issued in November 2023 was issued mistakenly and/or under false or inaccurate pretenses, i.e., through Developer's claim that it was merely "combin[ing]" what had been approved in the 2020 and 2021 initial permits.

122. As part of the permit Grand County issued for the fill needed to advance the Development, it required that Developer's contractor "shall comply with the geotechnical engineer's recommendations." On information and belief, this refers to a Geotechnical Design Report for the Development, and a Technical Memorandum that modified parts of the Report, which were published by the Moab Geotechnical Group on January 12, 2022, September 22, 2022, and January 4, 2024, respectively.

123. The Geotechnical Design Report provides that the fill can be taken from the borrow pits on the bench portions of the Property, so long as Developer and its affiliates meet certain conditions:

- a. The initial requirement under the Report was that the rocks for fill be no larger than three inches in diameter and could not be rounded.
- b. Fill material greater than 5 feet below finished grade, structures and pavement areas can be placed at 90% of the modified proctor (ASTM D1557) and within one percentage point of the optimum moisture content;

c. Fill material within 5 feet of finished grade below structures, pavement areas, and flatwork can be placed at 95% of the modified proctor and within one percentage point of the optimum moisture content; and

d. Fill material within 5 feet of finished grade outside of structures, pavement areas, flatwork, and adjacent to slopes or walls can should be placed at 90% of the modified proctor and within one percentage point of the optimum moisture content.

124. The filling operations began in approximately December 2023 or January 2024.

125. Shortly after the filling and grade work began, the Technical Memorandum was issued, modifying the size of rock that could be used to a maximum of “10 inches in nominal diameter.” It further noted that “boulders (material greater than 10-inches in diameter) will need to be hand picked or removed prior to the placement of the fill.”

126. On information and belief, Developer, Weston, and their affiliates have repeatedly violated the fill material size requirements outlined in the Geotechnical Design Report and Technical Memorandum, consistently allowing rocks much larger than 10 inches in diameter to be used in filling and grading the Property.

127. In addition to violating their permits, by not complying with the fill requirements, Developer, Weston, and their affiliates have created a safety and environmental risk at the Property.

The Development’s Noncompliance with County Zoning Regulations

128. Further, the excavation and fill activities are also not authorized for use on the Property under the GCLUC.

129. Upon information and belief, the Property is zoned “highway commercial” by Grand County.

130. Under the GCLUC, neither “overnight accommodations” nor “resource extraction” are allowed as principal uses on a property zoned “highway commercial.” GCLUC § 3.1.

131. The Development thus does not comply with the GCLUC because Developer and Weston plan for it to include overnight accommodation units.

132. Developer’s and Weston’s present activities also do not comply with the GCLUC because, through their extensive excavation of materials using the “borrow pits,” they are engaging in resource extraction on the Property.

133. The excavation, grading, and filling activities are not authorized as “accessory uses” either because “Accessory uses and activities shall be subject to the same regulations as principal uses unless otherwise stated. In no event shall an accessory use be construed to authorize a use not otherwise permitted in the zone district in which the principal use is located.” GCLUC § 3.3.2(A)(2).

134. Accessory uses are also not allowed “prior to the principal use or structure to which [they are] necessary.” GCLUC § 3.3.2(A)(3).

Kane Creek Road Issues

135. Kane Creek Road provides the only access to the Property and the Development from Moab, and the only access residents of the proposed Development would have to services. It is also the exclusive access point for numerous and multifaceted uses by Watch members and many others, as alleged above.

136. There are approximately 2.5 miles of roadway from 500 West in Moab to the Development, and approximately 1.3 miles of roadway running through the Development.

137. On information and belief, the asphalt of Kane Creek Road on the Property and adjacent thereto is in poor shape and is only 16 to 20 feet wide for the bulk of the 3.8 miles.

138. On information and belief, Kane Creek Road currently has an average daily trip (“ADT”) of between 1000 and 2000, and once construction begins the ADT will far exceed 2000.

139. On information and belief, the plans for the Development still call for Grand County to maintain jurisdiction over the portion of Kane Creek Road bisecting the Property.

140. On information and belief, Grand County requires a surface width of 34 feet for “Local Type 1” roads with an ADT between 500 and 2000. For an ADT exceeding 2000 a “Minor Collector” is required with a surface width of 50 feet.

141. On information and belief, Developer has agreed to improve the 1.3 miles through the Development to meet Minor Collector standard; however, it has not addressed the widening of the 2.5 miles of Kane Creek Road leading to the Property,

142. On information and belief, neighboring landowners have not been approached about the widening of Kane Creek Road through their properties.

143. On information and belief, widening Kane Creek Road will require blasting into the sandstone on the east side and/or cantilevering out over the Colorado River on the west side, for portions of the improvements.

144. On information and belief, when the ADT doubles or triples, with much of the traffic being large heavy trucks, it will become unsafe and burdensome for local traffic and visitors to public lands trying to use this only access road to areas south of the Development.

145. On information and belief, the following will be required in expanding Kane Creek Road to facilitate the Development: relocating natural gas lines; relocating power lines; obtaining easements or rights-of-way from the Nature Conservancy and the Bureau of Land Management; engineering designs; environmental assessment and/or environmental impact

statement, based on impacts to federally owned land; FEMA and other emergency-related assessments; and extensive surveying.

Drinking and Wastewater Permitting Issues

146. In Fall 2022, the Grand County Commission, following Developer's petition, established a special district called Kane Springs Improvement District to oversee the proposed development's wastewater treatment plant. The County then appointed board members, pursuant to state law.

147. At Developer's and Weston's behest, the original improvement district was dissolved by state law, a new entity created, and a new board appointed.

