

**BOX ELDER COUNTY**  
**August 18, 1994**

The Board of Planning Commissioners of Box Elder County, Utah, met in regular session in the Commission Chambers of the Box Elder County Courthouse, 01 South Main Street, in Brigham City, Utah, at 7:00 p.m. on August 18, 1994.

The meeting was called to order by Chairman Richard Kimber with the following members present, constituting a quorum:

Richard Kimber	Chairman
Jon Thompson	Member
David Tea	Member
Louis Douglas	Member
Allen Jensen	Commissioner, Member
Denton Beecher	Ex-Officio Member, Surveyor
Marie McKinnon	Recorder/Clerk Secretary

Excused:

Deanne Halling	Member
Marie Korth	Ex-Officio Member, Recorder/Clerk

**AGENDA: (Attachment No. 1)**

**APPROVAL OF MINUTES:**

Chairman Kimber presented the Minutes of June 30, 1994, for approval. Commissioner Jensen requested that the words "Planning Commission" be deleted from the motion regarding the LaMar Wamsley Minor Subdivision on page 6. Mr. Thompson made a motion to accept the Minutes of June 30, 1994, as corrected. Commissioner Jensen seconded. None opposed. The motion carried.

**BOND TRANSFER:**

**Darrell Nielsen \$20,000.00 Bond: (Correspondence, Attachment No. 2)**

Mr. Fay Facer, Jack B. Parson Companies, met with the Planning Commission for the purpose of finalizing the transfer of the \$20,000.00 bond from Darrell Nielsen to Parsons. Mr. Facer stated Mr. Nielsen's bond was replaced with a surety bond in June of 1994. He said there was some concern as to whether or not all of the conditions had been met. Mr. Facer referred to several letters (attached) acknowledging that Parsons will meet all of the conditions as required. Mr. Beecher stated along with the correspondence from Parsons there is a copy of the surety bond and a certificate of insurance in the amount of one million dollars; everything is in order.

Commissioner Jensen stated Mr. Frank Nishiguchi, who was the County Commission Chairman at time Mr. Nielsen's bond went into effect, asked that he be given a letter removing him from any

liability. This has been done. Commissioner Jensen stated after Mr. Nielsen's signature is obtained, the money can be released to him. He said Commission Chairman Lee Allen will need to go to the bank along with Mr. Nielsen to take care of this matter. The funds can then be released to Mr. Nielsen.

Mr. Thompson made a motion recommending the County Commissioners release the Darrell Nielsen Bond and impose the Jack B. Parson surety bond for the gravel pit in Willard. Mr. Tea seconded. None opposed. The motion carried.

**ZONING:**

**Request for Re-zoning: (Petition, Attachment No. 3)**

Mr. Ron Nelson, Chairman, and Ms. LaVee Hemsley, Secretary, Box Elder County/Willard City Flood Control District, met with the Planning Commission to present a request for re-zoning in the Willard area.

Mr. Nelson presented a "Petition to Amend Box Elder County Zoning Map" stating its purpose is "To maintain the Quality of Life which has been developed in this area. To enhance flood protection goals and management of flood waters, to protect established residential and agricultural areas. To provide protection for the water resources in the area designated below, including the water sheds and recharge areas along the region of the Wasatch Front."

Mr. Nelson stated Commissioner Jensen attended a recent Flood District meeting and in the course of the discussion advised the District that certain areas of the county could be designated as a Sensitive Area Zone. He said the District has investigated the situation and feels the area fits the criteria called out in the Land Use Ordinance. Mr. Nelson said the Flood District feels a duty to the people to make sure there is adequate flood protection. Chairman Kimber stated the Planning Commission would review the petition and make a recommendation to the County Commission. He said the County Commission is the body that would make any changes in zoning.

Mr. Thompson made a motion to table the issue for further study and that it be an item for the September 15 Planning Commission Meeting. Commissioner Jensen seconded. None opposed. The motion carried.

**PETITIONS:**

**Request for Rezoning:**

Later in the meeting the petition submitted by Mr. Nelson was brought up. Chairman Kimber stated he felt it would be appropriate for the Planning Commission to refer the petition to the County Commission for study.

Mr. Beecher referred to another petition submitted by Ms. Donnalee Ball of the Tax Payers Action Group, and stated he felt it

should not be accepted as it was not properly presented to the Planning commission. He further said it should not be a matter of record and should be returned to Ms. Ball. Chairman Kimber stated the Planning Commission would accept only the petition presented by Mr. Ron Nelson of the Flood District.

Mr. Beecher read from the Box Elder County Land Use Ordinance which spells out the details for amending and rezoning within the county. The Ordinance requires a public hearing be held by the County Commission. The Planning Commission is to review an application and make recommendations concerning the proposed amendment to the County Commission within 30 days of receipt of the amended application in a regularly scheduled meeting. It was decided that a copy of the petition would be returned to the Flood District along with proper instructions.

Mr. Beecher next read from the Ordinance concerning the sensitive area overlay zone. A brief discussion followed.

Commissioner Jensen made a motion that Mr. Beecher advise the Willard Flood District of the requirements for proper application for rezoning. Mr. Thompson seconded. None opposed. The motion carried.

It was suggested that a nonrefundable fee of one hundred dollars be set for a rezoning amendment application. Commissioner Jensen stated this would be brought before the County Commission on Tuesday, August 23.

**MINOR SUBDIVISIONS:**

Mr. Greg Hansen of Hansen & Associates was present at the meeting to explain details and answer questions regarding the minor subdivisions.

**Pettingill Minor:**

Mr. Gay Pettingill of South Willard met with the Commissioners to further discuss his proposed minor subdivision.

