

## BOARD OF SUPERVISORS

SEPTEMBER 27, 2005

The Lassen County Board of Supervisors convenes in Regular Session on Tuesday, September 27, 2005, at 9:34 a.m. Present: Supervisors Robert Pyle, Jim Chapman, Lloyd Keefer, Brian Dahle, and Jack Hanson; County Counsel Craig Settlemire, County Administrative Officer (CAO) John Ketelsen and County Clerk Theresa Nagel. Following the flag salute, the invocation is offered by Supervisor Keefer.

### ANNOUNCEMENT OF ITEMS DISCUSSED IN CLOSED SESSION

Chairman Keefer announces that no closed session was held.

### AGENDA APPROVAL, ADDITIONS AND/OR DELETIONS

Supervisor Pyle requests the addition of a proclamation honoring Adam Skillen as a late item.

Supervisor Dahle requests the meeting be adjourned in memory of Pat Salters.

It is moved by Supervisor Pyle, seconded by Supervisor Hanson and carried to approve the agenda with the noted changes.

### PUBLIC COMMENT

1. Chief Probation Officer Roy Thiels reports on the results of the 2004/2006 Biennial inspection of the Juvenile Justice Center by the Corrections Standards Authority which found the facility and operations in compliance. He commends Juvenile Hall Manager Joe Ritz and other staff for their work. The areas of concern are: mental health services at Juvenile Hall are very limited - he is hoping this will be addressed by the Mental Health Services Act; the Assistant Manager of Juvenile Hall is running shifts - he hopes next year more staff can be hired to alleviate this. He introduces new Assistant Chief Probation Officer Donna Humphrey.
2. Violet Stout reads a poem entitled "A Moment of Thought" relating to a child hit and killed by a car while in a crosswalk.

### UNAGENDIZED BOARD REPORTS

1. Supervisor Chapman notes that Northeastern California was recognized in the National News for the extra help provided for the hurricane recovery - it was not stated

just what the extra help was.

2. Supervisor Pyle attended the Lake Almanor Watershed Commission meeting; attended the Clear Creek Homeowners Association meeting - main concern was abandoned vehicle abatement.
3. Supervisor Hanson reports on the Air Pollution District meeting - A87 costs were finally resolved; attended the Ft. Sage Family Resource Center ribbon cutting and recognizes Melody Brawley for all her work; attended, along with Robert Sorvaag, the Washoe County Regional Water Planning Commission meeting; will attend the West Patton Village CSD meeting to discuss fire protection; notes the State Fish and Game Commission will meet at Susanville City Hall this Friday at 8:30 AM.
4. Supervisor Dahle states the Senior Nutrition Site issues are calming down; announces he will attend the Sierra Nevada Conservancy meeting.
5. Supervisor Keefer announces he will be on vacation and will not attend the October 11th meeting.

#### CONSENT CALENDAR

Supervisor Dahle points out a correction needed on the minutes for September 20, 2005 under "Unagendized Reports by Board" and requests that Item G-3, contract for nursery and seed inspections, be removed from the consent calendar for separate consideration.

It is moved by Supervisor Hanson, seconded by Supervisor Pyle and carried to take the noted action on the following Consent Calendar items:

#### COUNTY CLERK ITEM

Approve Minutes of September 20, 2005 with noted correction.

#### ADMINISTRATIVE SERVICES ITEM

Receive and file Personnel Movement report for August, 2005.

#### HEALTH & SOCIAL SERVICES - ENVIRONMENTAL HEALTH DIVISION ITEM

Approve, and authorize the CAO to execute, the Declaration of Intent Not to Apply for FY 2005/2006 Emergency Medical Services Appropriation (EMSA).

#### HEALTH & SOCIAL SERVICES - MENTAL HEALTH DIVISION ITEM

Approve agreement and authorize the CAO to sign FY 2005/2006 State Agreement County/City Mental Health Performance (#05-75021-000) for integrated community mental health services; and subsequent agreement documentation.

