

KANE COUNTY ORDINANCE NO. 2014 - 6

AN ORDINANCE ADOPTING CHAPTER 27 OF THE KANE COUNTY LAND USE ORDINANCE, THE ESCALANTE REGION MULTIPLE USE/MULTIPLE FUNCTIONS GRAZING ZONE

WHEREAS, the Kane County Planning Commission, after a duly noticed public hearing, recommended for approval the addition of Chapter Twenty Seven, Escalante Region Multiple Use/Multiple Functions Grazing Zone to the Kane County Land Use Ordinance;

WHEREAS, both the Kane County Planning Commission and Kane County Board of Commissioners desire to implement the recommended addition;

WHEREAS, HB 382 was adopted by the State of Utah in 2013, establishing the Escalante Region Grazing Zone, codified in Utah Code Ann., Title 63J, Chapter 8;

WHEREAS, Utah Code Ann. §17-27a-102 designates Counties to provide for the health, safety, and welfare, and promote the prosperity, improve the morals, peace and good order, comfort, convenience, and aesthetics for its present and future inhabitants and businesses, to protect the tax base, to secure economy and foster the county's agricultural and other industries and provide fairness in land use regulation, and to protect property values;

WHEREAS, Utah Code Ann. § 17-50-302(1)(a)(ii) authorizes Counties to exercise power reasonably related to the safety, health, morals, and welfare of county inhabitants;

WHEREAS, the elements of this ordinance adhere to the State of Utah Resource Management Plan for Federal Lands, outlined in Utah Code Title 63J, Chapter 8, with the additional planning elements to suit Kane County's needs on a local level with the addition of the Multiple Functions part of the Livestock Grazing Zone plan;

WHEREAS, all allotments and references to locations stated in Utah Code Ann. § 63J-8-102 are adopted by Kane County, as well as the definitions contained in Title 63J, Chapter 8, including "Multiple Use," which means proper stewardship of the subject lands pursuant to Section 103 (c) of FLPMA, 43 U.S. C Sec. 1702(c);

WHEREAS, the Multiple Function aspect of this ordinance is included to protect historical and cultural uses, allowed in the past, to continue to exist in the monument to help protect the health, safety and welfare of Kane County citizens;

WHEREAS, the Escalante Region Multiple Use/Multiple Functions Grazing Zone will be adopted as the Kane County Zoning of Public Lands within the Kane County portion of the

Grand Staircase-Escalante National Monument, and will be part of the Kane County General Plan and Kane County Land Use Ordinance, along with the zoning map including the Escalante Region Multiple Use/Multiple Functions Grazing Zone;

WHEREAS, this zone promotes local, state and federal coordination to develop grazing resources and maintain existing grazing allotments pursuant to President Clinton's September 18, 1996, Proclamation establishing the Monument which states, "Nothing in this proclamation shall be deemed to affect existing permits or leases for, or levels of, livestock grazing on Federal Lands within the monument";

WHEREAS, the highest management priorities for lands within the Escalante Region Multiple Use/Multiple Functions Grazing Zone are responsible management, enhancement, and development of existing and future livestock grazing resources in order to provide protection for the resources, customs, culture, and values of Kane County, which values include the responsible development of abundant deposits of energy and mineral resources, including oil, natural gas, oil shale, oil sands, coal, gold, uranium, and copper, that are compatible with grazing activities in the Escalante Multiple Uses/Multiple Functions Grazing Zone;

WHEREAS, Multiple Functions means uses that include responsible development of abundant recreation resources, including wildlife, roads, campgrounds, water resources, trails, ATV use, Search and Rescue ATV use in life threatening rescue missions, sightseeing, canyoneering, hunting, livestock grazing, guide services, trail rides, post and fuel wood permits, mining and timber, scenic values, commercial activities, water and water rights, and movie productions, etc.;

WHEREAS, responsible development of abundant recreation resources, such as wildlife, roads, campgrounds, water resources, trails, OHV use, sightseeing, canyoneering, hunting, and hiking are compatible with livestock grazing and related activities in the Escalante Region Multiple Use/Multiple Functions Grazing Zone;