Mr. Beecher presented the preliminary plan for the Pettingill Minor Subdivision. He said at the June meeting a concept plan for a minor subdivision for two lots with a private road was approved. He pointed out the area on a map indicating the access road. Chairman Kimber brought up the issue of possible flooding because of the steep drop off in the road area. Mr. Pettingill stated plans have been made to take care of any water with drains, pipes, etc. Also a large berm has been constructed above the property by Jack B. Parson Companies, the owner of the area. The berm would divert any water from coming on to Mr. Pettingill's property.

Mr. Beecher stated there is a gentlemen's agreement with the Willard Flood District that any development that would be considered in the area would be presented to the Flood District. He said he

had asked Mr. Ron Nelson to be present for this discussion. Mr. Nelson stated the Flood District would like to review the proposal and comment on it. A copy of the preliminary plan was given to Mr. Nelson.

Mr. Pettingill stated all of the utilities are in place; water will be obtained from an existing well, and there will be a septic tank which has been approved by the Health Department for the first home. The septic tank for the second home will be approved as soon as the preliminary plan is approved.

Mr. Tea made a motion to approve the Pettingill Minor Subdivision in its preliminary form with the contingency that the Flood District give their approval, that the other conditions are met, and to authorize Mr. Pettingill to begin final submittal. Mr. Douglas seconded. None opposed. The motion carried.

**Marble Minor:**

Mr. Beecher presented the Marble Minor Subdivision in West Corinne. He said none of the signatures have been obtained, and he had not received the original plat. The request is for a conditional approval subject to the necessary signatures. Mr. Beecher pointed out the area on a map and a discussion was held. The following comment will be put on the plat, "The county is not responsible for surface flooding, and the home shall be constructed so the finished floor is equal to or above the center line of the road. The county is not responsible for drainage along 1600 North. The property owner is responsible for all drainage control."

Mr. Thompson made a motion to give conditional approval of the Marble Minor Subdivision subject to signatures and utilities, to authorize the Chairman to sign the plat, and to authorize the Building Department to issue a building permit. Mr. Douglas seconded. None opposed. The motion carried.

**Baker Minor:**

Mr. Beecher presented the Baker Minor Subdivision. He pointed out the area on a map and stated there is a problem with the road leading to it; it is very narrow. Mr. Beecher said all of the road needs to be included on the plat. The Ordinance calls for no half roads unless the Planning Commission approves it. A discussion was held, and it was agreed thirty-three feet would be dedicated for a road.

Mr. Beecher stated the subdivider will have to make application for a waiver of improvements. Mr. Greg Hansen stated if the county wants to require the subdivider to put dura prime down across the front, he will do it.

Mr. Tea made a motion to accept the preliminary plan with conditional acceptance on the final for the Baker Minor Subdivision

and that the final meet all of the requirements as discussed. Mr. Thompson seconded. None opposed. The motion carried.

**Grant Thompson Minor:**

Mr. Beecher presented the Grant Thompson Minor Subdivision and said it is in the Bear River Tract and will have to be vacated. It will have to go before the County Commission for a public hearing and all of the property owners notified. It was pointed out there are wetlands involved in the subdivision. Mr. Hansen explained how the problem would be handled.

Mr. Thompson made a motion to approve the preliminary plan on the Grant Thompson Subdivision. Mr. Douglas seconded. None opposed. The motion carried.

**OLD BUSINESS:**

**Response to letter from Ron Nelson, Willard Flood District:  
(Attachment No. 4)**

Mr. Beecher presented a letter written in response to a letter from Ron Nelson, Chairman of the Willard City/Box Elder County Flood District, dated May 13, 1994. Chairman Kimber read the letter into the Minutes. Mr. Thompson made a motion to approve the letter and authorize the Chairman to sign it. Mr. Tea seconded. None opposed. The motion carried.

Mr. Thompson made a motion to adjourn at 8:30 p.m. Mr. Tea seconded. None opposed. The motion carried.

Passed and adopted in regular session this 8<sup>th</sup> day of

September, 1994.

  
Richard D. Kimber, Chairman

ATTEST:

  
Marie G. Korth  
Recorder/Clerk

AGENDA  
BOX ELDER COUNTY PLANNING COMMISSION  
MEETING PLACE; COUNTY COMMISSION CHAMBERS  
BOX ELDER COUNTY COURTHOUSE  
BRIGHAM CITY, UTAH

1. Public agenda for the Box Elder County Planning Commission meeting scheduled for 18 August 1994 at 7:00 P.M.
2. Notice given to the newspaper this 17th day of August, 1994 .
3. Approval of the minutes of 30 June 1994.
4. Scheduled Delegations:
  - A. Darrell Nielsen 20,000 dollar bond transfer to Parsons request. Fay Facer
  - B. Levee Hemsley Etal request to form a zoning committee for the south County.
  - C. Misc. subdivision submittals.
  - D.
  - E.
  - F.
  - G.
  - H.
  - I.
  - J.
5. Old Business
  - A. Old business from last meeting
  - B.
  - C.
  - D.



Jack B Parson Companies

July 1, 1994

Box Elder County  
Box Elder Planning Commission  
Box Elder County Court House  
Brigham City, UT 84302

Re: Conditional Use Permit #38  
Parson Cook Canyon Pit (Formerly D.N. Pit)

Dear Sirs:

As requested by Mr. Jon Bunderson, Box Elder County Attorney, this letter is to further clarify our 12 June 1994 letter (copy attached), and our assumption of the obligations of the above referenced conditional use permit.

Our letter of 15 June 1994 transmitted our surety bond in the amount of \$20,000 and requested the cash bond previously posted by Mr. Darrell Nielsen be released back to Mr. Nielsen.

