

Monday, October 15, 2007

The regular meeting of the Humboldt County Board of Commissioners was called to order on Monday, October 15, 2007, at 10:00 a.m. in the regular place of meeting at the Courthouse, Winnemucca, Nevada. Those present were Chairman John H. Milton, III, Commissioners Chuck Giordano, Dan Cassinelli, Tom Fransway and Garley Amos Jr. , Deputy District Attorney Theresa Wriston, Administrator Bill Deist and Clerk of the Board Tami Rae Spero.

**MINUTES:** The following motion was made by Commissioner Giordano and passed unanimously:

*To approve minutes of the October 1, 2007, meeting as written.*

**PUBLIC COMMENT:** Chairman Milton asked for public comment. Kelly Munger, a Grass Valley resident, addressed the Board regarding concerns with the Brinkerhoff subdivision including water availability, water quality and septic system issues. The Board directed Ms. Munger to speak to the Planning Department regarding where the proposal is in the process and the ability to appeal or protest.

**ADMINISTRATIVE REPORT:**

**CONSENT AGENDA:** The following items were presented under the consent agenda by Administrator Deist for the Board's review/action:

1. Request for adjustment to the Humboldt County Real Property Tax Roll: Requests 07-08-26 and 07-08-27 were provided to the Board for their review. *Recommendation: That the Commission approve the requests as recommended by the Assessor and Treasurer.*
2. Acknowledgment of Third Quarter Report from County Clerk: A copy of the 3<sup>rd</sup> quarter report for 2007 was provided to the Board for their review. *Recommendation: That the Commission acknowledge receipt of the report.*
3. Community Development Block Grant Quarterly 2007 Report for the McDermitt Sewer Reconstruction and the Housing Needs Assessment: The Board was provided with the quarterly program progress reports showing CDBG grant activity for the months of July, August and September. *Recommendation: That the Commission authorize the Chairman's signature on the Quarterly Reports.*
4. Applications for victims of sexual assault: Applications 10-01 and 10-02 were provided to the Board for approval. *Recommendation: That the Commission*

*approve the applications.*

The following motion was made by Commissioner Fransway and passed unanimously:

*To approve the Consent Agenda as presented and to authorize the Chairman to sign.*

**SOLID WASTE MATTERS:** Administrator Deist stated that there is a Landfill Committee Meeting scheduled for later today.

**PUBLIC LANDS PLANNING MATTERS & FORMULATION OF COUNTY POSITION ON BLM & FOREST SERVICE PROPOSED ACTIONS:** Administrator Deist stated that he had nothing on this item.

**MISCELLANEOUS REPORTS AND CORRESPONDENCE:**

**OTHER INFORMATION AND UPCOMING MEETINGS:** A copy of the August 2007 statistics for the Humboldt RX program was provided to the Board for their review. Upcoming meetings and dates of importance were reviewed. Administrator Deist informed the Board that taxable sales for July were down; discussion occurred.

**REPORTS FROM COMMISSIONERS REGARDING OTHER BOARDS AND COMMITTEES THEY SERVE ON:** Commissioner Fransway provided information on the NACO Annual Conference which had occurred in Elko, October 2<sup>nd</sup> through the 4<sup>th</sup>.

**QUARTERLY INSPECTION OF THE ADULT DETENTION FACILITY:** Commissioner Cassinelli would be inspecting the Detention Center following today's meeting.

**CLAIMS FOR EXPENDITURES OF COUNTY FUNDS:** The following motion was made by Commissioner Amos and passed unanimously:

*To approve the claims for expenditures of County funds as presented.*

Chairman Milton noted that a grant for the Victims program had been due on the previous Friday, so as Chairman he had signed it.

**REQUEST FROM SONOMA INDUSTRIES FOR RENEWAL OF THE LEASE FOR 3280 AND 3310 BENGOCHEA CIRCLE:** A copy of a letter of request from Sharon Allen, President of Sonoma Industries was provided to the Board. Administrator Deist reviewed the previous lease noting that the lease has a requirement for the request for renewal to be 60 days prior; this request did not meet that time line but that the requirement can be waived by the Commission. Chairman Milton asked that Sonoma Industries provide a report once or twice a year to the Commission

regarding the number of clients assisted, etc. The following motion was made by Commissioner Fransway and passed unanimously:

*To waive the sixty day requirement for notification and to approve the request from Sonoma Industries for renewal of the lease for 3280 and 3310 Bengochea Circle and to respectfully request a report ever so often.*