148. Under the direction of Developer, Weston, and their affiliates, KSID submitted an application in Fall 2023 to the Grand County Commission for a conditional use permit to allow for the construction of a wastewater treatment plant and water storage facility for the Development.

149. Over the ensuing months, Grand County planning staff worked to review the conditional use permit application, and the numerous issues it implicated.

150. At a meeting of the Grand County Commission on April 16, 2024, several commissioners voiced concerns about the proposed plant's reasonably anticipated detrimental effects, lack of sufficient or viable water rights, the condition of Kane Creek Road, lack of compliance with the GCLUC, and lack of conformance with the Grand County 2030 General Plan. Ultimately, the Commission took no action on the permit at that meeting.

151. On or about May 7, 2024, the Grand County Commission denied the conditional use permit to construct a wastewater treatment plant and water storage facility.

152. KSID appealed the decision to the Grand County Land Use Appeals Hearing Office and, following two hearings on June 27 and September 18, 2024, the Hearing Officer granted the conditional use permit.

Grand County Plat Reviews

153. In or about May 2021, Developer submitted a preliminary plat to Grand County.

154. Over the next three years, Grand County planning staff and the County Commission continued to review the proposal and work with Developer to address a myriad of significant issues with the preliminary plat.

155. Following several changes, Developer submitted a revised preliminary plat on or about February 19, 2025.

156. On or about March 3, 2025, the Grand County Zoning Administrator issued conditional preliminary plat approval to Developer. Several conditions were included to receive final plat approval, including:

- a. Full construction plans for all required subdivision improvements, including drainage improvements, must be prepared by a Utah licensed professional engineer and approved by the Grand County Engineer.
- b. KSID and Developer would be required to obtain complete approval for the proposed treatment plant and public drinking water system from the applicable state agencies.
- c. Developer would need to submit “a phasing plan for the dedication and reconstruction” of Kane Creek Road through the entire length of the Property.

d. Construction of off-site improvements to Kane Creek Road “from the intersection with 500 West Street to the northern boundary of the [P]roperty,” in accordance with prior requirements from the Grand County Attorney.

e. A requirement that the final plat must conform substantially with the approved preliminary plat and comply with applicable requirements of the GCLUC.

157. Grand County has not issued final plat approval for the Development.

E. Watch and its Members’ Participation in County Land Use and Other Regulatory Processes Concerning the Development

158. Watch is a grassroots association of thousands of individuals, including approximately 1,400 members who are full or part-time residents of Grand County.

159. Watch was expressly founded for the purposes of opposing this Development and preserving the integrity of Kane Creek/Kings Bottom area, which is vital and treasured by the local community. Thus, as Developer, Weston, and affiliated parties have sought the necessary permits from Grand County government bodies, Watch members have consistently and vociferously participated in the land use and other regulatory proceedings at the County level.

160. In June 2023, private individuals, many of whom are present members of Watch, opposed the Kane Creek private sewer treatment plant. This became the impetus for the creation of Watch.

161. Throughout the latter half of 2023, Watch continued forming as an association of largely Grand County citizens opposed to the Development.

162. On or about January 16, 2024, Watch appeared at a County Commission meeting to oppose the Development.

163. On or about January 24, 2024, Watch formalized its organizational status as an assumed name of Friends of the Abajos.

164. On March 27, 2024, Watch filed a protest concerning a change application that Developer and affiliated entities had filed with the Division of Water Rights in January 2024, to change the authorized nature of use and points of diversion for Developer's water rights. This change application was later withdrawn, following the protests from Watch and others.

165. On or about April 5, 2024, Watch filed a code Enforcement Complaint with the County, claiming that the actions of Developer, Weston, and their affiliates or agents were in violation of provisions of the GCLUC pertaining to floodplain development and resource extraction (based on the excavation of gravel and rock material and use of that same material as fill for the floodplain portions of the Property).

166. On or about June 22, 2024, Watch filed a Request for Zoning Interpretation with the County concerning the 'Highway Commercial' designation that had been applied to the Property, either because of a mapping error or as a result of the County having not gone through the correct rezoning process in 1992.

167. On October 9, 2024, after obtaining an unfavorable ruling from the Zoning Administrator, Watch filed an appeal with the County Commission concerning the 'Highway Commercial' rezone issues.

168. On November 18, 2024, Watch and others protested at a rally against the Development.

169. A few weeks later, on December 3, 2024, Watch argued the zoning appeal concerning the highway commercial designation.

F. Legislative History of SB 258

170. The PML was enacted via Senate Bill 258 ("S.B. 258") during the 2024 General Session of the Utah Legislature.

171. S.B. 258 was introduced on February 19, 2024, and quickly advanced through the legislative process: it received its first committee hearing two days after introduction and was passed by the Utah Senate within one week.

172. The bill cleared the House five days thereafter.

173. The final questioning of the bill occurred on March 1, 2024, which was also the last day of the legislative session.

174. The hearings were nothing more than a formality, as they lasted only approximately ten minutes in the Senate and about two minutes in the House.

175. This extremely accelerated timeline left no meaningful opportunity for public review or full consideration of the bill's constitutional impact.

176. Throughout the legislative process, the bill's sponsor mischaracterized its purpose, emphasizing an affordable housing component (which is unenforceable following incorporation), while failing to disclose that S.B. 258 would permit developers to draft their own governing laws without any oversight from elected officials. This is a drastic departure from the standard incorporation process under Utah law.

177. When concerns were raised about the potential end-runs around the statutory requirements, the sponsor assured colleagues that such circumvention was not occurring.

178. The bill was hastily drafted, carrying forward errors and incorrect terminology into its final version.

179. These misrepresentations, along with the lack of deliberations, show a legislative process that was fundamentally flawed and constitutionally suspect.