#### MISCELLANEOUS CORRESPONDENCE ITEMS

Receive and file the following correspondence:

- a. Application for Alcoholic Beverage License - White House, 463-795 Main Street, Janesville.

## AGRICULTURAL COMMISSIONER

It is moved by Supervisor Hanson, seconded by Supervisor Pyle and carried, with Supervisor Dahle abstaining, to approve, and authorize Chairman to sign, Contract #05-0430 with California Department of Food and Agriculture for FY 2005/2006 nursery and seed inspections.

## LOCAL REUSE AUTHORITY

(Convene as the Local Reuse Authority)

Community Development Director Robert Sorvaag provides information on the remaining parcels to be transferred to the County by the Army. There is a remedial plan for munitions and use restrictions would remain on the land.

County Counsel Craig Settlemire expresses some of his questions and concerns and suggests continuing this matter to a future meeting. There are restrictions on the property that the land surface cannot be disturbed therefore the land would be limited to open space use - the County would assume responsibility for what is on the property.

Supervisor Hanson states the property is not critical to any future plans, but under the original MOU the County agreed to take the property. As a favor to the Army and to possibly gain a favor from the Army he would like to accept the property.

It is moved by Supervisor Dahle, seconded by Supervisor Pyle and carried, with Supervisor Hanson voting NO, to continue this matter to a meeting in October.

(Adjourn and reconvene as Board of Supervisors)

## UNAGENDIZED BOARD REPORTS CONT.

6. Supervisor Chapman received a call from Dayne Barron reporting that Colonel Butler has stepped to the plate to make the Bizz Johnson Trail Tunnel temporarily usable for the Marathon. He states this shows how the proactive stance by the BLM has fixed a problem - unlike the USFS stance in regard to the Triathlon. (Supervisor Dahle departs at 10:08 a.m.) He expresses appreciation to the BLM and the Army for their creative solution.

## AGRICULTURAL COMMISSIONER

It is moved by Supervisor Pyle, seconded by Supervisor Hanson and carried on a roll

call vote, with Supervisor Dahle absent, to increase State Aid to Agriculture revenue 100-0601-2005300) by \$100,000 and increase Agriculture expense line item (100-0601-3001000) by \$100,000 for mosquito control.

Supervisor Dahle returns at 10:13 a.m.

#### PUBLIC HEARING - VARIANCE #2005-112, ARNOLD BAY

The public hearing is opened at 10:15 a.m. to consider variance request from front and side yard setback requirements of the County Zoning Ordinance (from 20 feet to 13.5 feet in front and from 10 feet to 7 feet on the side) to allow placement of a manufactured home. The project is exempt from the California Environmental Quality Act pursuant to the Guidelines Section 15305 Minor Alterations in Land Use Limitations. The project site is zoned A-2-B-3 (Agricultural Residential, Building Site Combining District, 3 acre minimum). The project site is located at 446-565 Pioneer Drive, Herlong. APN No. 139-080-20.

Community Development Director Robert Sorvaag requests the hearing be continued to October 18, 2005, due to the continuance of the Planning Commission hearing until October 5, 2005.

It is moved by Supervisor Hanson, seconded by Supervisor Pyle and carried to continue the hearing to October 18, 2005.

#### COMMUNITY DEVELOPMENT DEPARTMENT - NATURAL RESOURCES

Trail Coordinator Peter Heimbigner provides a Power Point presentation - Report on Susanville Ranch Park grazing for 2005. Information was provided well before cattle were brought in to graze, in the form of pamphlet and future trail closure signs along with an article in the newspaper. Trails were detoured so the cattle grazing did not affect trail usage. He shows pictures of the duff build-up that retards new growth and notes the cattle hoof action breaks down the duff (dead vegetation). He notes the cattle that grazed the Park also graze during the winter on Nature Conservancy lands in Vina - the Conservancy purchased a working ranch and stopped grazing cattle, after a couple of years they noticed adjoining lands that were grazed had much better fields - grazing improved the land. He states the cattle grazing on the Park worked well for both the County and the lessee, Langston Cattle Company. There was some initial vandalism of a stock water tank - probably kids who threw rocks at, and broke the water level float.