**PUBLIC HEARING TO CONSIDER APPLICATION 76196 FROM BATTLE MOUNTAIN GOLD, THROUGH THEIR AGENT, SCOTT PAINE OF NEWMONT MINING CORPORATION, TO CHANGE THE POINT OF DIVERSION, PLACE AND MANNER OF USE OF 0.25 C.F.S. OF WATER HERETOFORE APPROPRIATED UNDER PERMIT 49460, CERTIFICATE 14024:**

A letter of request from the State of Nevada Department of Conservation and Natural Resources Division of Water Resources and a copy of the Application For Permission to Change Point of Diversion, Manner of Use and Place of Use of the Public Waters of the State of Nevada Heretofore Appropriated was provided to the Board. Administrator Deist reviewed the request and discussion occurred regarding the need for County involvement. Chairman Milton asked for public comment; none offered. The following motion was made by Commissioner Amos and passed unanimously:

*That a letter be sent to the State Engineer stating that Humboldt County has no concerns at this time.*

**AGRICULTURAL DISTRICT #3:** Kim Petersen, Director of the Winnemucca Convention and Visitors Authority, appeared before the Board.

**REQUEST FOR WAIVER FROM THE ATTRITION POLICY FOR A VACANCY IN THE FAIRGROUND ATTENDANT POSITION:** Director Petersen stated that Calvin Wolfsteller has left the position and since it takes time to find a qualified employee he is requesting the waiver to begin that process. Commissioners Amos and Cassinelli agreed that the position should be filled as soon as possible. Chairman Milton noted that the fairgrounds always has to hire outside help to make sure the work gets done and not having this position would make it necessary to hire additional outside labor. Commissioner Fransway noted that the position is contained in the current budget. The following motion was made by Commissioner Amos and passed unanimously:

*To approve the waiver to the attrition policy for vacancy in the fairgrounds attendant position.*

**REQUEST TO PROCEED WITH THE DRAINAGE PROJECT BEHIND THE INDOOR**

**EVENTS CENTER:** Provided to the Board was a copy of a memo from the County Administrator stating that this project was proposed last year but was not constructed, that per request and approval the money was carried over to the current budget for the project and that the current quote of \$12,105.00 is within the budgeted amount of \$20,000.00. Director Petersen spoke in support of the request and detailed the proposed project. After discussion the following motion was made by Commissioner Cassinelli and passed unanimously:

*To approve the project not to exceed \$20,000.00 and to offer encouragement to try and do it for less than \$20,000.00.*

**ROAD MATTERS:** Road Superintendent John Russum appeared before the Board.

**PUBLIC HEARING ON THE REQUEST TO TAKE REINS WAY AND SADDLEHORN DRIVE IN THE RAWHIDE ESTATES AND THAT PORTION OF E. TYCANA ROAD BETWEEN ALICE LANE AND THE END OF E. TYCANA ROAD INTO THE COUNTY**

**MAINTAINED SYSTEM:** Provided to the Board was a copy of the Notice of Public Hearing, request letters from Terri A. Tompkins, a member of Rawhide Estates, LLC, related to Reins Way and Saddlehorn Drive and Laird Aldrich related to E. Tycana Road, a copy of a letter of support from Kenneth L. Hladek, maps of the location and the Report of the Road Superintendent. Road Superintendent Russum reviewed his inspection report as related to E. Tycana Report. Discussion occurred regarding which lots could be attributed to E. Tycana; it was noted that E. Tycana is a collector street and that additional rock is needed to bring the road up to county standards. Chairman Milton asked for public comment; the letter received from Mr. Hladek was noted. The following motion was made by Commissioner Fransway and passed unanimously:

*To accept East Tycana Road from Alice Lane to the end of East Tycana Road into the County Maintained System based on the fact that currently it meets close to the sixty percent and with the addition of lots sixteen, four and one it would put it over the top and the potential of access is there, and because Tycana is a collector street for the area and that the Road Superintendent is directed to work with the developer to bring up to county standards.*

*(Resolution No. 10-15-07/R 18)*

Road Superintendent Russum reviewed his inspection report as related to Reins Way.