180. Moreover, based on the timing of S.B. 258's passage—in the midst of Developer, Weston, and their affiliates' inability to receive the necessary approvals from Grand County—as

well as the physical requirements of the areas that can be incorporated thereunder, there is reason to believe the PML was custom-designed for the proposed Development.

181. On or about March 21, 2024, S.B. 258 was enacted into law following its signing by the Governor. It became effective on May 1, 2024.

182. Following its hasty passage, S.B. 258 generated controversy on numerous grounds, including but not limited to its allowance for proposed developments to obtain incorporation as preliminary municipalities, then exercise land use regulation and planning authority, without any residents actually living in the municipal boundaries and without any county-level involvement whatsoever.

G. Overview of the PML

183. S.B. 258 enacted a new chapter of the Utah Code (§§ 10-2a-501 et seq.) and amended certain others to create an entirely new process and political subdivision in Utah known as a “preliminary municipality,” and a process by which private developer applicants could apply to incorporate a “preliminary municipality” before there are any residents living in the boundaries of the proposed municipality.

184. Under the PML, the area proposed for incorporation must be contiguous, owned by “no more than three persons, all of whom consent to incorporation as a preliminary municipality,” and “at least 50% of the area” must be “undeveloped.” Utah Code § 10-2a-502(2)(a), (d).

185. An unincorporated area is also eligible for incorporation as a preliminary municipality only if it is located outside first and second class counties. Utah Code § 10-2a-502(6)(b).

186. To apply to incorporate a preliminary municipality, the property owner(s) must be able to post a bond, cash deposit, or letter of credit to “guarantee that the initial landowners will

complete the system infrastructure no later than six years after the day on which the initial landowners file the petition for incorporation described in this section.” *Id.* § 10-2a-502(2)(h). System infrastructure means “the main thoroughfares within the proposed preliminary municipal area” and “the main lines that will connect a utility to the proposed preliminary municipality area.” *Id.* § 10-2a-501(13).

187. Statutory authority to incorporate under the PML expires on January 1, 2031. Utah Code § 10-2a-502(6)(a). An applicant may not initiate the process “in a calendar year during which two or more requests have already been filed in the state.” *Id.* § 10-2a-502(6)(b).

188. A sponsor initiates the incorporation process by filing a feasibility request with the Lieutenant Governor. Utah Code § 10-2a-502.

189. A person may file such feasibility request if they “intend to develop the area.” *Id.* § 10-2a-502(2)(e).

190. One of the analyses that a feasibility study “shall include” is “an analysis regarding whether sufficient water will be available to support the proposed preliminary municipality area when the development of the area is complete.” Utah Code § 10-2a-504(3).

191. If the feasibility study shows that the five-year projected revenues will surpass five-year costs by more than five percent, the Lieutenant Governor is required to conduct a public hearing near the site of the proposed preliminary municipality. *Id.* § 10-2a-506(1).

192. The feasibility study is essentially a paper tiger, as the statute essentially mandates the financial consultant assume all the accuracy of applicants’ projections, and then use that hypothetical perspective as the vantage point from which to conduct the study.

193. Once the Lieutenant Governor conducts a public hearing, the property owners have a year to file a petition for incorporation of the proposed municipality. *Id.* § 10-2a-507.

194. Among other things, the petition must designate four (of five) members who will serve on the preliminary municipality’s “board,” along with a board chair. Utah Code § 10-2a-507(f). Under the law, the preliminary municipality’s “board” functions like five-member municipal town council. *Id.* §§ 10-2a-507(f), 10-3b-402. The “board chair” is a voting member of the board and serves as the preliminary municipality’s chief executive officer. *Id.* §§ 10-2a-501(3), § 10-3b-402(1)(e), § 10-3b-104. Until the first general election after the developers issue the first certificate of occupancy, no member of the board is “required to be [a] resident of the preliminary municipality.” *Id.* § 10-2a-509(2)(a). Once the preliminary municipality is incorporated, the county is able to designate the fifth board member. *Id.* § 10-2a-509(1)(a).

195. If the incorporation petition complies with applicable requirements, the Lieutenant Governor must certify the incorporation. Utah Code § 10-2a-508(1)(b)(i).

196. Once incorporated, a preliminary municipality has nearly “all the powers and duties of a municipality.” Utah Code § 10-2a-509(4)(a). There are some limitations: a board may not “impose a tax,” “receive an allocation of sales tax or gas tax,” or “exercise eminent domain authority.” Utah Code § 10-2a-509(4)(a)-(b). But otherwise, the preliminary municipality may exercise all municipal authority, including critically “the same authority as another municipality to make decisions regarding zoning and land use.” Utah Code § 10-2a-509(4)(b)(iii).

H. Developer and its Affiliates Sidestep the Traditional Approval Processes and Apply to Become a Preliminary Municipality.

197. While their initial attempts to develop the Property through traditional land use processes were taking longer than they preferred, Developer, Weston, and their affiliates began exploring other possible means to force through the proposed Development.

198. On or about May 1, 2024, Developer and G&H Miller Family Holdings LLC (“G&H Miller”) submitted a Feasibility Request and supporting materials to the Lieutenant Governor.

199. On or about June 14, 2024, the Lieutenant Governor certified the Feasibility Request, ordering that under the statute a feasibility study was to be initiated within 90 days.

200. Throughout Fall 2024, a consultant firm conducted the Feasibility Study for the proposed Development.

201. On or about December 11, 2024, a draft of the Feasibility Study was circulated to unspecified “Grand County stakeholders” who provided minimal feedback, mostly focusing on issues relating to Kane Creek Road.

202. On or about January 1, 2025, G&H Miller executed a warranty deed (“January 2025 Deed”) conveying Parcel No. 12-0010-0001 to an entity called Six Bugs Holdings, LLC.