Jack B. Parson Companies hereby acknowledge the terms and conditions of C.U.P. #38 and agree to accept, agree and be bound by its terms and conditions. We further acknowledge that we will be responsible to see that all of these conditions have or will be met as required and accept and assume any and all obligations relating to this conditional use permit, including any that accrued or arose during the former owner's use and occupation of the premises.

Please let us know if you have any questions or require further information.

Sincerely,

R. Fay Facer  
Vice President

RFF/ck



Jack B Parson Companies

June 10, 1994

HAND DELIVERED

Jon J. Bunderson, Esq.  
Box Elder County Attorney  
45 North 100 East  
Brigham City, Utah 84302

Undertaking of Jack B. Parson Companies With Respect to  
Box Elder County Conditional Use Permit No. 38, With  
Respect to Existing Gravel Pit Operation

Dear Mr. Bunderson:

As you are aware, Jack B. Parson Companies, a Utah corporation ("Parson"), will be acquiring certain real property in Box Elder County, Utah, from Darrell Nielsen. A portion of said property is benefitted and burdened by Conditional Use Permit No. 38, as issued by the Box Elder County Planning Commission (the "Permit").

The purpose of this letter is to confirm Parson's undertaking and agreement in favor of Box Elder County to comply with all of the terms and conditions of the Permit, pursuant to the Application dated July 14, 1987, the Conditions dated March 3, 1989, and the obligations of Darrell Nielsen under the Agreement dated March 3, 1989 between Darrell Nielsen and Box Elder County (the so-called "Hold Harmless Agreement").

With specific reference to the March 3, 1989 Conditions (the "Conditions"), please be advised as follows:

1. Parson accepts, agrees and shall abide by all of the terms and conditions of the Conditions, as subsequently modified by the Box Elder County Planning Commission.
2. Immediately upon Parson's closing of its purchase of the property affected by the Permit, Parson shall provide Box Elder County with the \$1,000,000 insurance policy required by paragraph 8 of the Conditions.

Jon J. Bunderson, Esq.  
June 10, 1994  
Page 2

Based upon our conversations, it is our understanding that the undertaking and agreement contained herein is satisfactory to Box Elder County and that no further submissions will be required of Parson when it commences its gravel pit operations on the property covered by the Permit, except for the submission of the insurance policy described in paragraph 2 above and the other periodic submissions required under the Conditions. Since we contemplate closing our acquisition of the property covered by the Permit on June 13, 1994, I would appreciate it if you would contact our counsel, Cary D. Jones, of Snell & Wilmer, 111 East Broadway, Suite 900, Salt Lake City, Utah 84111 (telephone number 801-237-1927) to confirm this understanding.

Finally, pursuant to your conversations with Mr. Jones, our counsel, I have also attached hereto for your information a copy of the memorandum which you have discussed with him pertaining to the nature of the Permit as a covenant running with the land.

Thank you very much for your assistance.

Very truly yours,

JACK B. PARSON COMPANIES,  
a Utah corporation



R. Fay Facer  
Vice President

RFF/ck

## MEMORANDUM

TO: Cary D. Jones  
FROM: Jeffrey T. Sivertsen  
CLIENT: Jack B. Parson Companies  
RE: Restrictions on transferability of conditional use permit  
DATE: June 8, 1994

---

### ISSUE:

Will a conditional use permit issued by Box Elder County for the operation of a gravel pit terminate upon the sale of that gravel pit to a new owner?

### CONCLUSION:

No. A conditional use permit creates a right that runs with the land; it does not, and cannot, attach to the permittee. Accordingly, the gravel pit can be sold without risk of termination of the conditional use permit.

### ANALYSIS:

Chapter 7 of the Land Use Management and Development for Box Elder County (the "Ordinance") has very detailed standards for the issuance of conditional use permits. The Ordinance, however, is silent on the issue of the transferability of a conditional use permit. The Utah Code likewise fails to address the issue. Accordingly, we must rely on case law. The cases addressing the right to transfer conditional use permits uniformly hold that such transfers are permissible and, in fact, mandatory, since the permits run with the land.

The decision of *Anza Parking Corp. v. City of Burlingame*, 241 Cal.Rptr. 175 (Cal.App. 1987) provides a good analysis of the law pertaining to this issue. In *Anza*, the City of Burlingame had issued a conditional use permit for the operation of an airport

parking facility. One of the conditions for the permit was that the permit was "nontransferable." Anza Parking Corporation filed a lawsuit by which it sought to enforce the nontransferable clause. The trial court denied the relief sought and that decision was appealed. On appeal, the court stated:

The principal issue of the appeal may be stated as: Does a municipal zoning authority have power to condition a conditional use permit upon its nontransferability by the person to whom it is granted?

*Id.* at 176. The court concluded that the answer is "no."

The court began its analysis by noting that it is the policy in California that all property is freely transferable, unless expressly restricted by law. *Id.* at 177. The court then surveyed law from around the country on this issue. *See, e.g.; Olevson v. Zoning Board of Review of Town of Narragansett*, 44 A.2d 720 (R.I. 1945)(Court held that granting a zoning exception exclusively for a specific person amounted to granting a license or privilege to that individual and does not relate in its proper sense to the use of the property and zoning thereof); *Vlahos v. Little Boar's Head District*, 146 A.2d 257 (N.H. 1958)(Although decisions are not numerous, it has been held that transferability restriction is invalid because zoning conditions and restrictions are designed to regulate the land itself and its use and not the person who owns or operates the premises); *Clements v. Steinhauer*, 221 N.Y.S.2d 793 (N.Y. 1961)(The trial court correctly held that the permit authorized public parking. The court also correctly held that the permit inured to the benefit of subsequent owners of the premises). Based upon its review of decisions from other jurisdictions and the court's adoption of the rule in *County of Imperial v. McDougal*, 564 P.2d 14 (Cal. App. 1977) that conditional use permits "run with the land," the court concluded as follows:

The above authority is reasonable, and persuasive. Applying it here, we hold that a conditional use permit may not lawfully (and perhaps may not constitutionally) be conditioned upon the permittee having no right to transfer it with the land. Such a condition, if imposed, is beyond the power of the zoning authority, and void.