Discussion occurred regarding the number of lots, Chairman Milton asked for public comment; the letter received from Mr. Hladek was noted. The following motion was made by Commissioner Fransway and passed unanimously:

*To accept Reins Way into the County Maintained System and that the Road Superintendent is directed to work with the developer to bring it up to current county standards.*

*(Resolution 10-15-07a/R 19)*

Road Superintendent Russum reviewed his inspection report as related to Saddlehorn Drive noting that it fails to meet the 60% occupancy requirement. Chairman Milton asked if only the portion to Spur could be considered as that would reduce the area of occupancy considered bringing it to about 50% and it would make maintenance of Reins Way easier because otherwise you would stop the maintenance in the middle of a curve. Commissioner Cassinelli agreed. Chairman Milton asked for public comment; the letter received from Mr. Hladek was noted. Dick Rowe, a resident of Reins Way, addressed the Board requesting that Mag Chloride be applied to Reins Way. Chairman Milton explained the County's process for considering Mag Chloride requests. Gary Tompkins with Rawhide Estates LLC, addressed the Board regarding other lots sold and planned development in the area. The following motion was made by Commissioner Fransway and passed unanimously:

*To approve the acceptance of Saddlehorn Drive to Spur Street into the County Maintained System based on the extra occupancy as described by the developer and that the Road Superintendent is directed to work with the developer to bring it up to current county standards.*

*(Resolution No. 10-15-07a/R 19)*

**REPORT OF PENDING ROAD DEPARTMENT PROJECTS:** Road Superintendent Russum updated the Board on the potato haul and road grading.

**MISCELLANEOUS ROAD RELATED MATTERS:** None offered.

**POSSIBLE APPROVAL OF THE CONTRACT BETWEEN HUMBOLDT COUNTY AND SMITH DESIGN GROUP FOR THE DISTRICT ATTORNEY'S OFFICE EXPANSION**

**PROJECT:** Administrator Deist requested this item be tabled to allow for additional time for discussion. The following motion was made by Commissioner Fransway and passed unanimously:

*To table the item.*

**POSSIBLE ADOPTION OF AN ORDINANCE AMENDING CHAPTER 13.12 OF THE HUMBOLDT COUNTY CODE (HCC) - To authorize acceptance of solid waste from outside the landfill district for disposal at sites other than Humboldt County Regional Landfill; providing for the assessment of fees for acceptance of solid waste from outside the landfill district; and providing other matters properly related thereto:**

A copy of the Notice of Public Hearing and the proposed ordinance was provided to the Board for their review. Chairman Milton read the title of the proposed ordinance. Administrator Deist reviewed the item for the Board. Discussion occurred regarding environmental issues, NDEP's involvement in approving landfills, and the necessary negotiations and agreements required if another landfill were to be located in Humboldt County. Chairman Milton asked for public comment; none offered. The following motion was made by Commissioner Giordano and passed unanimously:

*To approve the adoption of an ordinance amending chapter 13.12 of the Humboldt County Code.*

*(Ordinance No. 10-15-07)*

**UPDATE FROM NRCS REGARDING THE EMERGENCY WATERSHED PROTECTION PROGRAM IN RELATION TO THE THOMAS FIRE AND MATTERS RELATED**

**THERE TO:** Craig Plummer of the Natural Resources Conservation Service appeared before the Board. Mr. Plummer provided a report to the Board. Mr. Plummer stated that there is no budget as of yet and referred the Board to his report. Chairman Milton asked what would occur if Humboldt County fronted all of the money and if the County could be reimbursed for those costs. Mr. Plummer stated that it would be done at the County's own risk and if it was funded there would be a possibility for reimbursement but that he would need to speak to the State Engineer regarding the issue. Discussion occurred regarding previously approved match, seed availability, type of seed, time frame for re-seeding, BLM coordination and programs for Water Canyon and Thomas Fire, and funding amounts. Commissioner Fransway suggested that a letter be drafted with the City's concurrence or their own letter to the Congressional Delegation requesting assistance; he commented that it makes sense to do the County's acreage at the same time as the BLM's acreage to save money. Commissioner Cassinelli agreed that the County should proceed and hope for reimbursement. Chairman Milton stated that the County needs to be prepared to fund the process

and asked that the item be placed on the next agenda and asked that Mr. Plummer check on the reimbursement possibilities. Administrator Deist stated that he is attempting to make contact with one of the largest property owners in the area to see if they would be willing to assist. The following motion was made by Commissioner Fransway and passed unanimously:

*That staff draft a letter for the Chairman's signature and ask for concurrence from the City to expedite the release of funds for the Emergency Watershed Protection issue related to the Thomas Fire.*

**PLANNING MATTERS:** Sandy Hammargren, Senior Planning Technician of the Planning Department, appeared before the Board.