203. The final Feasibility Study was also issued in January 2025 (“Feasibility Study”).

204. As to the analysis concerning the availability of sufficient water under Utah Code § 10-2a-504(3), the Feasibility Study states the following:

Kane Springs Water Company will serve as the municipal water supply upon incorporation. The company presently has approximately 422-acre feet of water rights. Water sources include five wells and the ability to pull directly from the Colorado River. The developer estimates that the proposed development will likely need 200-acre feet, resulting in sufficient water supply to support the proposed preliminary municipality area when the development of the area is complete.

205. On information and belief, the water rights referenced in this Feasibility Study are subject to forfeiture and/or abandonment due to long periods of nonuse by Developer and its predecessors in interest.

206. On information and belief, Developer, Weston, and/or their agents, principals, employees, or assigns, provided the information regarding the water rights referenced in the feasibility study.

207. On information and belief, Developer, Weston, and/or their agents, principals, employees, or assigns knew at the time they provided this information that the water rights were subject to forfeiture for nonuse, had lapsed, and/or were not fully authorized for use for municipal purposes. This knowledge is evidenced by, *inter alia*, their awareness of protests that had been filed on Developer's application to change the approved use of this water, including on the basis of historical nonuse, and, on information and belief, Developer subsequently withdrew that change application in response to the forfeiture-related arguments raised in these protests.

208. A public hearing on the preliminary municipality and the Feasibility Study results was held on or about March 5, 2025. Watch and over 230 individuals participated at the public hearing to present the numerous deficiencies and misrepresentations in the Feasibility Study.

209. On or about March 20, 2025, Developer and Weston filed a Petition for Incorporation, stating that Developer and G&H Miller "represent[ed] 100% of the surface property owners within the proposed boundaries," and changing the name of the proposed preliminary municipality to "Echo Canyon." However, this was more than two months after the January 2025 Deed had been executed, conveying G&H Miller's property interests to another party, meaning the petition was not actually signed by 100% of the surface property owners.

210. On or about April 30, 2025, G&H Miller was voluntarily dissolved as an entity.

211. On or about May 5, 2025, the Lieutenant Governor issued a notice rejecting the initial Petition for Incorporation based on failure of the applicants to comply with statutory requirements concerning the legal descriptions of the area to be included in the preliminary

municipality. Notably, however, the Lieutenant Governor did not identify (and likely was not aware of) the other facial deficiencies with the original petition.

212. On or about May 20, 2025, Developer filed a Modified Petition for Incorporation, again stating that it and “represent[ed] 100% of the surface property owners within the proposed boundaries,” under the changed preliminary municipality name of “Echo Canyon.” However, at the time this petition was filed, it had been over four months since G&H Miller had executed the January 2025 Deed to convey its property interests to another party, and several weeks after G&H Miller had been dissolved as an entity. Thus, “100% of the surface property owners within the proposed boundaries” did not actually sign the Petition.

213. The Modified Petition for Incorporation designated Thomas Gottlieb (“Gottlieb”), Trent Arnold (“Arnold”), and Jonathan Hoffman (“Hoffman”) as board members of the to-be-incorporated entity, and designated Weston as Board Chair.

214. One of the documents attached to the Modified Petition for Incorporation is an agreement entitled Cash Deposit and Restricted Use Agreement to Guarantee Completion of System Infrastructure for Echo Canyon, a Proposed Preliminary Municipality (“Cash Deposit Agreement”), dated March 18, 2025 and entered into between Developer, the other initial landowner, and a separate entity called Echo Canyon Bond Guarantee Company (“Holder”). Weston signed for Developer and Arnold signed for Holder.

215. The Cash Deposit Agreement sets forth an initial amount of “deposit funds” by Developer and the other initial landowner, that could be released by Holder and paid either to Developer “or a designated contractor which has performed work on the System Infrastructure, for reimbursement or payment of costs and expenses incurred in constructing and installing the System Infrastructure.”

216. Importantly, the Cash Deposit Agreement specifically incorporated an attached a map of the “System Infrastructure” that was also defined as the same “as shown on the map or plat included in the Feasibility Request submitted to the Utah Lieutenant Governor’s Office dated May 1, 2024.”

217. Attached to the Cash Deposit Agreement was a draft resolution of the Board of Echo to “accept the terms of the Cash Deposit Agreement”; authorize the “Chair, [i.e., Weston] other board members, and staff . . . to take such actions in accordance with the Cash Deposit Agreement as are necessary and appropriate to carry out the intent and terms to the benefit of Echo”; and that any “donated real property will be used for a public purpose.”

218. The Cash Deposit Agreement also provides that within ten days of the issuance of a certificate of incorporation for Echo, and execution of the draft resolution attached to the Agreement by the Echo Board, “[t]hereafter Echo . . . shall be the Holder of Deposit Funds and subject to this Agreement.”

219. On or about June 9, 2025, the Lieutenant Governor issued a Certificate of Incorporation (“Certificate”) for Echo.

220. In accord with the modified petition, Weston, Gottlieb, Arnold, and Hoffman were named as four of the five members of Echo’s Board.

221. On information and belief, throughout the entire time Weston, Developer, and their affiliates were pursuing the preliminary municipality incorporation process in 2024 and 2025, they were continuing to seek the requisite approvals from Grand County at the same time (as discussed in Section D, above).

222. However, on information and belief, once receiving the certificate of incorporation, Weston, Developer, and their affiliates ceased working with Grand County on any land use or related issues.

I. Post-Incorporation Actions

223. Once receiving its Certificate, the Echo Board acted quickly to assert its newfound land use authority to advance the planned Development, taking several actions later in June, including holding the first public meeting of the Board on June 12, followed by a meeting on June 24, at which the Board enacted several land use ordinances and created a planning commission.