WHEREAS, Kane County supports efficient and responsible full development within the Escalante Region Multiple Use/Multiple Functions Grazing Zone of all permitted, existing and future grazing resources, and other uses compatible with grazing activities;

WHEREAS, Kane County believes that access should be developed and maintained to allow for access to the federal lands by the disabled, by means of motorized vehicle, ATV, wheelchair, etc.;

WHEREAS, Kane County asserts that federal agencies that administer the land within the Escalante Region Multiple Use/Multiple Functions Grazing Zone must fully coordinate with Kane County and the State of Utah to develop, amend, and implement land and resource

management plans and implement management decisions that are consistent with the purposes, goals and policies described in this ordinance to the maximum extent allowed under federal law;

WHEREAS, Federal laws and regulations (e.g. the National Environmental Policy Act, FLPMA, NFMA, etc.) contain reciprocal requirements concerning cooperation, consultation and coordination by Federal agencies with state and local governments and the required cooperation, consultation and coordination have not been fully implemented;

WHEREAS, the Escalante Region Multiple Use/Multiple Functions Grazing Zone is one of the few remaining areas in the world where livestock grazing practices have maintained their traditional culture, values and heritage;

WHEREAS, residents and visitors to Kane County have enjoyed and received significant benefits to health, welfare and economic stability and sustainability, through the custom, culture and heritage of livestock grazing and other uses and functions of the Escalante Region Multiple Use/Multiple Functions Grazing Zone;

WHEREAS, continuation of current public land management practices diminishes opportunities for viable livestock grazing and threatens the custom, culture, heritage, value and economy incorporated in the Escalante Region Multiple Use/Multiple Functions Grazing Zone;

WHEREAS, livestock grazing in the Escalante Region Multiple Use/Multiple Functions Grazing Zone have improved the land by proper range management, including rotation of animals on pastures to assure the land is not overgrazed, range improvements, water developments, access improvements, weed control, reductions of hazardous fuels, providing nutrients, and many other positive aspects;

WHEREAS, the value of public land livestock grazing has been recognized by numerous federal statutes, such as, the Taylor Grazing Act, FLMA, NFMA and the enabling legislation for Glen Canyon National Recreation Area, and the Grand Staircase-Escalante Monument Proclamation;

WHEREAS, access rights-of-way and water rights have historically been critical to the success of the early pioneers in the County, and they remain just as critical today;

WHEREAS, in 1866 Congress enacted a law to provide and protect access across federal lands for people reliant upon water to earn their livelihood, namely, Revised Statue 2477, which provided, in part, “The right-of-way for the construction of highways across public lands not otherwise reserved for public purposes is hereby granted;”

WHEREAS, the 1866 Act was repealed by FLPMA, 1976, subject to “valid existing rights,” stating, “Nothing in this Act, or in any amendment made by this Act, shall be construed as

terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act;”

WHEREAS, Kane County rancher’s developed such rights-of-way in the forms of roads and trails which continue to be used today;

WHEREAS, the Utah legislature passed a statue establishing a procedure by which counties could provide for recording of such rights-of-way established under the 1866 law; and Kane County’s Board of Commissioners established such procedure which Kane County residents have used in recording their rights-of-way;

WHEREAS, early ranchers established water rights through the doctrine of prior appropriation with the earliest adjudicated rights in Kane County dating back to the 1800’s;

WHEREAS, holders of water rights today are still struggling to preserve their rights against encroachment

WHEREAS, Kane County desires that established water rights and uses for ranchers and livestock grazers alike be protected;

WHEREAS, the historical, cultural educational and moral benefits of livestock grazing in the Escalante Region Multiple Use/Multiple Functions Grazing Zone are important to Kane County and its residents; and the loss of our rich historical culture that brings visitors to Kane County would cause irreparable harm to our economy and the richness or our culture and heritage;