**PUBLIC HEARING ON AH-07-01 - An abandonment request submitted by Conn Davis on behalf of Larry and Vern Brinkerhoff to abandon the 30 foot right-of-way known as "Mary Way" lying within and along the northerly line and the 30 foot right-of-way lying north of Placer Way, being within and along the westerly line of the SW 1/4 of Section 12, T35N, R37E, Humboldt County, Nevada. Additionally, the Board will consider the abandonment of the 30 foot right-of-way known as "Mary Way" from the center of Section 12 easterly to Grass Valley Road. Said 30 foot strips will be retained as utility easements:** Provided to the Board for review was a copy of the Notice of Public Hearing, a copy of the Planning Department Staff Report recommending approval and noting the approval of the Regional Planning Commission at their October 4, 2007, meeting. Mrs. Hammargren reviewed the request and recommended approval. Administrator Deist noted that statutory notice had been accomplished. Chairman Milton asked for public comment; none offered. The following motion was made by Commissioner Giordano and passed unanimously:

*To approve AH-07-01.*

**RH-07-17 - A rezone application requested by the Humboldt County Commissioners to Change the AG-5 (General Agricultural-5 acre minimum lot size) to the RR-5 (Rural Ranchette-5 acre minimum lot size) on properties located in ZBS; APN #'s 10-531-01 thru 08, #10-532-01 thru 16, #10-533-01 thru 05, #10-541-01 thru 08, #10-542-01 thru 16, and #10-543-01 thru 05:** Mrs. Hammargren noted that this item is being brought back from the last meeting as it was continued to obtain a legal opinion regarding Mr. Curtis' parcels in ZBS; she stated that in the mean time an e-mail opposing this rezone had been received from Steve and Denise Dolphin

who are residents of ZBS. Mrs. Hammargren read the e-mail opposing the rezone. Discussion occurred regarding the protest which opposed rezoning the area to allow 2.5 acre minimum lot size; it was noted that this is not what is being discussed. Administrator Deist stated that following discussion with legal counsel it had been determined that the gravel pit operated by Mr. Curtis in ZBS could continue. Deputy District Attorney Wriston concurred and stated that not depending on ownership as long as the use remains the same the nonconforming use can remain but if the use changes it would be brought under the new requirements. Chairman Milton asked for public comment; none offered. Mrs. Hammargren asked if Mr. Curtis' two parcels could remain outside the zoning change; Chairman Milton stated that based upon legal counsel's statement it would not be necessary. Commissioner Amos stated that the zoning should remain the same as people in the area are confused as to what is occurring and the change will cause conflict; he stated that residents of the area had spoken to him and wanted the zoning to remain the same. Chairman Milton noted that with the change to RR-5 zoning the zoning will remain the same as it has been for the last twelve years because of the change made to the AG-5 Zoning at the September 4, 2007 Commission Meeting; he further noted that Mr. Curtis is the only resident who appeared and spoke at the public hearing expressing any concerns. Discussion occurred regarding the change made to AG-5 zoning. Deputy District Attorney Wriston stated for the record that she disagreed that the zoning has necessarily changed anything with the AG-5 with the sentence that remained, you enforced it as if the restrictions were there and now what this does is bring into line what you enforced with reality, what the restrictions are, but she did not want to go so far as to say that the zoning has changed or was changed with taking out that sentence. A motion was made by Commissioner Amos to deny the rezone application and it failed for lack of a quorum. The following motion was made by Commissioner Fransway and passed with Chairman Milton and Commissioners Fransway, Giordano and Cassinelli voting aye and Commissioner Amos voting nay:

*To approve RH-07-17.*

*(Ordinance No. 10-15-07a)*

**SET TO PUBLIC HEARING RH-07-18 - A rezone application submitted by Manuel Gomez to change property located at 3055 Tallman Drive from AG-5 (General Agricultural-5 acre minimum lot size) to RR-2.5 (Rural Ranchette 2.5 acre minimum lot size) and NC-R (Neighborhood Commercial - Rural) zoning districts; APN#14-153-14;** Chairman Milton read



the title of the proposed ordinance into the record. The following motion was made by Commissioner Giordano and passed unanimously:

*To set RH-07-18 to public hearing at the next meeting on November 5, 2007.*

Chairman Milton stated that he would be abstaining from discussion and action on the next five items as they were submitted by his company Desert Mountain Surveying; he turned the meeting over to Vice-Chairman Fransway.

