

STATE LAND USE PLANNING ADVISORY COUNCIL

MINUTES

August 12, 2016

Guinn Room

State Capitol

100 North Carson Street
Carson City, Nevada 89701

Members Present

Lee Plemel, Carson City
Eleanor Lockwood, Churchill County
Nancy Amundsen, Clark County
Jerrie Tipton, Mineral County
Austin Osborne, Storey County
Jake Tibbitts, Eureka County (Chair)
Nancy Boland, Esmeralda County
Harold Ritter, Lyon County
Tori Sundheim, NACO
Lorinda Wichman, Nye County (Vice Chair)
Laurie Carson, White Pine County
Roger Mancebo, Pershing County
Art Clark, Lander County
Varlin Higbee, Lincoln County
Jim French, Humboldt County
Jeanne Herman, Washoe County

Members Absent

Dr. Don Miner, Douglas County
Randy Brown, Elko County

Others Present

Charlie Donohue, Nevada Division of State Lands (NDSL)
Skip Canfield, NDSL, State Land Use Planning Agency
Steve Jackson, NDOT
Bob Madewell, NDOT
Lori Story, Nevada Attorney General Office
Lou Holland, Nevada Attorney General Office
Wayne Howle, Nevada Attorney General Office
Cheva Gabor, US Forest Service
David Pritchett, BLM
Jeff Fontaine, NACO
Lee Plemel, Carson City Community Development
Kim Borgzinner, Nevada Division of Environmental Protection
Birgit Henson, Nevada Division of Environmental Protection

CALL TO ORDER

The meeting was called to order at 9:00am and self-introductions were made. The Agenda was approved unanimously, motion by **Jerrie Tipton**, second by **Varlin Higbee**. The Draft Minutes of the May 13, 2016 meeting in Tonopah were also approved unanimously with minor edits with a motion by **Laurie Carson** and a second by **Jeanne Herman**. Abstentions included **Varlin Higbee**.

PUBLIC COMMENTS

None.

NDOT PERSPECTIVE - RS2477 ROADS

Bob Madewell updated SLUPAC on NDOT's role in evaluating county roads for inclusion in their database and acceptance as a public road pursuant to 23 CFR460 (*policies and procedures followed in identifying and reporting public road mileage for utilization in the statutory formula for the apportionment of highway safety funds under 23 U.S.C. 402(c)*).

The discussion focused on the differences between types of roads including variations of RS2477 "roads" that are submitted by the counties for review by NDOT. He discussed specific maintenance criteria that qualifies a public road and presented picture examples of travel ways throughout the State in different conditions to show which ones met the criteria. He included examples of RS2477 rights-of-way that would not be considered public roads due to their lack of identified maintenance. He stated that these types of rights-of-way are "accepted" into the NDOT RS2477 database, once received from the counties, but are placed in a GIS layer different than the public roads layer. **Jim French** commented that many roads are not "bladed" yearly, but are maintained when funds allow. **Bob Madewell** responded that NDOT works closely with counties when road status surveys are undertaken. Counties are coordinated with in timing of surveys well in advance. NDOT wants to recognize road status to benefit the counties and would want the counties to have time to update maintenance on any roads in questions. NDOT reports its public roads layer to the Federal Highway Administration every year but does not include the RS2477 layer. **Nancy Boland** commented that the County gains significant standing regarding RS2477 rights-of-way if NDOT accepts those roads, especially if the Federal government tries to close the roads. **Jake Tibbitts** reminded the members that there is a public road definition in the 23 CFR 460, and language in NRS 405.191 is different with NRS including minor roads and RS2477 road references. He asked if NDOT could make the distinction when responding to counties about their submitted roads list that those roads qualify as public roads under NRS. Making sure that it is a public road under NRS, but not necessarily pursuant to CFR (to qualify for the gas tax), is important so that public roads can be accounted for, and in what context. **Bob Madewell** replied that the next NDOT letters coming out in January 2017 will specifically ask the counties to identify which roads claimed as RS2477 and which roads are public. In years past all the letter asked for was number of certified road miles. Then NDOT will coordinate with the counties on the physical inventory to verify that the roads meet the criteria of a public road. The response then from NDOT will be a letter detailing the number of miles of roads submitted and the number of miles of roads accepted as a true public road under CFR460. **Jake Tibbitts** stressed that SLUPAC has a legislative mandate with NACO and the Attorney General to work together on an RS2477 protocol to bring forward these claims and eventually get them perfected. He asked that any NDOT streamlining with their AG be coordinated with the SLUPAC process and the designated AG for SLUPAC to ensure consistency. **Nancy Boland** stated that Esmeralda County identified major and minor roads and maintains them periodically when necessary. Other roads are maintained by travel and are not on the county maintenance list unless there is a catastrophic occurrence. **Varlin Higbee** commented about secondary roads, two-track roads. Most of these were established to access private property and developments at springs, reservoirs, mining claims or other resources. From a county point of view, these roads are critical to the tax base.