WHEREAS, Kane County families have grazed and used the land for multiple generations and a loss of a portion or all of a grazing right would impact family economics and dynamics that cannot be replaced once lost;

WHEREAS, Kane County recognizes the impact and value livestock grazing and that the use of our public lands provides a benefit for all residents in Kane County, tourists, and future generations;

WHEREAS, the Escalante Region Multiple Use/Multiple Functions Grazing Zone is intended to protect one of Kane County’s most valuable assets, our families, our culture and our history that is unique to our area;

WHEREAS, the Kane County Board of Commissioners, in a duly noticed public meeting, received the recommended addition of Chapter Twenty Seven to the Kane County Land Use Ordinance and desires to enact the recommendations;

**NOW THEREFORE, THE COUNTY LEGISLATIVE BODY OF KANE COUNTY,
STATE OF UTAH ORDAINS AS FOLLOWS:**

Chapter Twenty Seven of the Kane County Land Use Ordinance is hereby adopted and added to the Kane County Land Use Ordinance, as set forth in its entirety in the attached ordinance.

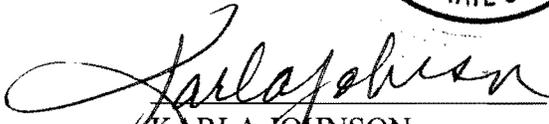
This Ordinance shall take effect May 13th, 2014.

The County Clerk is ordered to publish this ordinance in accordance with Utah State Law.

ADOPTED this 28th day of April, 2014.

ATTEST:




KARLA JOHNSON
Kane County Clerk/Auditor


DOUG HEATON, Chair,
Board of Commissioners,
Kane County

Commissioner Clayson voted *aye*
Commissioner Matson voted *aye*
Commissioner Heaton voted *aye*

CHAPTER 27. ESCALANTE REGION MULTIPLE USE/ MULTIPLE FUNCTIONS GRAZING ZONE

ARTICLE A: Zoning Districts

SECTION:

- 9-27A-1: Purpose
- 9-27A-2: Definition of Multiple Use
- 9-27A-3: Modifying Regulations
- 9-27A-4: Permitted and Conditional Uses-Uses Matrix

9-27A-1: Purpose.

To provide a Multiple Use/Multiple Functions Zone which promotes local, state and federal coordination to restore, repair, redevelop and develop under Utah State Code §17-27a-102, which designates Counties to provide for the health, safety, and welfare, and promote the prosperity, improve the morals, peace and good order, comfort, convenience, and aesthetics for its present and future inhabitants and businesses, to protect the tax base, to secure economy and foster the county's agricultural and other industries and provide fairness in land use regulation, and to protect and enhance property values.

The purposes of providing a Multiple Use/Multiple Functions Zone are to establish areas which are open and generally undeveloped lands where human habitation would be limited. The zone is designed to enhance and protect land and associated open space resources. The zone is established to encourage the use of land, where appropriate, for forest products, livestock grazing, agriculture, mining, wildlife habitat, and recreation. This zone is established to protect all valid private property rights and the continued use and full access to these rights. This zone is intended to promote the health, safety, convenience, order, prosperity and general welfare and economy of the inhabitants of Kane County, tourists and future generations.

9-27A-2: Definition of Multiple Use.

In addition to other defining provisions in this Chapter, the term "multiple use" means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the residents of Kane County; making the most judicious use of the land for

some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.” *See* Section 103(c) of FLPMA, 43 U.S.C. § 1702(c), 1976.

9-27A-3: Modifying Regulations.