Vice-Chairman Fransway stated these applications came before the Board previously and the Commission at that time felt that there was an argument that proper notice had not been given to the parties that may be affected and due to that, in all fairness and to promote public participation, it was remanded back to RPC to allow for further comment at their October 4<sup>th</sup> meeting. Vice-Chairman Fransway asked what the outcome had been. Mrs. Hammargren stated that Chairman Olson stated that the applications had been already heard by the RPC, a decision had been made and they were going to stick with their decision. Discussion occurred regarding the actions of the RPC. Vice-Chairman Fransway asked if LP-07-14 and LP-07-25 have mineral rights? Mrs. Hammargren stated that they were not under this mineral lease. Vice-Chairman Fransway suggested that those two applications be pulled and handled separately as they are not included in those applications being protested.

**A FINAL APPROVAL REQUEST FOR LP-07-14 - A large parcel map application submitted by Desert Mountain Surveying on behalf of Scott H. Wigginton to divide property located 1 1/2 miles north of Jungo Road, Section 23, T37N, R33E into 15 lots; APN #05-261-08:**

Provided to the Board was a copy of the Planning Staff Report recommending approval and a copy of the previous minutes of the RPC at which the application had been approved. Mrs. Hammargren reviewed the application and recommended approval. Vice-Chairman Fransway asked for public comment; none offered. The following motion was made by Commissioner Cassinelli and passed with Vice-Chairman Fransway and Commissioners Giordano, Cassinelli and Amos voting aye and Chairman Milton abstaining:

*To approve LP-07-14.*

**A FINAL APPROVAL REQUEST FOR LP-07-25 - A large parcel map application submitted by Desert Mountain Surveying on behalf of Demario Balams to divide property located 2+ miles south of Jungo Road, Section 27, T35N, R32E into 15 lots; APN #05-401-24:** Provided

to the Board was a copy of the Planning Department Staff Report recommending approval and a copy of the minutes of the RPC meeting at which the application had been approved. Mrs. Hammargren reviewed the application and recommended approval. Vice-Chairman Fransway asked for public comment; none offered. The following motion was made by Commissioner Giordano and passed with Vice-Chairman Fransway and Commissioners Giordano, Cassinelli and Amos voting aye and Chairman Milton abstaining:

*To approve LP-07-25.*

Vice-Chairman Fransway suggested that because LP-07-23, LP-07-24 and LP-07-26 deal with the same issues that comments be combined regarding them as long as the item being discussed is identified. Administrator Deist asked for clarification on which applications are being appealed by Newwest and which by Newmont; it was determined that Newwest is appealing LP-07-23 and LP-07-26 with Newmont's support and Newmont is appealing LP-07-24. Administrator Deist suggested that LP-07-24 be discussed first as LP-07-23 and LP-07-26 will have similar arguments. Vice-Chairman Fransway agreed.

**A FINAL APPROVAL REQUEST FOR LP-07-24 - A large parcel map application submitted by Desert Mountain surveying on behalf of Scott Wigginton to divide property locate 9 miles north of Blue Mountain, 1 1/2 miles NE of Mormon Dan Butte and 1/2 mile from Corbeal Well, Section 19, T38N, R35E into 15 lots; APN #05-211-14:** A copy of the Planning Department Staff Report recommending approval and stating the RPC approval and a copy of a letter from Newmont Mining Corporation appealing the Planning Department's approval of large parcel map applications LP-07-23, LP-07-24 and LP-07-26 was provided to the Board. Vice-Chairman Fransway asked for questions on this application from the Commission; none offered. Lindy Gash, Senior Landman, Land Department, Newmont Mining Corporation, appeared before the Board. Ms. Gash stated that Newmont is supporting Newwest on applications LP-07-23 and LP-07-26 but that the letter of appeal does apply to three items including LP-07-24, which Newwest is not involved in but which Newmont would like to make sure includes the same language in the jurat that will be used on LP-07-23 & LP-07-26; she stated that Newmont has additional proposed language for the jurat which clarifies where Newmont stands in the mining lease. Discussion occurred regarding the lease, the location of this lease compared to the others, the sub-lease, the current language of the jurat and the proposed additional language requested for the jurat. Deputy District Attorney