*Id.* at 178. (Citations omitted).

Like California, Utah has a strong preference for the free alienability of property. *See, e.g., Redd v. Western Sav. & Loan Co.*, 646 P.2d 761, 763 (Utah 1982); *Page v. Page*, 394 P.2d 612 (Utah 1964). Based upon the absence of any restriction on transferability in the Ordinance, Utah's strong policy in favor of the alienability of property, and the uniform approval of such transfers adopted by other jurisdictions, the conditional use permit would be transferred with the transfer of the property it affects, as a covenant running with the land.



Jack B Parson Companies

June 15, 1994

Box Elder County  
Box Elder County Courthouse  
Brigham City, Utah 84302

Re: Conditional Use Permit  
Parson Cook Canyon Pit  
Formerly Known as the D.N. Pit

Dear Sirs:

As you are aware, Jack B. Parson Companies has acquired the above referenced pit. We acknowledge the conditional use permit presently applying to this property and its conditions.

In accordance with item #14 of this C.U.P., enclosed is our surety bond in the amount of \$20,000.00, which was the agreed amount required to be bonded.

Our anticipation is that this bond would replace the cash bond presently held by Box Elder County and that this cash bond will be released back to Mr. Darrell Nielsen.

Item 8, Page 3 of the C.U.P. also requires a one million dollar policy in favor of Box Elder County. Enclosed is an insurance certificate in favor of Box Elder County to satisfy this condition.

If anything further is needed please let us know.

Sincerely,

  
Ray Racer  
Vice President

RFF/ck  
Enclosure

cc: Darrell Nielsen



RELIANCE I RANCE COMPANY  
PHILADELPHIA, PENNSYLVANIA  
UNITED PACIFIC INSURANCE COMPANY  
FEDERAL WAY, WASHINGTON  
PLANET INSURANCE COMPANY  
FEDERAL WAY, WASHINGTON

BOND NO. B2417010

LICENSE OR PERMIT BOND

KNOW ALL BY THESE PRESENTS:

That we, JACK B. PARSON COMPANIES, P. O. BOX 3429, OGDEN, UTAH 84409

RELIANCE INSURANCE COMPANY, a PENNSYLVANIA as Principal(s), and  
to transact surety business in the State of UTAH corporation authorized  
BOX ELDER COUNTY, COUNTY COURTHOUSE, BRIGHAM CITY, UTAH 84302 as Surety, are held and firmly bound unto

TWENTY THOUSAND AND NO/100\* \* \* \* \* as Oblige, in the penal sum of  
(\$ 20,000.00\* \* \* \* \*) DOLLARS, lawful money of the United States of America, for the payment of which,  
well and truly to be made, we bind ourselves, our heirs, legal representatives, successors and assigns, jointly and severally,  
firmly by these presents.

WHEREAS, Principal has applied to the Oblige for a license or permit to ~~XXXXXX~~ REHABILITATE PARSON/COOK  
CANYON PIT, FORMERLY DN PIT, W 1/2 SEC 25 AND F 1/2 SEC 26, BOTH TS 8N, R 2W, S1B & M

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That if the said Principal(s) shall comply with all applicable Ordinances, Rules and Regulations, and any Amendments thereto, then this obligation shall be void, otherwise to remain in full force and effect.

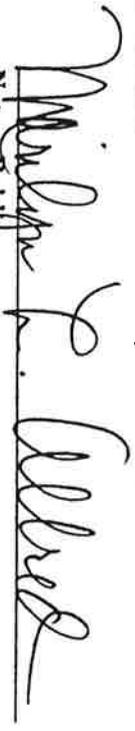
PROVIDED, HOWEVER, That this bond shall continue in force until:  
1. \_\_\_\_\_, 19\_\_\_\_, or until the expiration date of any Continuation Certificate executed  
by Surety, at its sole option.  
OR  
 2. Cancelled by Surety giving \_\_\_\_\_ 30 \_\_\_\_\_ days written notice to Oblige and Principal of its intention to terminate its liability hereunder.

SIGNED AND SEALED this 14TH day of JUNE, 1994.

JACK B. PARSON COMPANIES  
By [Signature]  
REL IANCE INSURANCE COMPANY  
Principal  
By [Signature]  
TINA DAVIS  
Attorney-in-Fact

STATE OF UTAH )  
 ) ss.  
COUNTY OF SALT LAKE )

On this 14TH day of JUNE, 19 94, before me a Notary  
Public personally appeared TINA DAVIS,  
personally known to me (or proved to me on the basis of satisfactory evidence) to be the  
person whose name is subscribed to this Instrument as the Attorney-In-Fact of RELIANCE INSURANCE COMPANY  
RELIANCE INSURANCE COMPANY and acknowledge to me that  
he (she) subscribed the name of RELIANCE INSURANCE COMPANY thereto as surety, and his (her) own name as  
Attorney-In-Fact.