Supervisor Chapman notes the fencing project on the Park accomplished the goal of being able to graze the Park.

Supervisor Dahle comments on the benefits to new growth from grazing and states that high grass is a good place for mountain lions to hide therefore it is good to get it down. Cattle do a much better job than haying the fields could do because they can graze around trees.

Supervisor Chapman saw other benefits from the grazing with staff on the Park regularly: Peter was the first person to notice and report a fire and also discovered a homeless person had set-up a camp and had an open fire. The Sheriff's Department was contacted to have the person removed.

Farm Advisor David Lile states that grazing will make a big difference in the regrowth.

## PUBLIC HEARING - REZONE, WEMPLLE

The public hearing is opened at 10:41 a.m. to consider Lot Line Adjustment 2005-061 and Rezone and Williamson Act contract 2005-071, to adjust the property lines among two parcels totaling 334.53 acres and to amend the zoning to allow for modification of an existing Williamson Act contract. Parcel "A" is .53 acres and zoned A-1 (General Agriculture District) and Parcel "B" is 334 acres and zoned #-A-AP (Exclusive Agriculture, Agricultural Preserve Combining District). The proposed adjustment is an even exchange to accommodate an existing structure that sits on the property line. Modification to the Williamson Act contract on resultant Parcel "B" is required pursuant to Government Code 51257. This project is exempt from the California Environmental Quality Act (CEQA), under Guidelines 15317 & 15305 (categorical exemptions Class 5 & 17). The property is located on the east side of Highway 395, in Milford.

Maurice Anderson presents the staff report including the Technical Advisory Committee's, Land Conservation Committee's and Planning Commission's recommendations on the establishment of an agricultural preserve, rezone, Williamson Act contract, and lot line adjustment. No one speaks in opposition to or in favor of the project and the hearing is closed at 10:44 a.m.

It is moved by Supervisor Hanson, seconded by Supervisor Pyle and carried unanimously on a roll call vote to:

1. Adopt Land Conservation Committee's and Planning Commission's findings and recommendations on the establishment of an agricultural preserve, rezone, Williamson Act contract, and lot line adjustment.
1. Introduce and adopt, by title only, Ordinance No. 467-A-345, implementing the rezone of the subject parcels from A-1 to E-A-A-P and E-A-A-P to A-1.
2. Rescind a portion of Agricultural Preserve AA-116, adopt Resolution No. 05-050, establishing an agricultural preserve on the adjusted property and authorize the

execution of a Williamson Act Contract on said adjusted property.

3. Approve Lot Line Adjustment 2005-061, upon finalization of the above referenced rezone application and Williamson Act contract.

Recess 10:47 - 10:53 a.m.

## COMMUNITY DEVELOPMENT DEPARTMENT - PLANNING DIVISION

Planner Rick Simon notes the Board held a public hearing on the proposed Noise Element revisions on August 23rd with direction for further discussion in considering the scope of the revisions, the appropriate environmental document and the anticipated cost of a focused EIR. The proposed revisions have been amended based on the Board's concerns and two versions have been prepared for consideration.

Version 1 limits the revisions to clarification of existing policies 1, 4 and 5. Mindful of the Board's desire to protect development rights on existing parcels, Version 1 requires acoustical analysis and mitigation in noise impacted areas only on new residential land divisions, not for construction on existing lots. Does not add any new policies, nor does it change existing policy in any way that would allow an increase in noise over existing standards. Does not address issues related to occasional noise events, or new projects in areas with high ambient noise. Version 1 could be adopted with a negative declaration.

Version 2 incorporates the changes from Version 1, but also adds two new policies addressing definition and noise standards for occasional noise events, and standards for new projects in areas with high ambient noise. By establishing a standard for occasional events that is higher than the existing standard, and allowing a standard equal to existing high ambient noise levels, it is Counsel's opinion that a fair argument can be made that the new policies could result in significant impacts to the environment; therefore, an EIR would be needed for Version 2.