Wriston stated that the only sentence in the proposed language that she had a problem with is "...*the holder of the mineral lease is not liable for damage of the surface of the property...*" that she does not want the County to act as though it is interpreting a liability, that is for the Courts. O. Kent Maher, appearing on behalf of Desert Mountain Surveying, appeared before the Board and spoke in support of including factual representations in the jurat but stating that interpreting the language of the lease is not appropriate and the Board does not have the authority to do that under Chapter 278. Laura Granier, Attorney with Lionel Sawyer and Collins on behalf of Newwest, appeared before the Board. Ms. Granier proposed that the language be a direct quote out of the lease so it would not be the County interpreting the lease; she stated that the language is very important to put the public on notice. Mr. Maher questioned if that was done should a number of items be quoted in the jurat. Vice-Chairman Fransway asked if the lease covers the liability issue so it doesn't need to be added to the jurat. Mr. Maher agreed. Ms. Granier stated she understood the concern but the jurat should put the public on notice of the very broad rights covered by the lease. Vice-Chairman Fransway suggested alternative wording. Mr. Maher disagreed with the suggestion, noting that the jurat already informs the public of the mineral lease, nothing else is needed and if parts of the lease are going to be included why not include the whole lease as that shows the fair picture and it is subject to interpretation. Ms. Granier stated that it would be fine to include the whole lease as that would inform the public; she spoke to the lack of due diligence on the part of buyers. Deputy District Wriston noted that per the language a "memorandum" is recorded which does not give the full detail of the lease and the lease is not recorded or readily available to the public as to what is effecting the land when they go to buy it. Mr. Maher stated he would have no objection to the jurat stating where the mineral lease could be viewed, if it were on file in a public office. Ms. Granier stated that the language of the lease is only five pages and there is no downside to including the whole lease so the public is on notice without tracking down the document. Discussion occurred regarding how the original jurat was developed. John E. Marvel of Marvel & Kump appeared on behalf of Newwest Gold and stated that with everything that has transpired over the past few months it has become apparent that stronger language is needed now; he spoke of his concern regarding public notification. Commissioner Fransway agreed with the need to protect the public but the County cannot be placed in jeopardy by a jurat that makes a finding that consequentially is believed to be a county interpretation. Deputy District Attorney Wriston reviewed the options

provided. Discussion occurred regarding recording the lease, the authority for the Board to deny large parcel map applications, master plan amendments, rezoning options, easement notification through the use of jurats, public knowledge of property issues, the 60 day time frame for acting on large parcel map applications and under what circumstances that can be extended. Vice-Chairman Fransway asked if this was an appeal or a protest. Deputy District Attorney Wriston stated that based on conversations and the letter, the intent for today is, in the words of Newwest/Newmont, to "get on with it", to have due process, to be heard, that the open meeting issues are being put aside but in technical terms this is not an appeal, this is an objection to the recommendations, the appeal process is judicial review. Discussion occurred regarding appeal versus objection and bringing the matter back at the November 5<sup>th</sup> meeting with language for the jurat which has been worked on by the protestors, legal counsel and the applicant which is mutually acceptable to protect the public. Debra Struhsacker, Environmental Permitting & Government Relations Consultant, appearing for Newwest Gold appeared before the Board and emphasized Newwest's position of the importance of allowing the public to have a clear understanding of the lease which has extraordinary language; she addressed the development of the current jurat and the need to now to make the jurat more explicit. Discussion occurred regarding non-conformance being corrected on the final map, whether the lease is an easement, right of access and what would be a basis for denial of the application. The following motion was made by Commissioner Fransway:

*To conditionally approve LP-07-24 based on compliance with NRS 278.472 with the addition to the maps disclosures describing the dominate mineral rights the language of that disclosure to be approved by this Commission with the input from the applicant, from the protestors and from legal counsel and direct staff to reagentize this jurat for the next meeting November 5<sup>th</sup>.*

Deputy District Attorney Wriston confirmed the proposed motion and that the November 5<sup>th</sup> date is given in order to meet the sixty day requirement; she stated her legal opinion that as long as the Board is taking action today this is within the sixty days the completion of the condition does not need to be within the sixty days. Vice-Chairman Fransway stated that if that is true he would like to give them the time needed so it does not have to come back again. Deputy District Wriston stated that her argument is merely to put the Board on notice as to her opinion that she is not arguing to not bring it back on the 5<sup>th</sup>, the sooner the better but action is being taken today.