  
Notary Public

**RELIANCE SURETY COMPANY  
 RELIANCE INSURANCE COMPANY  
 UNITED PACIFIC INSURANCE COMPANY  
 RELIANCE NATIONAL INDEMNITY COMPANY**

ADMINISTRATIVE OFFICE, PHILADELPHIA, PENNSYLVANIA

**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS, that RELIANCE SURETY COMPANY is a corporation duly organized under the laws of the State of Delaware, and that RELIANCE INSURANCE COMPANY and UNITED PACIFIC INSURANCE COMPANY, are corporations duly organized under the laws of the Commonwealth of Pennsylvania and that RELIANCE NATIONAL INDEMNITY COMPANY is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called "the Companies") and that the Companies by virtue of signature and seals do hereby make, constitute and appoint **Tina Davis, Jack Parron, Vicki Soransen, Linda L. Nipper, of Salt Lake City, Utah** their true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver for and on their behalf, and as their act and deed any and all bonds and undertakings of suretyship and to bind the Companies thereby as full and to the same extent as if such bonds and undertakings and other writings obligatory in the nature thereof were signed by an Executive Officer of the Companies and sealed and attested by one other of such officers, and hereby ratifies and confirms all that their said Attorney(s)-in-Fact may do in pursuance hereof.

This Power of Attorney is granted under and by the authority of Article VII of the By-Laws of RELIANCE SURETY COMPANY, RELIANCE INSURANCE COMPANY, UNITED PACIFIC INSURANCE COMPANY, and RELIANCE NATIONAL INDEMNITY COMPANY which provisions are in full force and effect, reading as follows:

ARTICLE VII - EXECUTION OF BONDS AND UNDERTAKINGS

1. The Board of Directors, the President, the Chairman of the Board, any Senior Vice President, any Vice President or Assistant Vice President or other officer designated by the Board of Directors shall have power and authority to (a) appoint Attorney(s)-in-Fact and to authorize them to execute on behalf of the Company, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and (b) to remove any such Attorney(s)-in-Fact at any time and revoke the power and authority given to them.
2. Attorney(s)-in-Fact shall have power and authority, subject to the terms and limitations of the Power of Attorney issued to them, to execute and deliver on behalf of the Company, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof. The corporate seal is not necessary for the validity of any bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof.
3. Attorney(s)-in-Fact shall have power and authority to execute affidavits required to be attached to bonds, recognizances, contracts of indemnity or other conditional or obligatory undertakings and they shall also have power and authority to certify the financial statement of the Company and to copies of the By-Laws of the Company or any article or section thereof.

This Power of Attorney is signed and sealed by facsimile under and by authority of the following resolution adopted by the Executive and Finance Committees of the Boards of Directors of Reliance Insurance Company, United Pacific Insurance Company and Reliance National Indemnity Company by Unanimous Consent dated as of February 28, 1994 and by the Executive and Financial Committee of the Board of Directors of Reliance Surety Company by Unanimous Consent dated as of March 31, 1994.

"Resolved that the signatures of such directors and officers and the seal of the Company may be affixed to any such Power of Attorney or any certificates relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company and any such Power so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company, in the future with respect to any bond or undertaking to which it is attached."

IN WITNESS WHEREOF, the Companies have caused these presents to be signed and by their corporate seals to be hereto affixed, May 2, 1994.

RELIANCE SURETY COMPANY  
 RELIANCE INSURANCE COMPANY  
 UNITED PACIFIC INSURANCE COMPANY  
 RELIANCE NATIONAL INDEMNITY COMPANY



*[Signature]*

STATE OF Washington )  
 COUNTY OF King ) ss.

On this, May 2, 1994, before me Janet D. Blankley, personally appeared Lawrence W. Carlstrom, who acknowledged himself to be the Senior Vice President of the Reliance Surety Company, and the Vice President of Reliance Insurance Company, United Pacific Insurance Company, and Reliance National Indemnity Company and that as such, being authorized to do so, executed the foregoing instrument for the purpose therein contained by signing the name of the corporation by himself as its duly authorized officer.

In witness whereof, I hereunto set my hand and official seal.



*[Signature]*  
 Notary Public in and for the State of Washington  
 Residing at Puyallup

I, Robyn Layng, Assistant Secretary of RELIANCE SURETY COMPANY, RELIANCE INSURANCE COMPANY, UNITED PACIFIC INSURANCE COMPANY, and RELIANCE NATIONAL INDEMNITY COMPANY do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 14<sup>th</sup> day of JUNE 19 94.



*[Signature]*  
 Assistant Secretary

ACURITE CERTIFICATE OF INSURANCE 6/14/94

PRODUCER  
Sedgwick James of Idaho, Inc.  
P.O. Box 8688  
Boise, ID 83707

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.  
COMPANIES AFFORDING COVERAGE

COMPANY  
A Aetna Casualty & Surety Co.

COMPANY  
B TIG Insurance Company

COMPANY  
C

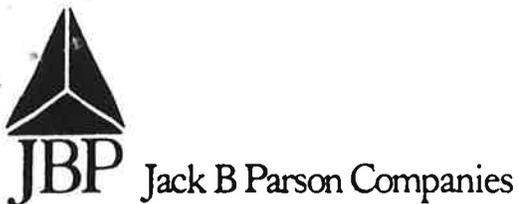
COMPANY  
D

INSURED  
Jack B. Parson Companies  
P.O. Box 3429 Ogden UT 84409

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE(M/D/Y)	POLICY EXPIRATION DATE(M/D/Y)	LIMITS
A	GENERAL LIABILITY COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input checked="" type="checkbox"/> OCCUR OWNERS & CONT PROT	196L5665719	3/01/94	3/01/95	GENERAL AGGREGATE \$ 2000000
					PRODUCTS-COMP/POP AGG \$ 2000000
					PERSONAL & ADV INJURY \$ 1000000
					EACH OCCURRENCE \$ 1000000
					FIRE DAMAGE (Any one fire) \$ 100000
					MED EXP (Any one person) \$ 10000
A	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS	19FJ1075944	3/01/94	3/01/95	COMBINED SINGLE LIMIT \$ 1000000
					BODILY INJURY (Per person) \$
					BODILY INJURY (Per accident) \$
					PROPERTY DAMAGE \$
					AUTO ONLY - EA ACCIDENT \$
					OTHER THAN AUTO ONLY: \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$
					AGGREGATE \$
					EACH OCCURRENCE \$
					AGGREGATE \$
					EACH ACCIDENT \$