224. On information and belief, the actions of Echo's Board are taken in coordination with, at the behest of, and/or under direction of Developer, Weston, and/or through their principals, agents, and/or other representatives. Indeed, Weston is both Board Chair of Echo—an ostensible government entity—while also being the general partner of Developer.

225. Further, three of the four other members of Echo's Board (Gottlieb, Arnold, and Hoffman) also hold formal roles and/or financial stakes in Developer: on information and belief, Gottlieb and Arnold are general partners with Weston in Developer, and Hoffman is Developer's main permanent employee.

226. On or about June 25, 2025, Weston formed an entity called KCPD Phase I, LLC ("KCPD Phase I") to further facilitate aspects of advancing the Development. Based on publicly available documents, Arnold is a manager and/or member of KCPD Phase I, and Weston is registered agent and/or member of KCPD Phase I.

227. On or about June 26, 2025, Weston formed Echo Canyon Phase 1 Owners Association, Inc. and Echo Canyon Community Association, Inc. (both as nonprofit corporations) to further facilitate aspects of advancing of the Development.

228. On July 1, 2025, Weston signed and recorded a special warranty deed on behalf of Developer conveying a portion of the Property to KCPD Phase I.

229. On information and belief, one of the first actions Echo took following its incorporation was to approve a new 14-parcel subdivision on the Property through a Final Plat of Echo Canyon, Phase I” (“Phase I Final Plat”). The Phase I Final Plat displays a “Certificate of Approval” stating it was “approved by Echo Canyon, A Utah Preliminary Municipality having land use jurisdiction.”

230. KCPD Phase I signed and recorded the Phase I Final Plat on July 3, 2025.

231. In contrast to what is presented in the Phase I Final Plat, what was represented as “Phase 1” in the approved Feasibility Study contained 318 units.

232. On information and belief, the new subdivision proposed in the Phase I Final Plat is starkly different from what was represented to the Lieutenant Governor in the Feasibility Study and what was approved by Grand County during the prior land use process.

233. On July 7, 2025, KCPD Phase I recorded the following documents as it pertains to Echo Canyon Phase I:

- a. Declaration of Covenants, Conditions, Easements, and Restrictions
- b. Notice of Annexation to Community Declaration.
- c. Echo Canyon Community Declaration

234. On or about August 15, 2025, Echo’s Board met again.

235. At a meeting on October 13, 2025, the Echo Board took the following actions, among other matters:

- a. adopted a revised procurement and purchasing policy, which (among other things) made changes to allow for sole-source procurement;

- b. passed an ordinance adopting a building permit review process and approved of professional services for building inspections;
- c. opened a bank account for Echo; and
- d. adopted and approved renewed agreements and other documents to carry out all or a portion of the provisions of the Cash Deposit Agreement that was submitted as part of the Modified Petition for Incorporation.

236. On November 3, 2025, KCPD Phase I recorded an amended subdivision plat, which added six additional parcels to the existing fourteen-parcel subdivision.

237. To date, Echo and Developer have not taken critical steps to protect public safety, including (but not limited to): developing adequate plans to expand and/or upgrade Kane Creek Road to adequately provide for the increased traffic that will be caused by the Development and mitigate the risks from flooding of the road; taking sufficient steps to enter the State NFIP Floodplain Program; and otherwise comply with legal obligations of proposed developments located within a designated floodplain and SFHA.

J. Craig Weston's Conflicts of Interest

238. From roughly 2020 to 2022, Weston and/or entities under his control proposed and repeatedly revised development plans, escalating a 100-unit campground to a 586-unit luxury development, which was later finalized at 478 units, to house 1,105 people.

239. On August 1, 2023, Weston signed a Sewer Service and Will Serve Agreement as Trustee for Kane Springs Improvement District and as Manager for Developer, which made him act for both sides of the regulated transaction.

240. On November 2, 2023, Weston signed a Water Service and Will Serve Agreement as Trustee for Kane Springs Water Company and a Manager for Developer. This represents, once again, Weston apparently serving as both parties in a critical utility agreement.

241. On May 1, 2024, Weston submitted the Request for Feasibility Study as the applicant and primary contact, which put him in the position to influence the approval process for his project.

242. When the Lieutenant Governor certified Echo as a preliminary municipality on June 9, 2025, approximately 90% of the 176 acres were owned by Developer, in which Weston, on information and belief, owns a majority interest. This created, and continues to create, a direct financial conflict of interest with Weston in his capacity as Board Chair for the government entity ostensibly tasked with regulating Developer and its land use plans.

243. On June 12, 2025, Weston signed an Administrative Funding and Reimbursement Agreement between Echo and Developer. This is a direct agreement between the two entities Weston controls—one private and one ostensibly a government entity—allowing Echo to borrow money without any obligations attached.

244. On June 26, 2025, Weston completed a disclosure statement, as required by the Utah Code § 67-16-7, but there was no mention in his disclosure of the precise nature and value of his interest in this entity.

245. On July 1, 2025, KCPD conveyed 10.75 acres to KCPD Phase 1, LLC, consolidating Weston's control over the development.

246. On July 3, 2025, the Echo Canyon Phase 1 subdivision plat was recorded. Weston signed twice: once as Manager for KCPD Phase 1 (the applicant) and once as Chairman of Echo (the approving entity).

247. By September 30, 2025, Weston still had not filed a disclosure of his interest in KCPD Phase 1, LLC, although he was legally required to do so under Utah Code § 67-16-7.

K. Risks to Grand County and County Residents Posed by Loss of County's Regulatory and Land Use Authority over the Development

248. As a result of Echo's incorporation, Grand County loses the ability to regulate or control the myriad remaining issues the Development still poses, and Plaintiffs lose the ability to engage with Grand County, the County Commissioners, and County planning staff, concerning the Development.