- 1) No livestock grazing restrictions or amendments should change as stated by President Clinton’s declaration in September 18, 1996: “Nothing in this proclamation shall be deemed to affect existing permits or leases for, or levels of, livestock grazing on Federal Lands within the monument.”
- 2) The Escalante Region Multiple Use/Multiple Functions Grazing Zone (“Escalante Region Grazing Zone”) includes the following lands situated in the following townships, as outlined in Utah Code §63J-8-102, including any amendments thereto, if any:

Township 38S Range 1W, Township 38S Range 2W, Township 38S Range 3W, Township 38S Range 4W, Township 38S Range 1E, Township 38S Range 2E, Township 38S Range 3E, Township 38S Range 4E, Township 38S Range 5E, Township 38S Range 6E, Township 38S Range 7E, Township 38S Range 8E, Township 38S Range 9E, Township 39S Range 1W, Township 39S Range 2W, Township 39S Range 3W, Township 39S Range 4W, Township 39S Range 1E, Township 39S Range 2E, Township 39S Range 3E, Township 39S Range 4E, Township 39S Range 5E, Township 39S Range 6E, Township 39S Range 7E, Township 39S Range 8E, Township 39S Range 9E, Township 40S Range 1W, Township 40S Range 2W, Township 40S Range 3W, Township 40S Range 4W, Township 40S Range 4.5W, Township 40S Range 5W, Township 40S Range 1E, Township 40S Range 2E, Township 40S Range 3E, Township 40S Range 4E, Township 40S Range 5E, Township 40S Range 6E, Township 40S Range 7E, Township 40S Range 8E, Township 40S Range 9E, Township 40.5S Range 9E, Township 41S Range 1W,

Township 41S Range 2W, Township 41S Range 3W, Township 41S Range 4W, Township 41S Range 4.5W, Township 41S Range 5W, Township 41S Range 1E, Township 41S Range 2E, Township 41S Range 3E, Township 41S Range 4E, Township 41S Range 5E, Township 41S Range 6E, Township 41S Range 7E, Township 41S Range 8E, Township 41S Range 9E, Township 42S Range 1W, Township 42S Range 2W, Township 42S Range 3W, Township 42S Range 4W, Township 42S Range 4.5W, Township 42S Range 5W, Township 42S Range 1E, Township 42S Range 2E, Township 42S Range 3E, Township 42S Range 4E, Township 42S Range 5E, Township 42S Range 6E, Township 42S Range 7E, Township 42S Range 8E, Township 42S Range 9E, Township 43S Range 1W, Township 43S Range 2W, Township 43S Range 3W, Township 43S Range 4W, Township 43S Range 4.5W, Township 43S Range 5W, Township 43S Range 1E, Township 43S Range 2E, Township 43S Range 3E, Township 43S Range 4E, Township 43S Range 5E, Township 43S Range 6E, Township 44S Range 1W, Township 44S Range 2W, Township 44S Range 3W, Township 44S Range 4W, Township 44S Range 4.5W, Township 44S Range 5W, Township 44S Range 1E, Township 44S Range 2E, Township 44S Range 3E, Township 44S Range 4E, and Township 44S Range 5E.

- 3) The highest management priorities for lands within the Escalante Region Grazing Zone are responsible management, enhancement, and restoration of historic sagebrush steppe landscapes and development of existing and future livestock grazing resources, in order to provide protection for resources, customs, culture, and values of Kane County.
- 4) Responsible development of locatable, leasable, and sellable mineral resources in the Escalante Region Grazing Zone.
- 5) Responsible development of abundant recreation resources, including wildlife, roads, campgrounds, water resources, trails, OHV use, sightseeing, canyoneering, hunting, hiking and human safety in emergency Search and Rescue missions are compatible with livestock grazing activities in the Escalante Region Grazing Zone.
- 6) Access for disabled persons needs to be a high-priority as required by Federal law. Persons with disabilities should not be discriminated against and should have the same opportunities to access these lands as an able bodied person. This includes, but is not limited to the elderly, retired and disabled veterans who have been severely restricted in their ability to access these lands since the restrictions for the Grand Staircase Escalante National Monument have

been put into place. Examples of appropriate access for disabled persons may include, but are not limited to, OHV, vehicular, and wheelchair access to areas disabled persons may be incapable of hiking to, walking to, or otherwise accessing.