Jack B Parson Companies

June 10, 1994

HAND DELIVERED

Jon J. Bunderson, Esq.  
Box Elder County Attorney  
45 North 100 East  
Brigham City, Utah 84302

Undertaking of Jack B. Parson Companies With Respect to  
Box Elder County Conditional Use Permit No. 38, With  
Respect to Existing Gravel Pit Operation

Dear Mr. Bunderson:

As you are aware, Jack B. Parson Companies, a Utah corporation ("Parson"), will be acquiring certain real property in Box Elder County, Utah, from Darrell Nielsen. A portion of said property is benefitted and burdened by Conditional Use Permit No. 38, as issued by the Box Elder County Planning Commission (the "Permit").

The purpose of this letter is to confirm Parson's undertaking and agreement in favor of Box Elder County to comply with all of the terms and conditions of the Permit, pursuant to the Application dated July 14, 1987, the Conditions dated March 3, 1989, and the obligations of Darrell Nielsen under the Agreement dated March 3, 1989 between Darrell Nielsen and Box Elder County (the so-called "Hold Harmless Agreement").

With specific reference to the March 3, 1989 Conditions (the "Conditions"), please be advised as follows:

1. Parson accepts, agrees and shall abide by all of the terms and conditions of the Conditions, as subsequently modified by the Box Elder County Planning Commission.
2. Immediately upon Parson's closing of its purchase of the property affected by the Permit, Parson shall provide Box Elder County with the \$1,000,000 insurance policy required by paragraph 8 of the Conditions.

Jon J. Bunderson, Esq.  
June 10, 1994  
Page 2

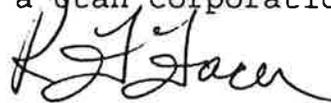
Based upon our conversations, it is our understanding that the undertaking and agreement contained herein is satisfactory to Box Elder County and that no further submissions will be required of Parson when it commences its gravel pit operations on the property covered by the Permit, except for the submission of the insurance policy described in paragraph 2 above and the other periodic submissions required under the Conditions. Since we contemplate closing our acquisition of the property covered by the Permit on June 13, 1994, I would appreciate it if you would contact our counsel, Cary D. Jones, of Snell & Wilmer, 111 East Broadway, Suite 900, Salt Lake City, Utah 84111 (telephone number 801-237-1927) to confirm this understanding.

Finally, pursuant to your conversations with Mr. Jones, our counsel, I have also attached hereto for your information a copy of the memorandum which you have discussed with him pertaining to the nature of the Permit as a covenant running with the land.

Thank you very much for your assistance.

Very truly yours,

JACK B. PARSON COMPANIES,  
a Utah corporation



R. Fay Facer  
Vice President

RFF/ck

## MEMORANDUM

TO: Cary D. Jones  
FROM: Jeffrey T. Sivertsen  
CLIENT: Jack B. Parson Companies  
RE: Restrictions on transferability of conditional use permit  
DATE: June 8, 1994

---

### ISSUE:

Will a conditional use permit issued by Box Elder County for the operation of a gravel pit terminate upon the sale of that gravel pit to a new owner?

### CONCLUSION:

No. A conditional use permit creates a right that runs with the land; it does not, and cannot, attach to the permittee. Accordingly, the gravel pit can be sold without risk of termination of the conditional use permit.

### ANALYSIS:

Chapter 7 of the Land Use Management and Development for Box Elder County (the "Ordinance") has very detailed standards for the issuance of conditional use permits. The Ordinance, however, is silent on the issue of the transferability of a conditional use permit. The Utah Code likewise fails to address the issue. Accordingly, we must rely on case law. The cases addressing the right to transfer conditional use permits uniformly hold that such transfers are permissible and, in fact, mandatory, since the permits run with the land.

The decision of *Anza Parking Corp. v. City of Burlingame*, 241 Cal.Rptr. 175 (Cal.App. 1987) provides a good analysis of the law pertaining to this issue. In *Anza*, the City of Burlingame had issued a conditional use permit for the operation of an airport

parking facility. One of the conditions for the permit was that the permit was "nontransferable." Anza Parking Corporation filed a lawsuit by which it sought to enforce the nontransferable clause. The trial court denied the relief sought and that decision was appealed. On appeal, the court stated:

The principal issue of the appeal may be stated as: Does a municipal zoning authority have power to condition a conditional use permit upon its nontransferability by the person to whom it is granted?

*Id.* at 176. The court concluded that the answer is "no."

The court began its analysis by noting that it is the policy in California that all property is freely transferable, unless expressly restricted by law. *Id.* at 177. The court then surveyed law from around the country on this issue. *See, e.g.; Olevson v. Zoning Board of Review of Town of Narragansett*, 44 A.2d 720 (R.I. 1945)(Court held that granting a zoning exception exclusively for a specific person amounted to granting a license or privilege to that individual and does not relate in its proper sense to the use of the property and zoning thereof); *Vlahos v. Little Boar's Head District*, 146 A.2d 257 (N.H. 1958)(Although decisions are not numerous, it has been held that transferability restriction is invalid because zoning conditions and restrictions are designed to regulate the land itself and its use and not the person who owns or operates the premises); *Clements v. Steinhauer*, 221 N.Y.S.2d 793 (N.Y. 1961)(The trial court correctly held that the permit authorized public parking. The court also correctly held that the permit inured to the benefit of subsequent owners of the premises). Based upon its review of decisions from other jurisdictions and the court's adoption of the rule in *County of Imperial v. McDougal*, 564 P.2d 14 (Cal. App. 1977) that conditional use permits "run with the land," the court concluded as follows:

The above authority is reasonable, and persuasive. Applying it here, we hold that a conditional use permit may not lawfully (and perhaps may not constitutionally) be conditioned upon the permittee having no right to transfer it with the land. Such a condition, if imposed, is beyond the power of the zoning authority, and void.