249. Namely, Echo has moved forward with the Phase I Final Plat, and is not required to complete any of the conditions Grand County imposed as part of the conditional plat approval, including but not limited to the following:

- a. Full construction plans for all required subdivision improvements, including drainage improvements, must be prepared by a Utah licensed professional engineer and approved by the Grand County Engineer.
- b. KSID and Developer would be required to obtain complete approval for the proposed treatment plant and public drinking water system from the applicable state agencies.
- c. Developer would need to submit “a phasing plan for the dedication and reconstruction” of Kane Creek Road through the entire length of the Property.
- d. Construction of off-site improvements to Kane Creek Road “from the intersection with 500 West Street to the northern boundary of the [P]roperty,” in accordance with prior requirements from the Grand County Attorney.
- e. A requirement that the final plat must conform substantially with the approved preliminary plat and comply with applicable requirements of the GCLUC.

250. Thus, as noted above, Developer is no longer required to incur the expense and public safety risks associated with improvements to Kane Creek Road that would be needed to facilitate construction of the Development and new residents. The County is left without the ability to mitigate these risks to its residents.

251. Grand County has also lost the ability to review and approve the Development's building permits subject to the GCLUC and other applicable county regulations. Namely, on information and belief, it is likely the County would want to see certification of the fill on which the homes will be built, from the geotechnical engineering who established the standards for placing the fill. As a result of Echo's incorporation, this critical public safety review is called into question.

252. Further, County Ordinance 598 appears to no longer be enforceable against the Development, leaving the flood control mitigation open to serious risks of noncompliance by Echo, Developer, and the related entities.

253. The County also has no review over the declarations, covenants, conditions, and restrictions for the Development, which appear to place new and existing residents at risk by absolving Developer and its affiliates from any liability.

254. On information and belief, the new land use and building codes adopted by Echo in June 2025 do not contain the same level of standards as the counterpart Grand County regulations, raising additional specter of safety and structural risks.

255. These risks are also borne by Plaintiffs' members, including those named herein. As Grand County residents and taxpayers, they will be potentially subject to additional tax liability if Echo fails to transition to a town and Grand County must then take on the obligation

to maintain, repair, and/or modify all roads and infrastructure built by Echo—which the PML requires the County to shoulder regardless of condition. *See* Utah Code § 10-2a-507(3)(d).

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

Violation of the Prohibition on Special Laws Under Article XI Section 5 and Article VI Section 26 of the Utah Constitution

(Against all Defendants)

256. Plaintiffs incorporate by reference the allegations contained in all preceding paragraphs as if fully set forth herein.

257. The Utah Constitution provides: “The legislature may not create cities or towns by special laws.” Utah Const. art. XI, § 5. It also states: “No private or special law shall be enacted where a general law can be applicable.” *Id.* art. VI, § 26.

258. In Utah, “a special law is a law that classifies its objects unreasonably, as by selecting from a general class particular persons, places or things for the purpose of conferring privileges or imposing burdens.” *Blue Cross & Blue Shield of Utah v. State*, 779 P.2d 634, 645 (Utah 1989).

259. To the extent the PML authorizes the creation of a city or town, it violates the Utah Constitution’s prohibition on special laws.

260. The PML is a special law because it employs several arbitrary classifications. The procedures to create a preliminary municipality do not apply to all counties. Rather, a preliminary municipality may only be incorporated in counties of the third through sixth class, i.e., counties that are mostly rural.

261. The PML also circumscribes how and when applicants can seek incorporation. The Legislature called the PML a “pilot project,” and its provisions expire on January 1, 2031.

Id. § 10-2a-502(6)(a). Moreover, no more than two applicants can complete the process each year. *Id.* § 10-2a-502(6)(b).

262. On top of employing unreasonable classifications, the PML confers special privileges on a select and finite number of property owners. For an unincorporated area to be eligible for incorporation under the PML, the land must be contiguous, owned by “no more than three persons, all of whom consent to incorporation as a preliminary municipality,” and “at least 50% of the area” must be “undeveloped.” Utah Code § 10-2a-502(2)(a), (d). The property owner(s) must also have sufficient financial resources to post a bond, cash deposit, or letter of credit sufficient to develop significant infrastructure. *Id.* § 10-2a-502(2)(h).

263. If the property owners satisfy these criteria, they can wield significant government power by virtue of their propertied status—and without having to be elected. For example, the PML directs the property owner to designate a veto-proof majority of the preliminary municipality’s governing board. *Id.* § 10-2a-502(f). And with limited exceptions, that board “has all the powers and duties of a municipality,” including “the same authority as another municipality to make decisions regarding zoning and land use.” *Id.* § 10-2a-509(4)(a), 4(b)(iii).

264. In short, the PML grants a limited number of rural property owners the power to create their own fiefdoms and exempts them from regulation by democratically elected county governments.

265. Plaintiffs are being irreparably injured by the Lieutenant Governor’s grant of special privileges to Developer, Weston, and their affiliates, through authorizing Echo under the PML. Plaintiffs’ injuries include not only the highly detrimental impacts that they will experience from the Development itself, as detailed herein, but also the loss of their ability to exercise and represent the rights of their members as Grand County citizens, businesses, and

property owners concerning the Development. Namely, this includes their inability to meaningfully participate in the land use, planning, and zoning processes concerning the Property, which was previously unincorporated and subject exclusively to County regulation and zoning.

266. On the other hand, there are now no citizens or residents to whom Echo's Board is accountable, meaning there is no political recourse for any Grand County residents, businesses, and/or property owners to address their concerns with the Development.

267. To the extent the PML authorizes the creation of a town or city, it is a prohibited special law within the Constitution's meaning and should be invalidated on that basis.