Mr. Simon notes if the Board is considering funding a focused EIR for the added policies in Version 2, estimated at between \$25,000 and \$50,000, it may be prudent to explore how much more it would cost to update other parts of the Noise Element at the same time. For instance, the Noise Contour Data for Roadways within the Existing and Future Noise Environments Section, was based on 1987 data when the maximum speed limit was 55 mph. Since speed is one of the key factors contributing to highway noise, the noise contours may be substantially different for the current 65 mph speed limit. As a result of using outdated information the extent of noise impacted areas along county roads and state highways may be underestimated.

There is also the option of adopting a Noise Ordinance.

Extensive discussion is held between board members and staff.

Lisa Wosick asks why an EIR is required to increase the dba to 75, when OSHA standards are set at 90 dba for 8 hours straight in a work environment. She cautions that it only takes one neighbor to cause a problem, for instance for football games, the Civil War event, etc. even though everyone else wants such events.

Larry Wosick states that 14 months ago he asked the Board to adopt a policy to clarify the original intent of and how to use the noise element as explained by Brown Buntin who wrote the Noise Element. He asks why we need an EIR to add 5 dba for occasional events. He asks what is the problem with 70 dba at someone's property line when OSHA will allow 90 dba for 40 hours per week in a work environment. He is only suggesting that for occasional events 75 dba be allowed. He notes this will be helpful for anyone down the road with similar events. He again asks the Board to adopt a policy to refer to the original intent of and how to apply the Noise Element; to allow occasional events a 5 dba grace and use the OSHA standards as findings. Also notes the State of California allows every fairgrounds 95 dba until 11:00 PM. He feels the Board has the ability to make some changes that do not require an EIR.

Supervisor Dahle asks Counsel just what they can do. County Counsel Craig Settlemire responds they are considering raising current standards and arguments have been put forth against it. It is his opinion that a fair argument could be made of significant impact requiring an EIR.

Supervisor Keefer states that Larry Wosick makes interesting comments but the question is meeting the CEQA requirements and it appears CEQA requires an EIR.

Supervisor Chapman states we are not just talking about one event - it is a broader scale of public policy.

Supervisor Hanson reads the last paragraph of the Brown Buntin report that it is appropriate to amend the Noise Element for occasional events, limiting the number of events and the times of events. He states short of the CEQA decision we are doing what Brown Buntin is recommending.

Supervisor Chapman feels our program is adequate and the courts have also determined that.

Theresa Nagel understands the hesitation to spend funds on an EIR but asks the Board to look beyond the current event to future possibilities for events to expand tourism and economic development. She states we should not penny-pinch and jeopardize future projects - don't hogtie us so we cannot do what we want to do in the future.

Supervisor Pyle feels the Wosicks have made good arguments, but he has to take the advice of County Counsel.

Supervisor Chapman states we must assure we are on solid ground for the future.

It is moved by Supervisor Hanson, seconded by Supervisor Chapman and carried unanimously, on a roll call vote, to move forward with Version 2 and to include the Planning Commission in the scoping for the parameters of a focused EIR.

## RECREATION DISTRICT

CAO Ketelsen informs the board members that a citizen group has launched an effort to establish a county recreation district. He states the question before the Board today is are we in support of a county-wide recreation district.

Lisa Liband, President of the Lassen Recreational Alliance, states they want to put a measure before the voters that would create a special recreation and park district to enhance and broaden the range of park and recreation facilities and programs available to Lassen County residents including the construction of an aquatic center. Proceeds are proposed to be derived from a .5% sales tax until March, 2036 and a .25% sales tax thereafter. She states the .5% sales tax will actually mean just \$.50 on a purchase of \$100. She states the City of Susanville is committed to the idea and provides further information.

Supervisor Keefer asks if the resolution submitted to the Board could be reworded to support placing the question before the voters rather than the current wording "supporting the formation of Lassen Park and Recreation District". Also suggests the name of the district be changed because it seems to refer to Lassen Park (Lassen National Park). Supervisor Chapman has concerns the current proposal has a marginal chance of success.

JoEllen Wood states the aquatic center is only a portion of what the recreation district can provide.