*Id.* at 178. (Citations omitted).

Like California, Utah has a strong preference for the free alienability of property. *See, e.g., Redd v. Western Sav. & Loan Co.*, 646 P.2d 761, 763 (Utah 1982); *Page v. Page*, 394 P.2d 612 (Utah 1964). Based upon the absence of any restriction on transferability in the Ordinance, Utah's strong policy in favor of the alienability of property, and the uniform approval of such transfers adopted by other jurisdictions, the conditional use permit would be transferred with the transfer of the property it affects, as a covenant running with the land.

PETITION TO AMEND BOX ELDER COUNTY ZONING MAP

Petitioners:

Box Elder County Flood Control Spec. Service District  
80 West 50 North, (P.O. Box 286) Willard, Utah 84340

PURPOSE:

To enhance flood protection goals and management of flood waters to protect established residential and agricultural areas. To provide protection for the water resources in the area designated below, including the water sheds and recharge areas along the region of the Wasatch Front.

Proposed Amendment:

Recognize and designate the following sections located within Box Elder County, State of Utah ("Identified Area") as a Sensitive Area (SA) District:

Township 7 North, Range 2 West SLB&M  
Sections 1,2 & 3; 9 through 18.

Township 8 North, Range 2 West SLB&M  
Sections: Part of 1 & 35; All of 12, 13, 24, 25 & 36

I. INTRODUCTION

Pursuant to Chapter 14 of the 1992 Land Use Management and Development Code for Box Elder County (the "Code"), the petitioners hereby submit that the Identified Area qualifies as a Sensitive Area District and respectfully requests pursuant to Section 1.11.3. of the Code that the Box Elder County Zoning Map be amended to expressly designate the Identified Area as a Sensitive Area District.

As stated in Section 14.1 of the Code:

[t]he purpose of the Sensitive Area Overlay Zone, SA, is to designate and describe those areas within Box Elder County that possess physical and/or environmental characteristics which require special public consideration of applications for uses which might affect: the structure of the land; the management of surface or subsurface water; safety of future land occupants due to increased fire, earthquake, or storm hazards from the proposed development; or the uneconomic extension of public facilities and services. Of specific concern is development in flood-prone areas, earthquake zones, landslide areas, areas of steep slope or unstable soils, wetlands, noise or other pollution sensitive areas. Other

sensitive areas also may require careful assessment prior to alteration or impact.

The Code, Section 14.1.

The identified Area is an area of "specific concern" under the Code because it includes 1) Flood prone areas; 2) An earthquake zone; 3) Wetlands; and 4) Other pollution sensitive areas.

In addition, Section 14.4 of the Code provides:

The "Sensitive Area District, SA" zoning districts if not marked on the zoning map per se, shall nonetheless include areas of Box Elder County designated as:

- 14.4.1 100 year flood plain;
- 14.4.2 Geological hazards including earthquake areas, unstable soil conditions, sloped in excess of 15%, and areas subject to flooding;
- 14.4.3 Areas of high water table and ground water including wetlands, high water table, perched water, drainage ways and swampy conditions.
- 14.4.4 Other environmentally sensitive areas . . .

The Code, Section 14.4.

The Identified Area is currently in a Sensitive Area District by virtue of the earthquake activity, susceptibility to flooding, and high water content of the East Shore Formation. Petitioners request that the Identified Area be designated officially as a Sensitive Area District on the Box Elder County Zoning Maps.

II. THE IDENTIFIED AREA INCLUDES WETLANDS AND OTHER POLLUTION SENSITIVE AREAS.

The East Shore Formation, a known regional aquifer, is a primary source of drinking and irrigation water for a large area, from North Willard to Bountiful, and clearly underlies the Identified Area. A region known as the Weber Delta within the Identified area provides an area of significant ground water recharge for the East Shore Formation. The ultimate source of most of the recharge water is precipitation in the mountainous areas of numerous basins that drain to the East Shore area. Major canyons along the Wasatch Range in Box Elder County carry this drainage; they are Willard, Cook, Holmes, Pearsons and Maguire Canyon.

The zone of permeable sediments extends as far as 7 miles west of the mouth of Weber Canyon to less than one-fourth of a mile west of the mountain front in areas north of Ogden and south of

Farmington. The recharge area consists of two parts that have different potential for accepting recharge by downward movement. The primary recharge area is nearest the mountain front; it is underlain by predominately permeable sands and gravel that enhance infiltration of recharge water. The secondary recharge area is farther from the mountains; it is underlain by some finer grained sediments that partially impede downward movement and therefore probably accepts direct infiltration less readily than areas closer to the mountain front. Although no direct relation was known for infiltration rates between the recharge areas, for the purpose of calculating recharge, it was assumed that the rate of infiltration in the secondary recharge area was one-half the rate of the primary area.