Administrator Deist concurred that time is of the essence and commented that if a time line is not put on the resolution could be drug out. Vice-Chairman Fransway amended his previous motion to "*conditionally approve*". Ms. Granier suggested that any question could be cleared up as to whether the condition must be fulfilled within the sixty days, if everyone consented on the record that this conditional approval meets the sixty days even if the jurat is not finalized on November 5<sup>th</sup>. Vice-Chairman Fransway stated that as it is in the minutes it did not need to be in the motion. Mr. Maher disagreed stating without the consent of the applicant if the sixty days goes by and the action was approving subject to agreeing on a jurat and there is no agreement a mess has been created that the Court will have to sort out; he believes the applicant would have to agree on some time frame and he is not willing on behalf of Desert Mountain Surveying to let this matter go on for whatever the time frame is but he is comfortable having it done by November 5<sup>th</sup>. Ms. Granier stated that is the difference between a conditional approval and denial, that if the Board denies there is no question that they have acted and then the applicant can come back and the jurat can be worked on. Mr. Maher disagreed stating a denial put the applicant in the position of having to petition the Court to make the Board take action. Vice-Chairman Fransway stated that the motion on the floor is sufficient to protect the public and all parties involved. Mr. Marvel questioned if the language is not worked out will the jurat disappear and the application is approved without a jurat? Vice-Chairman Fransway stated that is not the intent of the motion and the motion protects the public. Mr. Maher stated that he did not want the matter to be dragged out, that a decision needs to be made on November 5<sup>th</sup>. Deputy District Attorney Wriston asked if the applicant would be willing to work on a jurat? Mr. Maher replied absolutely. Discussion occurred regarding the sixty day issue and the existing jurat versus a new jurat. Mr. Maher asked why the motion not be to continue the matter to allow time for the parties to work on the jurat? Deputy District Attorney Wriston stated that she doesn't recommend that because the action is conditionally approving this map or denying with remedial action, that is the action within the sixty days. Mr. Marvel offered comment. Vice-Chairman Fransway called for a vote on the pending motion; the motion passed with Vice-Chairman Fransway and Commissioners Giordano, Cassinelli and Amos voting aye and Chairman Milton abstaining.

**A FINAL APPROVAL FOR LP-07-23 - A large parcel map application submitted by Desert Mountain Surveying on behalf of Scott Wigginton to divide property located 8+ miles north**

of Jungo Road, Section 13, T37N, R35E into 15 lots; APN #05-281-18:

AND

A FINAL APPROVAL FOR LP-07-26 - A large parcel map application submitted by Desert Mountain Surveying on behalf of Scott Wigginton to divide property located 8 miles SW of Sand Pass Road, Section 7, T37N, R36E into 15 lots; APN #05-291-07: A copy of the Planning Department Staff Report recommending approval and stating the RPC approval, a copy of a letter from Newmont Mining Corporation appealing the Planning Department's approval of large parcel map applications LP-07-23, LP-07-24 and LP-07-26 and a letter from Lionel, Sawyer and Collins with exhibits A through H were provided to the Board. Debra Struhsacker, Environmental Permitting & Government Relations Consultant, appearing for Newwest Gold appeared before the Board and offered comment on both applications; she handed out a map of the areas in question to the Board and indicated the location of the conditional use permit boundary for the Sandman Project and the location of the large parcel map applications in relation to the conditional use permit area. Ms. Struhsacker stated that Newwest's concerns are that the existing staff report doesn't mention the conditional use permit and that the jurat needs to be updated to reflect more specifically the language in the minerals lease; she noted that nothing being discussed today is hypothetical as there is already a discovery of a deposit adjacent to LP-07-23 and it is being actively explored. Ms. Struhsacker stated that Newwest would like to ask that in addition to working on a jurat that more specifically warns the public of the existence of a minerals lease, that in the case of these two large parcel map applications there should be an added paragraph on that jurat that talks about the conditional use permit and puts the public on notice that the County has already authorized mining uses of adjacent properties. Administrator Deist stated that the conditional use permit does not include either of these sections; Ms. Struhsacker agreed. Administrator Deist asked if Newwest had mineral leases on these two sections; Ms. Struhsacker stated not at this time but discussion is occurring with Newmont who does have a mineral lease on these sections. Vice-Chairman Fransway stated that the discussion is about protecting the public and that this is another issue that needs to be addressed. Mrs. Hammargren stated that as these sections were not included in the conditional use permit there was no reason for it to be picked up on the large parcel maps as far as putting anyone on notice; she questioned how many feet you would go to search for conditional use permits or other activities are occurring on adjacent property to advise people? Mr. Maher

