

STATE LAND USE PLANNING ADVISORY COUNCIL

MINUTES

November 4, 2016
Eureka Opera House
31 South Main Street
Eureka, Nevada 89316

Members Present

Lee Plemel, Carson City
Eleanor Lockwood, Churchill County
Nancy Amundsen, Clark County
Austin Osborne, Storey County
Jake Tibbitts, Eureka County (Chair)
Nancy Boland, Esmeralda County
Harold Ritter, Lyon County
Lorinda Wichman, Nye County (Vice Chair)
Laurie Carson, White Pine County
Art Clark, Lander County
Jim French, Humboldt County
Jeanne Herman, Washoe County

Members Absent

Randy Brown, Elko County
Varlin Higbee, Lincoln County
Roger Mancebo, Pershing County
Tori Sundheim, NACO
Jerrie Tipton, Mineral County

Others Present

Frank Whitman – Lander County
Fred Etchegaray – Lander County
Ken and Patty Benson – Eureka
Jerry Burns – NAS Fallon
Mike Klapec – NAS Fallon
Rob Rule – NAS Fallon
Tom Seley – BLM
Roger Christensen – USAF/NTTR
Skip Canfield, NDSL, State Land Use Planning Agency

CALL TO ORDER

The meeting was called to order at 9:00am and self-introductions were made. The Agenda was reviewed and the Draft Minutes of the August 12, 2016 meeting in Carson City approved unanimously with a motion by **Nancy Amundsen** and a second by **Eleanor Lockwood**.

PUBLIC COMMENTS

None.

RS2477 ROADS WORK SESSION

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

- Start with Utah and Nye County process and identify Nevada specifics.
- Review and adjust processes that are working 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

SLUPAC is charged with the first three bullets to develop the protocol. A discussion ensued on the way forward and steps to be taken.

Jake Tibbitts stated that 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. **Lorinda Wichman** replied that Nye County is ready to move forward with quiet title actions following their Nye County protocol and she would be willing to present their process to other county commissions. **Nancy Amundsen** said that Clark County has all of their RS2477 maps adopted.

Jake Tibbitts reminded the group that there are certain aspects of the Utah example that won't apply in Nevada. For example, Utah is under the Tenth Circuit court which found that simply documenting that a road existed and showing that it was used is not enough to prove RS2477 status, there are other standards. In Utah it is ten years previous to 1976 to establish use through quiet title, (in Nevada it is 5 years previous, pursuant to State law for quiet title). In Utah, affidavits for public purpose use are sought to prove the use. However, a permitted purpose like a mine at the end of a road does not qualify as an RS2477 road according to the Tenth Circuit court because the only people using the road have to have a permit to use the road. **Jake Tibbitts** stressed the need for a clear vision on how this would work in Nevada, under the Ninth Circuit court moving forward and using protocols in place such as acceptance by NDOT and concise county mapping criteria.

Jake Tibbitts requested that each county move forward with outreach and education pursuant to bullet #3 above. Very important to let all county commissions know what SLUPAC is doing and keep them in the loop for feedback and robust constituent involvement.

Eleanor Lockwood asked for clarification on Nye County's procedures and if those can be utilized statewide, or if they need updating. **Lorinda Wichman** replied that Nye's procedures can be used as a basis but there are still some issues such as proper criteria for the affidavits. **Jake Tibbitts** said that Utah requires three affidavits for each road from individuals that used the road historically. However, the BLM successfully challenged those affidavits in the Tenth Circuit arguing that they were not at the table to determine authenticity of the affidavits. The judge specified a "bell weather" process whereby a few roads are chosen as test cases and seeking preservation depositions so that older citizen memories will not be lost. A special quiet title rule is being utilized (Rule 26) that requires BLM participation if a dispute is evident.

Lorinda Wichman stated that it is much more difficult to obtain proof of use affidavits and deposition for roads on US Forest Service lands because the date of proof is much older than five years prior to FLPMA in 1976. For the US Forest Service, it is 1906. **Jake Tibbitts** stated that for just this reason, Utah is not pursuing roads on US Forest Service lands because they can't meet the Tenth Circuit standard.

Jake Tibbitts discussed two bills currently under review in Congress, S.3334 and HR.4313, because if passed, the mechanisms in the bills will result in the ability to obtain true title for the roads in a clear, concise, streamlined manner. SLUPAC's only option right now is the quiet title option, but if the bills pass, quiet title will be moot. **Lorinda Wichman** said that if bills pass, it will result in huge savings to counties and the State.

Jake Tibbitts received unanimous support to direct staff to write a letter for the Chair's signature supporting passage of the two bills with a notation that SLUPAC prefers to include roads on US Forest Service lands but recognizes the challenges. Also, he asked that **Lorinda Wichman and Eleanor Lockwood** assist him in moving forward with the first two bullets:

- Start with Utah and Nye County process and identify Nevada specifics.
- Review and adjust processes that are working for Nevada.

This subcommittee of three will report back at the next SLUPAC meeting, in consultation with representatives of the Attorney Generals of Nevada (Wayne Howle) and Utah (Kathy Davis) on a “recipe” that will work for Nevada. SLUPAC will also discuss continuing to move forward with bullet #3, the formal education process.

A discussion on the bills ensued. **Jake Tibbitts** mentioned how HR.4313 has three pages of RS2477 history, which is very good. Section 3 has clear procedures including need to meet legal standards, meet criteria and proof, and includes a 25-year period to get the designations completed. The statute of limitations is also waived. Section 4 includes categories of evidence which is very helpful.