268. Each of the Defendants have had a direct role in the constitutional violations described herein: Developer and Weston through applying and advocating for the creation of Echo; the Lieutenant Governor, through approving its incorporation; and Echo itself, by its very existence and holding itself out as a legitimate government entity.

SECOND CAUSE OF ACTION

Violation of Requirement to Create and Classify Cities and Towns in Proportion to Population Under Article XI Section 5 of the Utah Constitution

(Against all Defendants)

269. Plaintiffs incorporate by reference the allegations contained in all preceding paragraphs as if fully set forth herein.

270. The second sentence of article XI, section 5 of the Utah Constitution provides: "The legislature by statute shall provide for the incorporation, organization, and dissolution of ***cities and towns*** for their classification in proportion to population." (Emphasis added.)

271. The above-quoted clause restricts legislative power with respect to the creation of "cities and towns." *Wadsworth v. Santaquin City*, 28 P.2d 161, 167 (Utah 1933) (emphasis added).

272. As the Utah Supreme Court has explained, article XI, section 5 “applies to laws that classify municipalities for the purpose of defining their powers and functions and directs that if such laws make distinctions between the powers of various municipalities, those distinctions must be on the basis of population only.” *City of W. Jordan v. Utah State Ret. Bd.*, 767 P.2d 530, 536 (Utah 1988).

273. To the extent the PML authorizes the creation of a “municipality,” it violates the second sentence of article XI, section 5 in at least two respects. First, the PML purports to invent a new species of municipal entity that is neither a town nor a city—a so-called “preliminary municipality”—and provide for the incorporation of such entities. The incorporation of such an entity is expressly not authorized by the Utah Constitution. The Legislature lacks authority to create extraconstitutional municipal entities through the PML.

274. Second, the PML provides for the creation, incorporation, and organization of a “preliminary municipality” entity without requiring there being a “population” of said municipality. Rather, the requirements to incorporate a preliminary municipality are merely land ownership: at least fifty percent of the land subject to the petition must be undeveloped, and there can be no more than three property owners. *See Utah Code § 10-2a-502(2)*. There is no requirement that anyone actually live within the preliminary municipality’s borders.

275. Plaintiffs are being irreparably injured by the Lieutenant Governor’s grant of special privileges to Developer, Weston, and their affiliates, through authorizing Echo under the PML. Plaintiffs’ injuries include not only the highly detrimental impacts that they will experience from the Development itself, as detailed herein, but also the loss of their ability to exercise and represent the rights of their members as Grand County citizens, businesses, and property owners concerning the Development. Namely, this includes their inability to

meaningfully participate in the land use, planning, and zoning processes concerning the Property, which was previously unincorporated and subject exclusively to County regulation and zoning.

276. On the other hand, there are now no citizens or residents to whom Echo's Board is accountable, meaning there is no political recourse for any Grand County residents, businesses, and/or property owners to address their concerns with the Development.

277. To the extent the PML authorizes the creation of a town or city, it impermissibly creates a new class of municipality entity without reference to population, and should be invalidated on this basis.

278. Each of the Defendants have had a direct role in the constitutional violations described herein: Developer and Weston through applying and advocating for the creation of Echo; the Lieutenant Governor, through approving its incorporation; and Echo itself, by its very existence and holding itself out as a legitimate government entity.

THIRD CAUSE OF ACTION

Violation of the Prohibition Against Delegating Municipal Functions to Special Commissions Under Article XI, Section 28 of the Utah Constitution

(Against all Defendants)

279. Plaintiffs incorporate by reference the allegations contained in all preceding paragraphs as if fully set forth herein.

280. The Utah Constitution provides: "The legislature shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, to levy taxes, to select a capitol site, or to perform any municipal functions." Utah Const. art. XI, § 28. This provision is commonly referred to as the Constitution's "Ripper Clause."

281. The Ripper Clause “is a limitation of the power of the Legislature to delegate to any body, *save only the regularly elected officers of the municipalities*, the right to supervise or interfere with the property of the municipalities, or to perform any municipal functions.”

Logan City v. Public Utilities Comm’n of Utah, 271 P. 961, 974 (1928) (emphasis added). It was enacted to “protect local government councils from having their particularly local functions usurped by special boards or commissions that were unrepresentative and often created by the state legislature at the behest of special interests.” *City of W. Jordan v. Utah State Ret. Bd.*, 767 P.2d 530, 533 (Utah 1988).

282. The PML violates the Utah Constitution’s Ripper Clause by delegating municipal functions to a special private commission: the PML takes essentially all local governance authority from the democratically elected county government and gives it to the preliminary municipality’s board—all of whom are unelected.⁶

283. The preliminary municipality’s five-person board is a “special commission.” The board is composed of unelected individuals who need not be residents of the municipality; who are appointed by private property owners; and who are tasked with the special object of developing unincorporated territory. Utah Code § 10-2a-507(f).

284. The PML delegates to that board—and seizes from the County—nearly all municipal functions, including full control over land use and zoning. Utah Code § 10-2a-509(4)(a)-(b).

285. Plaintiffs are being irreparably injured by the Lieutenant Governor’s grant of special privileges to Developer, Weston, and their affiliates, through authorizing Echo under the

⁶ One member of Echo’s Board is technically an elected official because the Grand County Commission appointed one of its Commissioners to fill its seat on Echo’s Board. However, she is not an elected official of *Echo itself*, and is not a member of the Board as the result of an election, meaning that Echo still constitutes a supposed municipality whose entire Board is an unelected private commission.

PML. Plaintiffs' injuries include not only the highly detrimental impacts that they will experience from the Development itself, as detailed herein, but also the loss of their ability to exercise and represent the rights of their members as Grand County citizens, businesses, and property owners concerning the Development. Namely, this includes their inability to meaningfully participate in the land use, planning, and zoning processes concerning the Property, which was previously unincorporated and subject exclusively to County regulation and zoning.