CARSON CITY DOWNTOWN STREETScape ENHANCEMENT PROJECT

Lee Plemel gave an update on the streetscape improvements to Carson Street, scheduled for completion by Nevada Day 2016. The 2005 *Downtown Envision Plan* was undertaken in response to I-580 coming through town including intensive charrettes and 3D modeling, planning for downtown context, and developing a vision for Carson Street. I580 will be completed to Spooner Junction in 2017

Carson Street Implementation:

- 2005 – 2014 detailed studies
 - Engineering / traffic planning
 - Infrastructure upgrades
 - Public review and input

- April 2014 project funding
 - Part of 1/8-percent sales tax for city-wide capital projects (Plan of Expenditure)
- May 2014 adopted Complete Streets policies

Funding for Carson Street:

- Sales tax: \$6,850,000
 - Travel lanes, center turn lane, bike lanes
 - On-street parking
 - Wide sidewalks (dining / retail / special events)
 - Long-overdue street improvements and repair
- Utility fund: \$2,110,000
 - Long-overdue utility upgrades
- Traffic counts
- Traffic safety
- Parking control and loading
- Emergency services
- Bike Traffic

NDEP'S SOURCE WATER PROTECTION PLANNING PROCESS

Kim Borgzinner and Birgit Henson gave an update on NDEP's source water protection planning process and their clean water non-point source program.

In the source water protection process, NDEP looks at community drinking well resources and water systems that are regulated through NDEP. NDEP travels to each community and an inventory is generated and a scientific model created to show where the wells are capturing the underground water. Mapping is developed showing how the water sources interact with land use patterns above ground and how those land uses could create potential hazards to the wells. Examples include the effects of a gas station on a local well or the effects of large scale agriculture producing nitrates that affect multiple wells. Once these compatibility maps are complete, NDEP works with the communities to develop a plan to address mitigation measures and other policies that will help protect drinking water sources. Policies include better coordination with new development, monitoring, public education, etc.

The clean water non-point source program works closely and parallel to the source water protection planning process in addressing the effects on water quality due to incompatible land uses. Public education is one component where best management practices are employed to protect water quality. Non point is any pollutant that can run off the land in a diffuse way, (not from the end of a pipe which would be regulated by NPDES), that can impact surface water quality, whether it is a river, creek, ditch or storm water drain. Many counties with a large enough population are regulated by the EPA's National Pollution Discharge Elimination System (NPDES), and regulated by the State as to what can run off of urban areas. For many other rural communities not regulated by NPDES, NDEP can assist in storm water planning to get ahead and prepare for a next census that would trigger NPDES regulation.

RS 2477 ROADS WORK SESSION

Wayne Howle, Attorney General's Office has been designated the lead from the AG's Office and began by stating that the Legislative bill directing SLUPAC to develop the protocol was approved with no fiscal component. Attorney General **Laxalt** is committed to working through this process with SLUPAC and NACO, to develop the RS2477 protocol, as required by SB456. However, the AG's Office recognized early on that the process would require resources and funding. The legislators realized that the fiscal note would kill the bill. The Attorney General agreed to pull the fiscal note off the bill with the understanding that any work would require additional funding. It does not look feasible for the Attorney General to approach the Legislature for additional funding unless there is support from multiple stakeholders. A protocol can be developed, including utilization of examples like Utah. A "Plan for Litigating" should be developed. Every road is a potential case and it is our burden to make the case. The road must be on public land, the land must not have been withdrawn, and there must be actual evidence of construction, it has to have been in existence prior to 1976 (FLPMA revoked RS2477 and came into existence in 1976). The final element is a road so constructed must