Supervisor Dahle does not feel the present proposal would be approved by the voters and states we have to come up with something that will pass. (Supervisor Pyle is

absent 12:35 - 12:36 p.m.) Supervisor Chapman states whatever we place on the ballot must create a unification of purpose.

Laurel Marsters states the sales tax is non-discriminatory - it will impact everyone, including travelers from out of the area - not just landowners.

CAO Ketelsen suggests a telephone survey prior to deciding what to place on the ballot would be helpful to determine what voters opinions are. Supervisor Keefer feels we are at a point in time to fine-tune the ballot measure.

Lisa Liband indicates the LAFCO process needs to start and requests the resolution presented to the Board be approved.

It is moved by Supervisor Pyle, and seconded by Supervisor Hanson to adopt the Resolution Supporting the Formation of Lassen Park and Recreation District.

Supervisor Hanson states if they want to jump-start the LAFCO process, the resolution is not needed. Supervisor Chapman states he will not support the current resolution as there are things in it that need to be changed.

The motion fails on the following roll call vote: Supervisors Chapman, Hanson, Dahle and Keefer voting NO, and Supervisor Pyle voting YES.

Supervisor Chapman makes suggestions on changes to the resolution: delete the 2nd, 4th, 6th and 7th WHEREAS. Keep the 1st and 5th WHEREAS. In the 3rd WHEREAS, change the name of the district to Lassen Recreation District and delete all wording following the district name. In the 8th WHEREAS, again change the name of the district and delete the word "other" preceding the wording "sources of funding". Make no changes to the NOW, THEREFORE section.

It is moved by Supervisor Chapman, seconded by Supervisor Dahle and carried to direct staff to revise the resolution and schedule it for the next meeting.

Noon recess 12:57 - 1:35 p.m. Supervisor Chapman absent.

## STUDY SESSION - OPEN RANGE

Farm Advisor David Lile presents the staff report. Lassen County remains one of only a few Open Range counties in the State. Open Range is a reference to the law which requires one to fence cattle out of their property instead of the more common rule that the owner of cattle must confine them. In recent months in Herlong and Janesville areas cattle have wandered onto the property of local residents causing damage and conflict

between the cattle owners and the property owners. The question before the Board is whether the County should change its status from Open Range in total or in part.

County Counsel Craig Settlemyre provides further information on what type of action would be required to make a change to Open Range. He notes there are other ways to manage cattle such as refining the County Code to deal with persons not properly managing their cattle.

Supervisor Keefer reviews the events that occurred in Janesville - cows placed on a pasture adjacent to a residential area got out through unmaintained fences and were out a significant amount of time. They caused significant damage to private property and the cattle owner used the Open Range laws to justify not managing his cattle or fixing the fences.

Daren Hagata states the majority of ranchers are quick to take care of stray cattle and there are just a few ranchers who are creating the problems. He states Open Range is very important to the ranching community.

Ken Wemple states just a few are causing the problems. He acknowledges that animals will get out but owners must be responsible, especially in residential areas. He suggests that maybe a committee could be formed to look at the situation and bring recommendations back.

George Bailey states that Open Range is very important and cautions against creating zones where fencing is required because when the door is opened it will lead to many wanting areas closed to Open Range. He suggests looking at a nuisance ordinance to address the issue when a cattle owner totally disregards his responsibility. He reminds the Board that the area of Janesville in which this problem occurred is a ranching area and some subdivisions have been allowed amongst the ranchland. He states the residents need to fence their property.

Jeff Hemphill is against closing the Open Range and suggests an ordinance against taking feed - whether growing feed or in a stack (stray cattle eating feed from another's property).

Todd Swickard, representing the Lassen County Cattlemen's Assn. states that agriculture is very important to the County and as more things interfere with agriculture operations it will lead to urbanization. Vegetation control for fire prevention is also a tool that cattle grazing provides. Open Range is very important to ranchers and most operators are responsible and good neighbors. He acknowledges there are a few

isolated cases of abuse, but there are existing laws that can address the problems - law enforcement sometimes takes the easy way out.