286. On the other hand, there are now no citizens or residents to whom Echo's Board is accountable, meaning there is no political recourse for any Grand County residents, businesses, and/or property owners to address their concerns with the Development.

287. The PML impermissibly delegates municipal authority to a special commission and should be declared unconstitutional on this basis.

288. Each of the Defendants have had a direct role in the constitutional violations described herein: Developer and Weston through applying and advocating for the creation of Echo; the Lieutenant Governor, through approving its incorporation; and Echo itself, by its very existence and holding itself out as a legitimate government entity.

FOURTH CAUSE OF ACTION

Violation of the Right to Petition Government to Redress Grievances Under the First Amendment of the U.S. Constitution and Article I, Section 1 of the Utah Constitution

(Against all Defendants)

289. Plaintiffs incorporate by reference the allegations contained in all preceding paragraphs as if fully set forth herein.

290. The First Amendment to the United States Constitution prevents the government, including state and local entities via the Fourteenth Amendment, from infringing on "the right of the people . . . to petition the Government for a redress of grievances." U.S. Const. amd. I.

291. Similarly, the Utah Constitution guarantees that “[a]ll persons have the inherent and inalienable right to . . . petition for redress of grievances.” Utah Const. art. I, § 1.

292. “The right to petition allows citizens to express their ideas, hopes, and concerns to their government ***and their elected representatives . . .***” *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 388 (2011) (emphasis added).

293. “Petitions to the government assume an added dimension when they seek to advance political, social, or other ideas of interest to the community as a whole.” *Id.* at 395.

294. Plaintiffs are made up of, and represent, a variety of Grand County residents and businesses as described herein who care deeply about Kane Creek/Kings Bottom and the irreversible impacts to that area posed by the Development.

295. Whereas before Echo was created, Plaintiffs could petition—and were frequently petitioning—the Grand County Commission, and County land use authorities whose decisions were reviewable by the County Commission, that right has now been removed through each of the Defendant’s respective role in the creation of Echo.

296. Prior to Echo’s creation, Plaintiffs and their members were actively petitioning Grand County officials in a variety of formats concerning the Development.

297. Echo’s governing board and land use authority is a private commission made up of unelected board members. Yet Echo is granted with vast and general land use and zoning authority, equivalent to that of a lawfully created municipality, pursuant to the PML. *See* Utah Code § 10-2a-509(4)(b)(iii).

298. Because Echo is governed by this private, unelected commission, Plaintiffs and the Grand County residents and businesses they represent have been denied the ability to

“petition . . . their elected representatives” concerning the injuries they would experience from the destruction of Kane Creek/Kings Bottom by Developer, Weston, and their affiliates.

299. On information and belief, there are no residents or voters who have the ability petition Echo’s governing board for redress of grievances, as there are no full-time residents within its boundaries.

300. Accordingly, the PML removes the ability of residents, businesses, and taxpayers of rural counties, including Plaintiffs’ members, to petition their elected representatives for redress of grievances.

301. Each of the Defendants have had a direct role in the constitutional violations described herein: Developer and Weston through applying and advocating for the creation of Echo; the Lieutenant Governor, through approving its incorporation; and Echo itself, by its very existence and holding itself out as a legitimate government entity.

302. Therefore, Defendants collectively by their actions have removed the ability of Plaintiffs to petition their elected Grand County representatives for redress of their grievances concerning the Development, and of the Kane Creek/Kings Bottom area that is now within Echo’s boundaries and jurisdiction.

REQUEST FOR RELIEF

Therefore, Plaintiffs respectfully request that this Court:

1. Grant declaratory relief, pursuant to Utah Code § 78B-6-401, stating that the Preliminary Municipality Law, Utah Code §§ 10-2a-501 to 10-2a-510, violates the Utah and United States Constitutions, for one or more of the reasons pleaded herein, and is therefore invalid;

2. Grant declaratory relief, pursuant to Utah Code § 78B-6-401, stating that, because Echo Canyon Preliminary Municipality (“Echo”) was created exclusively pursuant to the

Preliminary Municipality Law, Utah Code §§ 10-2a-501 to 10-2a-510, it is an unconstitutional entity, and all actions, approvals, and/or governance taken by Echo since it was issued a certificate of incorporation are null and void;

3. Issue preliminary and permanent injunctive relief, pursuant to the Court’s equitable authority, prohibiting all Defendants, including their agents, officers, assigns and employees, from enforcing, applying, and/or acting pursuant to the Preliminary Municipality Law, Utah Code §§ 10-2a-501 to 10-2a-510;

4. Issue preliminary and permanent injunctive relief, pursuant to the Court’s equitable authority, nullifying any and all actions, approvals, pronouncements, and/or regulations issued by Echo to date since issuance of its certificate incorporation;

5. Issue preliminary and permanent injunctive relief, pursuant to the Court’s equitable authority, enjoining Echo, in its present form as a so-called “preliminary municipality,” from taking any future action whatsoever, apart from such actions strictly necessary to wind up its affairs and lawfully transfer any assets;

6. Issue preliminary and permanent injunctive relief, pursuant to the Court’s equitable authority, enjoining Developer and Weston, including their agents, officers, assigns and employees, from taking any action whatsoever that is based on an authorization or approval ostensibly given by Echo, unless and until such action has been expressly authorized by the relevant Grand County or other government authorities;

7. Award Plaintiffs their reasonable attorney fees and costs; and

8. Grant such other relief as the Court deems just, equitable, and proper.

DATED this 10th day of February, 2026.

CLYDE SNOW & SESSIONS

/s/ Nathaniel E. Broadhurst

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