- 7) Kane County supports efficient and responsible full restoration, repair, redevelopment and development within the Escalante Region Grazing Zone, of:
 - (a) All permitted existing and future livestock grazing resources;
 - (b) Other uses compatible with livestock grazing; and
 - (c) Coordination management approach by federal agencies, the State of Utah, and local governments to achieve broadly supported management plans for the full development of resources and goals, within the Escalante Region Grazing Zone.
- 8) Federal agencies that administer land within the Escalante Region Grazing Zone shall coordinate with Kane County to develop, amend, and implement land and resource management plans and implement management decisions that are consistent with the purposes, goals, policies, and provisions described in this Chapter to the maximum extent allowed under federal law.
- 9) The National Environmental Policy Act, Federal Land Policy and Management Act, National Forest Management Act, etc., and their implementing regulations and policies contain reciprocal requirements concerning cooperation, consultation and coordination by Federal agencies with state and local governments and such cooperation needs be fully implemented by Kane County and the relevant federal agencies.
- 10) Kane County is sustained by a small population whose livelihoods have maintained the vast openness and natural beauty of the land treasured by visitors. All sources of economic support must be maintained at their highest possible level in order to sustain the economic stability of the County. To ensure this, the Board of Commissioners and the Planning Commission have dedicated themselves to a coordinated land use planning effort, which can hold the federal management agencies to standards set by Congress regarding continuation of multiple uses of the federal lands.
- 11) The County recognizes that federal law mandates multiple uses of federally managed lands and the County positively supports multiple use. Maintenance of such multiple uses necessarily includes continued maintenance of the

historic and traditional economic uses of federally managed and state managed lands in the County.

- 12) Kane County has depended on the livestock grazing industry throughout its history to provide economic stability to the county; therefore, livestock grazing must be protected to ensure the health, welfare and safety of the citizens.
- 13) The American legend of the “Cowboy” is found throughout the Escalante Region Grazing Zone and is part of the culture and history of Kane County’s “Western Legends.” This cultural legend is what brings the tourism and movie industries to the County, and helps to fuel the local economy. With livestock grazing being pushed out of the County by federal policies, this cultural icon, so identifiable with the persona of Kane County, is becoming endangered.
- 14) Kane County’s ranching and livestock grazing are protected uses under this zone due to multiple generational use of the land. A loss of livestock grazing rights would impact family economics and dynamics that cannot be replaced.
- 15) Kane County recognizes the impact and value of livestock grazing and the recreational use of our public lands. These should continue to provide Kane County residents, tourists and future generations the opportunity to enjoy this rich heritage. Our families depend on these uses of the federal lands to stay in the area and continue this long tradition of responsible use of the lands.
- 16) Access rights-of-way and water rights have historically been critical to the early pioneers in the County and they remain critical today. In 1866, Congress enacted laws to provide and protect access across federal lands for people reliant upon water to earn their livelihood. The Act of July 26, 1866, Revised Statue 2477, provided: “The right-of-way for the construction of highways over public land, not reserved for public uses, is hereby granted.” Kane County rancher’s developed such rights-of-ways in the forms of roads and trails, which continue to be used today. The Federal Lands Policy and Management Act (FLPMA) of 1976 repealed the 1866 Revised Statue 2477, subject to valid existing rights. Section 8 of the Act states, “Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act.” The Utah Legislature passed a statute establishing a procedure by which counties could provide for recording of such rights of way established under the 1866 law,

and recognized by FLPMA. Kane County's Board of Commissioners established such a procedure and Kane County residents have recorded their rights-of-way.