Janesville resident Keith Emmert was one of the impacted property owners and states it would be best to have a remedy at the local level. He hopes the nuisance law could be enhanced to address these problems. States the cattle owner was just not responsive.

Bruce Ovitz agrees with Mr. Emmert - he was also an impacted resident. States he came from a ranching family and they always got their cattle back in when they were out. He feels something is needed for residents who do not want the impact of having to build a cattle fence around their property. He is not against Open Range, but something is needed to resolve these problems.

Shirley Weaver states there is a big problem in Wendel with cattle breaking down fences to get into yards and gardens. She also feels the cattle are a danger to children. She notes there is a real lack of signs on roads/highways in the County indicating it is Open Range.

Cindy Thomas also states it is a safety issue for children and developed communities should not be Open Range.

Supervisor Dahle is in favor of Open Range, but there is a responsibility that goes with this right. We need to make abusers aware that Open Range is a right that can be taken away. We need some way to penalize the abusers but not penalize the responsible cattle owners by closing Open Range.

Supervisor Hanson agrees with Supervisor Dahle and Todd Swickard that enforcement is the issue.

County Counsel Craig Settlemire suggests that County Code Section 8.08.030(c) - Nuisances Designated, could be tightened up in regard to a danger to public health and welfare.

Supervisor Hanson states that changing Open Range is not something he feels is needed - there are other ways to handle the problems.

Supervisor Pyle states we have plenty of laws and they need to be administered properly. To change the Open Range because of two people who are not managing their cattle is not right. Also feels that subdivisions in ranching areas should be fenced. Agrees that Open Range signs on roads and highways is a good idea. Comments the complaints that cattle are coming around homes and causing damage may more

correctly be stated that residents have come into the cattle's home - cattle were there first. He feels this is a civil litigation issue and the non-responsible cattle owners should be sued.

Supervisor Keefer favors Open Range, but we need to do something locally to protect that right and feels the County Code should be reviewed and strengthened in regard to nuisance animals. When cattle are out on a continued basis and the owner is not responding there needs to be some way to address it.

CAO Ketelsen states that interpretations have been made to Animal Control that a good and sufficient fence is required to keep animals out and unless the Board takes a stance to set forth their desires there will be no change by law enforcement.

Chairman Keefer directs staff to work with the Cattlemen's Assn. on crafting language to deal with willful neglect.

Todd Swickard suggests that some participation from law enforcement would also be helpful.

## TITLE II AND III PROJECTS

It is moved by Supervisor Pyle, seconded by Supervisor Hanson and carried, with Supervisor Chapman absent, to:

1. Allocate the portion of funds received for projects through safety net payments of 15%.  
Title II 100% Title III 0%
2. Adopt Resolution No. 05-051, allocating 15% Safety Net Payments to Title II; and
3. Adopt Resolution No. 05-052, designating the 15% Safety Net Payment to local projects for FY 2005/06.

## PROCLAMATION

Pursuant to Government Code Section 54954.2 (2) that the need to take action arose subsequent to the agenda being posted, it is moved by Supervisor Pyle, seconded by Supervisor Hanson and carried, with Supervisor Chapman absent, to adopt a proclamation honoring Staff Sergeant Adam Skillen and commending him for his bravery and heroism in the defense of liberty and justice and wishing him a speedy recovery.

## HEALTH & SOCIAL SERVICES

It is moved by Supervisor Pyle, seconded by Supervisor Dahle and carried, with Supervisor Chapman absent, to repeal Resolution #02-015 and adopt Resolution No. 05-053, establishing procedure for approving contracts between the Lassen County Health

and Social Services agencies and service providers.

**INFORMATION FOR THE BOARD**

CAO Ketelsen announces he will be on vacation September 28th through October 3rd.

**ADJOURNMENT IN MEMORY**

There being no further business, the meeting is adjourned at 3:04 p.m. in memory of Pat Salters.

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**SUPERVISORS**

**CHAIRMAN OF THE BOARD OF**

**ATTEST:**

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**THERESA NAGEL, CLERK OF THE BOARD**