be accepted by the State. The precedent in Nevada is by use. To prove each case requires evidence. Utah is in the process of gathering evidence through any admissible source such as maps, public title and maintenance documents, oral testimony, etc. **Jake Tibbitts** asked, in light of the lack of funding, should SLUPAC hold off on developing the protocol. **Wayne Howle** replied that the protocol should move forward. **Jim French** asked if lands withdrawn such as sage grouse areas will affect RS2477 designations. **Wayne Howle** responded that those circumstances shouldn't affect RS2477 road determinations. **Jake Tibbitts** stated that withdrawals such as for sage grouse are created under FLPMA, and FLPMA was created subject to valid and existing rights. **Jerrie Tipton** asked about roads that pre date the creation of the US Forest Service, some of which exist in Mineral County (Lucky Boy Pass example). The County has documented the use and maintenance of these roads. **Wayne Howle** agreed that documentation like that is effective to show that the road preexisted the withdrawal. **Jake Tibbitts** mentioned that State of Utah is not pursuing RS2477 on US Forest Service lands due to how difficult it is to gather evidence.

Jake Tibbitts summarized four points to move forward with the protocol:

- Start with the Utah and Nye County processes and identify Nevada specifics.
- Review and adjust Utah's and Nye's processes for Nevada.
- Conduct a significant outreach and education process.
- Build capacity for the final perfection of title with adequate Attorney General funding and county participation in that funding. **Lorinda Wichman** mentioned that the cost to Nye County has so far been \$400,000.

Once a protocol is developed, it will depend on individual counties to have the resolve to contribute funding, gather evidence and pursue quiet title or other avenue for their roads. At the Legislative Committee on Public Lands meeting in Elko, Eureka County made it clear that this will be a request in the near future for funding and commitment, and for them to consider an appropriation to the Attorney General's Office.

Charlie Donohue asked if it is necessary to litigate each road individually or can the protocol be developed first and the protocol be litigated by reviewing its thresholds. If roads come in meeting the threshold then, they would not need to be litigated. **Wayne Howle** responded that the most prudent process would be case by case, litigating each individual road. The factors are very site specific. **Jake Tibbitts** said that Utah creates a file for each road, then includes multiple roads in a package seeking quiet title. The intent is recognizing things that are already out there. The intent is to avoid conflicts like Jarbidge. Our process is to recognize what rights exist so that closures cannot be made. **Wayne Howle** said that the majority of roads should already be agreed upon by all and the list for litigation should be small, with a mechanism such as a consent decree in place to avoid a full-blown legal case, and a judge could sign a simple judgement.

Jerrie Tipton said that good historical documentation is critical.

Lorinda Wichman stressed the need not to reinvent the wheel. Use the Utah example and the Nye County protocol as a template.

Jake Tibbitts asked if there should be a working sub group to proceed with his four key points. The members concurred that a sub group is not necessary, but that members, coordinated by **Jake Tibbitts**, should move forward with the review and reported back by **Jake Tibbitts**. **Jake Tibbitts** asked each member to review the Legislative Committee of Public Lands documentation on Eureka's request for support and appropriations, and seek support from their individual county commissions for funding and commitment to support the development of the protocol, and once in place, follow the protocol.

COUNTY PLANNING ISSUES

Nancy Amundsen, Clark County:

- Issue with BLM requiring permits for certain County work due to BLM's ownership of the mineral rights beneath, example given was the need to clean up a County detention basin where BLM owns the mineral rights, this is an unnecessary and onerous requirement.