PENDING MILITARY LAND WITHDRAWALS AND AIRSPACE EXPANSION

Representative from NAS Fallon, Nellis and the Nevada Test and Training Range (NTTR) provided a status on the scoping phase for pending military land withdrawal and airspace expansion proposals at the two ranges. Both proposals require Congressional approval and the EIS’s will most likely be ready for Congressional action sometime in late 2019. Both proposals would result in large acreages of current BLM multiple use lands being withdrawn for military-only access. NAS Fallon’s proposal also includes an expansion to their airspace and a lowering of the airspace to 250 feet.

Members had multiple questions about how the public would be precluded from the withdrawn lands and what, if any, exemptions and flexibility would be offered. Limited hunting would be allowed on a scheduled basis, co-managed with NDOW. Under specific approvals, grazing permittees would sign an agreement for access. Other agreements would be considered however no access will be allowed on those areas where ordnance is being dropped. **Eleanor Lockwood** expressed concern that compensation to existing multiple users of the land is not always adequate. **Lorinda Wichman** said the withdrawals will result in a negative economic impact to Nye County. She said that the NTTR does not create much of a positive economic impact in Nye but the county has always supported the military. She suggested a tradeoff should be the military’s assistance in emergency services along highway corridors, currently there is no assistance. Nye County has no hospitals and volunteers cannot take the injured anywhere. Nye County needs assistance to pay the volunteers and develop an urgent care in Tonopah. Concern was also stated over NAS Fallon’s proposal to lower the airspace to 250 feet. Crop dusting could be affected. Also, aerial surveys by State agencies and researchers will be impacted.

Staff was directed to develop a letter for the Chair’s signature expressing comments and suggestions by SLUPAC and can be summarized as follows:

- Nevada’s counties and State agencies should be afforded a strong local voice as the EIS moves forward via all public and transparent input processes available including close coordination and Cooperating Agency status when requested.
- The Nevada Association of Counties and the Nevada State Clearinghouse should act as points of contact to coordinate County and State participation.
- The State Land Use Planning Advisory Council values public and transparent interaction with our military partners and should be afforded future briefings by Nellis/NTTR representatives as the EIS process moves forward.
- The NEPA principle of “Avoid, Minimize and Mitigate” should be employed throughout the process with mitigation being the very last option only after all reasonable avoidance and minimization options have been exhausted.

Eleanor Lockwood requested that this be kept as a regular Agenda item to remain in the loop and **Lorinda Wichman** emphasized the need for SLUPAC to be afforded regular briefings by the military as the two proposals move forward. **Jake Tibbitts** mentioned that NACO will be representing the counties as the process moves along. NACO is willing to represent the counties as a cooperating agency.

LESSONS LEARNED – COUNTY LAND BILLS

This item was tabled to next meeting due to time constraints.

COUNTY BROTHEL ORDINANCES

Austin Osborne began the discussion and explained Storey County's ordinance. The ordinance is being updated to address how the sheriff administers the licensing. Currently it is the role of the Sheriff but staff is looking at potentially having this function be the charge of Community Development or Business Licensing department. The Sheriff would be reserved for only the background checks. The ordinance is divided up into use, application stage and fees. Storey County does not have zoning for brothels (Lyon County does). Locations are based on performance standards and five are allowed in the county and there are distance parameters from the brothels to multiple use types and locations. Mustang Ranch and the Wildhorse are the only brothels operating in the county along the Truckee River near the Tahoe Reno Industrial Center. Brothels must be concealed, are not allowed next to highways, must have specific security measures in place, and gaming is not allowed. There is a brothel room tax that is considered similar to standard hotel room taxes.

Lorinda Wichman gave an update for Nye County, the ordinance there is also being updated. "Outdating" is not allowed in Nevada but is occurring where activity is ordered and occurs outside of the brothel. State law prohibits brothel advertising signs along state highways but it is occurring in Nye County. Nye County's language is gender neutral and there is concern with proposed changes that will be reviewed because of the definition of prostitution being too specific. The county approves a brothel through a privilege license.

Eleanor Lockwood explained the ordinance in Churchill County has similar performance standards to Storey and other counties. A special use permit is reviewed by the planning commission and the license is approved by the county commission. Brothels are listed as a use allowed with a special use permit in one zoning district. The county distinguishes between adult entertainment and houses of prostitution. The ordinance was updated last decade and is fairly simple but has not been tested since there are no brothels currently in the county.

COUNTY PLANNING ISSUES

Jake Tibbitts, Eureka County:

Legislative Subcommittee to Study Water developing potential bill draft requests.

Laurie Carson, White Pine County:

Loves truck stop under construction.

Jim French, Humboldt County:

Annexation concerns as the county is losing taxable base to the city but service needs remain, seems like a common theme throughout Nevada. **Nancy Amundsen** mentioned that Clark County has a bill draft request that would allow for de annexation based on lack of services being provided and other impacts to the county. There are issues where areas have been annexed to the city and the residents don't think it is appropriate, the character of the area changes from the more rural nature as the city up zones and allows for incompatible, higher density development. One primary issue is shifting the tax revenue from one entity to another without addressing the resulting impacts to provision of services and paying for them.

Austin Osborne, Storey County:

USA Parkway is being constructed to US50 and will be open by August 2017. New Marriot Hotel is being constructed at Tahoe Reno Industrial Center.

Eleanor Lockwood, Churchill County:

New jail is being constructed.

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 Friday February 10, 2017 in Carson City and will include, if possible, discussions on the annexation issue, an update to any relevant bill draft requests, lessons learned on county Congressional land bills, status of the military land withdrawals, along with continuing the RS2477 work session.

PUBLIC COMMENT

None

ADJOURNMENT

The meeting was adjourned at 2:15 pm.

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.