stated that he would have to leave the meeting but his comments from the previous application stand. Ms. Struhsacker commented that with a mining conditional use permit it makes sense to let land developers, purchasers, potential owners know that there are mining activities next door and even though the conditional use permit does not apply to these two sections that common sense planning principles would dictate that it makes sense to disclose them. Ms. Granier offered for the record a copy of Newwest's Conditional Use Permit. Vice-Chairman Fransway agreed. Ms. Granier concurred that the public must be put on notice of the mining activity; she commented on the Master Plan. Deputy District Attorney Wriston stated that based on policy and past discussions she does not disagree with the intentions and the protection of the community, but consistent with what she said before, if the Board conditionally approves or denies it must be based on NRS 278.472 and she does not interpret NRS 278.472 as including adjacent land with CUPs and mining leases on it, with final parcel maps it is very specific that you are dealing with the land that is being divided; as the master lease is on it, the jurat previously discussed is fine but she cannot advise the Board to conditionally approve based on "hey its a good idea to let people know", as it cannot be justified by Statute. Deputy District Attorney Wriston continued and stated while she agreed with the comments regarding the Master Plan, the overlying zoning is the problem that needs to be worked on. Discussion occurred regarding the effect of the putting the notification of conditional use permit on the map including potential clouds on title, the use of the previously discussed jurat on these maps, the District Court ruling regarding notification to surface right holders, that Humboldt County uses statute to govern large parcels, that master plan does not override zoning or statute, Newmont's lease on 7 and 13, inclusion of CUP in the jurat, mining impacts and the amount of research necessary by Planning staff to notify on all conditional use permits that are adjacent to someone's property. Vice-Chairman Fransway stated that he would like to include an acknowledgment that there is an adjacent CUP but he would not do that if it puts the County out there. Deputy District Wriston noted her previous opinion but stated that the Board can decide to go with whichever is their choice but she cannot legally recommend what is being suggested but she can recommend the jurat as discussed previously on LP-07-24. Mr. Marvel noted that there is a direct impact on adjacent properties as the mining can go right to the property boundary. After discussion Vice-Chairman Fransway offered a motion and it failed with Vice-Chairman Fransway and Commissioner Amos voting aye, Commissioners Giordano and Cassinelli voting nay and

Chairman Milton abstaining. Ms. Granier offered suggested language regarding due consideration. The following motion was made by Commissioner Fransway:

*To conditionally approve LP-07-23 and LP-07-26 based on compliance with NRS 278.472 with the addition to the maps, disclosures describing the dominate mineral rights, the language of that disclosure to be approved by this Commission with the input of the applicant, the protestors and legal counsel, that the addition of the conditional use permit held by Newwest Gold be discussed as part of the jurat, if there is not mutual agreement then the second portion of this motion is stricken and the first portion would carry over, and to direct staff to reagendaize this jurat for the next meeting November 5<sup>th</sup>.*

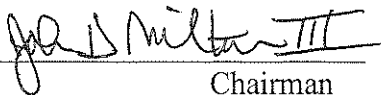
Deputy District Attorney Wriston stated that if the applicant voluntarily agrees to put that in there, then that can go because it is by mutual consent. Administrator Deist asked what would occur if the applicant is not willing to include the language. Deputy District Attorney Wriston stated then she could not legally advise this Commission to force that CUP be put on the jurat, therefore she suggested that the motion be very clear that if there is no agreement to be had that the original jurat as suggested on 24 definitely comes into play. Vice-Chairman Fransway amended the previous motion to include "*if there is not mutual agreement then the second portion of this motion is stricken and the first portion would carry over*". Deputy District Attorney Wriston stated subject to the discussions as already delineated under 24. Ms. Granier stated that she did not want to suggest in any way that Newwest is not standing on the position that the CUP should be included she just offered that as a suggestion but it wasn't in any way compromising their argument. Vice-Chairman Fransway called for a vote on the pending motion; the motion passed with Vice-Chairman Fransway and Commissioners Giordano, Cassinelli and Amos voting aye and Chairman Milton abstaining.

Mr. Marvel commented the way the property sales are taking place and the effect on real property tax income.

Vice-Chairman Fransway turned the meeting back over to Chairman Milton.

**ADJOURNMENT:** Chairman Milton adjourned the meeting at 3:43 p.m.

ATTESTED:  Clerk

APPROVED:  Chairman