Jake Tibbitts, Eureka County:

- The draft Water Resources Master Plan is complete and the Planning Commission has approved it, to be forwarded on to the County Commission.
- A Groundwater Management Plan is being developed to address the Diamond Valley Critical Management Area (special designation under Nevada water law, only basin in Nevada with that designation, designated in 2015). The plan must be completed within 10 years of designation. Goal is to reduce pumping over time and keep as much agricultural base as possible. Without a plan, the State Engineer could cut off all junior rights. Diamond Valley represents two thirds of the entire tax base of Eureka County. 25,000 acres of irrigated agriculture is in Diamond Valley. Over 60% of that would be lost if junior rights were cut off by the State Engineer. Eureka Town and two general improvement districts also draw their water from Diamond Valley.
- Eureka County has been approached to consider pursuing a county lands bill, but at this time, there is no political appetite to do so.
- The downturn in mining has resulted in a deflation of the County's economy. Employee levels are the lowest since the 1990's. It is the first time in 30 years that the County Commission has raised the tax rate. Eureka County is the definition of boom and bust.
- The sage grouse decision has resulted in significant harm to the County. For example, a gravel pit that has been in existence for 60 years with a use permit for expansion that just expired. In seeking a new permit, BLM has identified the pit is within four miles of a lek. BLM has now placed stipulations on the pit that prohibits access six months out of the year, and there are no emergency provisions provided. In speaking with the local BLM office, they are unable to help without direction from the National office.

Harold Ritter, Lyon County:

- The County has replaced its community development director with a contractor.
- National Fish and Wildlife Foundation (NFWF) continues to buy land and use the associated water rights to support Walker Lake. County's concern is the agricultural land in Smith and Mason Valleys is taken out of production. Lands without water become difficult to maintain.

Tori Sundheim, NACO:

- Sage grouse litigation is ongoing with an anticipated judgement in 2-3 months.

Lorinda Wichman, Nye County:

- Planning staff looking at establishing a special use permit process county wide for oil and gas lease proposals.
- County pursuing a shooter site cleanup.
- A County gravel pit came up for permit renewal, Lorinda has a copy of the signed receipt from BLM that the renewal request was received. BLM insists that the permit expired because they have no record of the renewal request.
- Best in the Desert race through Basin and Range National Monument was supported by the County because the Presidential Proclamation stresses maintaining valid and existing rights, and this race has occurred there for many years.
- County supports the groundwater management planning being undertaken in Eureka County and hopes to apply lessons learned there to Basin 162 in Nye County.

Laurie Carson, White Pine County:

- Looking at issues with Cummins Lake water level and fisheries reestablishment, and potentially realigning US93. Also pursuing possible grants with NDOW and NDOT to help restore what was once a very productive fishery.
- Counties will have ballot question on whether to move forward on fuel tax indexing.

- Murray Street being overhauled. The sewer and water infrastructure is currently historic wood pipes.

Roger Mancebo, Pershing County:

- County Water Plan is just about completed.
- Land bill looks very good and the County hopes it is not altered in Washington D.C.

Varlin Higbee, Lincoln County:

- Basin and Range National Monument was designated in Lincoln and Nye Counties. Scoping meetings have been occurring and it is important for the counties to stay involved as the RMP is developed.
- US Ecology dump along US93 has been acquired by the County. The County purchased 320 acres, seven of those acres is the actual landfill, and 12 acre-feet of water rights. A new well will need to be drilled with a change of point of diversion.
- Approximately 600 acres of BLM land are identified for disposal later this year, pursuant to the Lincoln County Land Act. The LCLA identified 90,000 acres for disposal when the Act was approved 13 years ago, however, very few acres have actually been disposed.

Jerrie Tipton, Mineral County:

- The update to the Carson City BLM RMP has been delayed and it now appears that the plan will come out summer of 2017.
- The County Master Plan and Public Lands Policy Plan are in need of update. Part of the Inyo National Forest is in Mineral County, as well as the Humboldt-Toiyabe. The Inyo Forest Supervisor suggested that the County identify land use designations on all US Forest Service lands, and refrain from using the term "open space". There is a push from some groups to designate all Inyo National Forest lands in Mineral County as wilderness. Master Plan land use designations on the US Forest Service land can help explain the County's multiple use designs for the land.