Numerous sources document the presence of faults and geologic structures (folds, joints, etc.) in the Identified Area that generally trend in the same direction as the north-south alignment of the Weber Delta. These structures provide a potential pathway between ground water in the Identified Area. The conclusion of the comprehensive work of the Division of Water Resources in the Identified Area is that bedrock conduits are major hydrogeologic pathways in the Weber Delta. Such a pathway could allow contamination from gravel operations to migrate readily to the drinking water supplies in the Weber Delta.

The Utah Division of Drinking Water's proposed rules for ground water source protection will require identification of potable water aquifer recharge zones, together with ground water transport direction and velocity. These are essential elements of the United States Environmental Protection Agency's program. Every community well in the Weber Delta will shortly be required to demonstrate to the State that they have defined protection zones. The Utah Division of Water Rights' 1981 publication "Identification and Characteristics of Aquifers in Utah" both identifies the East Shore Area as an aquifer and the Weber Delta as an area of ground water development or potential development. Therefore, the County, in designating the Identified Area as a Sensitive Area District, will be taking proactive steps to assure compliance with state and federal requirements designed to assure the purity of potable water supplies.

The faulting and fracturing of the bedrock within the East Shore Area provides high transmissivity that would allow contaminants to leach from the surface or ground water of the Identified Area into the East Shore Area, thereby contaminating a valuable regional water supply. For this reason any proposed use which may release contaminants onto the surface or into ground water of the Identified Area must undergo a high level of scrutiny. Designating the Identified Area as a Sensitive Area District will cause any uses other than the few enumerated in Chapter 14 of the Code to require a conditional use permit, thus helping to preserve the purity of the water in the East Shore Area.

### III. PORTIONS OF THE IDENTIFIED AREA ARE PRONE TO FLOODING

Certain portions of the Identified Area are prone to flooding. This has been clearly shown by floods documented in 1923, 1936, 1949 and 1984.

Lives have been lost, homes and buildings destroyed, farmlands inundated with mud and debris and the highway rendered useless. Major floods have come out of Willard, Cook and Maguire Canyons specifically. The flood study completed in 1982 at a cost of \$80,000 recommended against development of gravel pits as a remedy for flooding. Engineering studies in 1991 and 1992 have outlined current flood hazards. Recent development of a pit at the mouth of Cook Canyon has jeopardized portions of the flood protection structures which were installed at a cost of several hundred thousand taxpayer dollars. Industrial development, including gravel operations, is not compatible with watershed protection or flood control in such steep confined areas. This is especially true when adjacent areas are established residential and agricultural uses.

### IV. IDENTIFIED AREA IS IN AN EARTHQUAKE ZONE

The East Shore aquifer system lies within an elongated graben formed by normal faulting along the Wasatch fault Zone to the east and an undefined fault zone near the shore of Great Salt Lake to the west. The fault systems have a direct effect on the quality of ground water near them.

### V. CONCLUSION

The Identified Area is a critical ground water recharge area for the Weber Delta within the East Shore Area. The Identified Area has portions that are prone to flooding. Documented seismic activity demonstrates the Identified Area should be designated an earthquake zone. Any one of these three characteristics demonstrates that the Identified Area is environmentally sensitive. The sum of all three characteristics leads to the inescapable conclusion that the Identified Area represents a valuable resource to the County that is environmentally sensitive and deserves protection. Petitioners respectfully request that Box Elder County amend the Zoning Maps to expressly designate the Identified Area as a Sensitive Area District.

### VI. REQUEST FOR HEARING

Petitioners hereby request a hearing to review the petition to designate the Identified Area as a Sensitive Area District.

COUNTY COMMISSIONERS

R. LEE ALLEN  
ALLEN L. JENSEN  
JAMES J. WHITE



OFFICERS

CARLLA J. SECRIST, COUNTY AUDITOR-TREASURER  
MARIE G. KORTH, COUNTY RECORDER-CLERK  
ROBERT E. LIMB, COUNTY SHERIFF  
JON J. BUNDERSON, COUNTY ATTORNEY  
MONTE R. MUNNS, COUNTY ASSESSOR  
DENTON BEECHER, COUNTY SURVEYOR

August 18, 1994  
LT-94-058

Box Elder County/Willard City  
Flood Control District  
P. O. Box 286  
Willard, Utah 84340

Dear District:

In response to your letter dated May 13, 1994, and presented at our meeting of June 30, 1994, we submit the following:

Parson Operation in South Willard

1. Inadequate Plans

These plans to our knowledge, are the same as the District, through your chairman, approved with many compliments to the developer.

2. Bonding

The flooding issue was presented by the developers engineer and we were assured that the development would more than handle the flooding conditions. These plans were agreed upon by the District. Later, after the permit was issued, they changed their decision.

3. Transfer of Permits

Our legal council does not agree with this statement and we desire to follow his council.

D. N. Development

1. Inadequate Plans

At the time of the issuance of this permit the then District reviewed the plans. The permit was issued. Some time later the new members hired a different engineer to review an amendment and a new request for a set of plans requested.

2. Bonding

This was agreed upon in the issuance of the permit and we feel we can not change in the middle of the operation because a new board feels it needs to be done.

3. Transfer of Use Permit

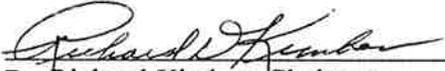
Again we rely upon the County Attorney for an opinion on this matter.

4. Phase One vs. Phase Two

As no dimensions were agreed upon as to the size, the County and Mr. Nielsen agreed upon a boundary limit line between the two areas. There is no need for an engineer to measure and compare as there is nothing to compare to. Therefore, we feel the County and Mr. Nielsen are the only ones who know these limits and we have assured the District as well as others that Phase One will be completed before going into Phase Two.

We trust you will accept this as our answer to your letter of May 13, 1994.

Respectfully,  
Box Elder Planning Commission

  
By Richard Kimber, Chairman