- 17) Early ranchers established water rights through the doctrine of prior appropriation. The earliest adjudicated rights in Kane County date back to the 1800's. Today, holders of water rights are still struggling to preserve their rights against encroachment. This zone protects water rights and uses for ranchers and grazers alike.
- 18) Some of the customs and aspects of the culture of Kane County has never altered from its historic beginnings. Mining, ranching, farming, timber production, and wood products have been productive industries that have supported County's residents for generations. Those activities continue today, except where federal encroachment has limited such activities. Federal agencies shall coordinate with Kane County to restore these historic uses and functions in the Escalante Region Grazing Zone.
- 19) The custom and culture of the County also include the determination of the people. Promoting harmony of man in his environment is a proper function of government and this zone.
- 20) The BLM shall coordinate with Kane County for consistency with this ordinance and the Taylor Grazing Act, 43 U.S.C §315 et. seq., 1934, the Act which created the agency that became known as the Grazing Service. The Courts have recognized that the purpose of the Act "is to stabilize the livestock industry and to permit the use of public range according to needs and qualifications of livestock operators with base holdings." See *Chournos v. United States*, 193 F.2d 321 (1951).
- 21) Planned livestock grazing in this zone will be managed so as to maintain and enhance desired diverse plant communities for the benefit of watersheds, diverse wildlife populations, water quality, recreation and livestock grazing as required by the Public Rangelands Improvement Act of 1978, through effective principles of planning and management. All necessary grazing management improvements, including water development, juniper, pinyon pine and sagebrush control, reseeding, fencing, salting plans, herding plans, and grazing systems will be included in any Allotment Management Plans, of the U.S. Forest Service, or related plans of the BLM. All decisions regarding improvements should be made on an allotment basis since they are integral with use of State leases, private leases, private lands, other allotments, and in

overall operation of each ranch enterprise. All planning efforts for this zone will adhere to the careful and considered consultation, coordination and cooperation requirements established by Federal statutes. See 43 U.S. C §1701 (a) (2); §1712 (c) (9); §1752 (d).

- 22) This zone shall comply with the Kane County General Plan provisions related to Restoration and Vegetation Management including: Juniper, Pinyon Pine and Sagebrush Control; Fire Management; Livestock Grazing; Noxious Weed Control; Water Quality; Riparian Areas and Wetlands; Recreational Use; Wilderness; National Wild and Scenic River Systems; Threatened and Endangered Species; Wildlife/Wildlife Habitat; Area of Critical Environmental Concern; Water Rights; Land Tenure; Energy and Mineral Resources; Cultural, Geological and Paleontological Resources; Rights-of-Way; Air Quality; Law Enforcement/Search and Rescue.
- 23) Search and Rescue vehicles need access to areas where helicopter access is not possible in emergency situations. Attempting to obtain permission during a crisis to access areas prohibited by federal agencies in matters of life and death can endanger human life. This has caused considerable conflict between the Kane County Search and Rescue agencies and the federal government. Human safety will be given the highest priority during the development of federal, state and local policies within this zone. As a part of the County's charge to protect the health, safety and welfare of the citizens, the County will continue to protect the citizens and visitors and expect the federal agencies to respect this charge by exempting the County from any procedures or closures which may impair the County's ability to respond to an emergency situation.
- 24) Creation of the Grand Staircase Escalante National Monument supersedes Wilderness Study Area designations within the Monument. Therefore, Wilderness Study Areas shall be managed as other non-wilderness areas within the Monument.

At times certain areas may need to be designated as Wilderness Study Areas; however, those areas will not be designated as Wilderness Study Areas for longer than one year. Any lands not designated as Wilderness within the one year period shall revert to its previous zone. Lands to be designated as Wilderness must be zoned through the Kane County zoning process.

Current designated Wilderness Study Areas shall terminate within one year of adoption of this ordinance.

9-27A-4: Permitted and Conditional Uses.

In addition to the desired uses specified herein, refer to Chapter 5: Agricultural Zone in the Kane County Land Use Ordinance for a list of permitted or conditional uses as found in 9-6A-6: Uses Table.

The uses in this zone shall be further governed by the Kane County Resource Management Plan (“KCRMP”). These uses include, but are not limited to, the following: hunting, fishing, livestock grazing, mining and mineral exploration and extraction, recreation, wildlife habitat management, telecommunications, water resource use, protection and development of timber/woodland products, utility corridors, and county transportation and circulation roads and corridors.

As referenced in the vegetation section of the KCRMP, “The private use of timber products from federal and state lands in the county for posts, poles, wood cutting to provide fuel for those in the county needing fuel for winter heating and Christmas trees, etc., shall be continued as an allowable use.”