Nancy Boland, Esmeralda County:

- Gold Point town site land tenure is being resolved with BLM so that the residents there can establish clear title to their homes and improvements, clouded for decades by BLM. Existing SHPO cultural resources inventories are being used as well as the data in the EIS for the solar energy zone adjacent to town to qualify for the background inventory requirements, rather than requiring the county to conduct a complete new study. The goal is to acquire surface rights for the town and hopes that mineral rights could be acquired also. The town site is 200 acres, the county currently only gets about six cents an acre through PILT and could see over \$100 per acre under clear title private ownership.

Jim French, Humboldt County:

- Issue in BLM Winnemucca district where prior BLM district managers designated large swaths of land as suitable for disposal and now those same managers are consultants with questionable ethical intentions in the County. Currently there are sage grouse and mineral withdrawal proposals. Potential for negative impacts to County because there will be seasonal closures of roads within the sage grouse focal areas (SFA's). Another concern is the potential effect to county R&PP sites and lands identified for economic development on those R&PP lands and other lands identified for disposal in the Winnemucca RMP. The County has a landfill site in jeopardy of being expanded due to its proximity to an SFA. Another site in jeopardy is a proposed safety zone for the shooting range. Many of the development proposals have been on the books for over a decade. These sites have shown up on the maps right in the middle of priority habitat, the maps are incorrect. The County is being harmed and the BLM is silent to the County's concerns. When pressed to explain how the SFA's were created with no harm to the County, BLM has no answer. The overarching concern from

the County's perspective is the Winnemucca BLM will not provide any level of certainty for any developments or existing projects that now are near SFA's.

Jeanne Herman, Washoe County:

- Proposed public lands bill for the county is underway and the mapping has been approved. Public meetings will occur in September.

Austin Osborne, Storey County:

- Seven-year Master Plan update process is now complete. The Plan included an exhaustive stakeholder involvement and review process and is site specific to each community. In addition to the standard elements, the Plan includes a Public Lands Policy section.
- The USGS has been studying the water situation in Mark Twain and the Highlands since the 1990's. They have found a 3-foot drop in water in Mark Twain and a 160-foot drop in the Highlands. They have proposed resident volunteer well monitoring, partially paid for by the County, to understand in a broader spectrum the water situation in the Highlands. The County will ultimately make recommendations based on the USGS findings.
- Tesla plant is moving along on schedule.
- Still working on the County land bill addressing land tenure in Virginia City. Unfortunately BLM staff that have been very helpful have been transferred and now there is a disconnect on moving forward.

Eleanor Lockwood, Churchill County:

- County Board of Highway Commissioners adopted resolutions for RS2477 rights-of way process. Will start oral history process soon.
- County Commission approved a special use permit for a new Ormat geothermal plant in Edwards Creek Valley. Unfortunately it took the BLM three years for their review process. The Churchill County Code includes a stipulation that if the County requires assistance in review of a project such as this, the fees associated with hiring outside consultants, up to \$50,000, must be paid by the developer. In this case the fees of \$50,000 were paid by Ormat upon submittal of their permit application to the County.

COUNCIL MEMBER COMMENTS

COUNCIL DISCUSSION AND RECOMMENDATIONS/CHECK IN ON SLUPAC GOALS

Primary 2015-2017 SLUPAC focus areas:

- RS2477 Roads Protocol (SB 456)
- County NEPA Consistency Review Assistance
- Public Land Policy Plan Update Assistance and Outreach
- SLUPAC and Counties Role and Inclusion in Development of a Statewide Water Management Plan (AB 198)
- ACEC Procedures (AB 144)

Due to lack of time, this standard item was not discussed.

Next meeting will be November 4, 2016 in Eureka.

PUBLIC COMMENT

None

ADJOURNMENT

The meeting was adjourned at 12:01 pm for lunch and a field trip to see developments along Carson Street.

Respectfully submitted,

Skip Canfield

/s/

Meeting Recorder

Please note that minutes should be considered draft minutes pending their approval at a future meeting of the State Land Use Planning Advisory Council. Corrections and changes could be made before approval.

The meeting was digitally recorded. Anyone wishing to receive or review the recording may call (775) 684-2723. The recording will be retained for three years.