

CARSON CITY OPEN SPACE ADVISORY COMMITTEE

Minutes of the September 5, 2006 Meeting

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A meeting of the Carson City Open Space Advisory Committee was scheduled for 4:00 p.m. on Tuesday, September 5, 2006 in the City Hall Capitol Conference Room, 201 North Carson Street, Carson City, Nevada.

PRESENT: Chairperson Steve Hartman
Vice Chairperson Dan Jacquet
Michael Fischer
Tricia Lincoln
Wayne Perock
Bruce Scott

STAFF: Juan Guzman, Open Space / Property Manager
Mary-Margaret Madden, Senior Deputy District Attorney
Kathleen King, Recording Secretary

NOTE: A recording of these proceedings, the committee's agenda materials, and any written comments or documentation provided to the recording secretary during the meeting are public record, on file in the Clerk-Recorder's Office. These materials are available for review during regular business hours.

CALL TO ORDER AND DETERMINATION OF A QUORUM (1-0007) - Chairperson Hartman called the meeting to order at 4:00 p.m. A quorum was present. Member Riedl was absent.

CITIZEN COMMENTS ON NON-AGENDIZED ITEMS (1-0018) - None.

1. **ACTION ON APPROVAL OF MINUTES (1-0021)** - None.

2. **MODIFICATIONS TO THE AGENDA** - None.

3. **AGENDA ITEMS:**

3-A. ACTION TO RECOMMEND TO THE BOARD OF SUPERVISORS ADOPTION OF A BASELINE ANALYSIS DOCUMENT TO BE INCORPORATED INTO THE HORSE CREEK RANCH CONSERVATION EASEMENT, PROVIDING FOR THE DESCRIPTION OF THE ENVIRONMENTAL VALUES OF THE 200-ACRE MEADOW AREA TO BE THE SUBJECT OF THE CONSERVATION EASEMENT, LOCATED APPROXIMATELY THREE MILES WEST OF THE PAVED TERMINUS OF KINGS CANYON ROAD, AT KINGS CANYON IN CARSON CITY, NEVADA, APN 007-051-78 (1-0025) - Mr. Guzman reviewed the staff report, provided background information on this item, and an overview of the draft Baseline Condition Report which was included in the agenda materials. He explained that the baseline map does not need to designate the conservation easement. Original discussions indicated the conservation easement would have an area for development, an area of irrigated pasture, and an area of development. These elements can be overlaid on the baseline map or not.

Mr. Guzman advised that, since the last meeting, Mr. Fagen had made very clear that public access is "off the table." He further advised that Chairperson Hartman had an opportunity to review the draft conservation easement in more detail. Chairperson Hartman's opinion is that the conservation easement

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is too detailed. Based on his experience, he has recommended more general language which can include more specificity where necessary. Following discussion between Mr. Guzman, Chairperson Hartman, and Mr. Fagen, the conservation easement will be based on three parcels: the meadow with all of its associated irrigation, and two parcels where development will be allowed to occur. Chairperson Hartman commented that, with the work done by Steve Walker, the development areas will be known and can be designated on the baseline map.

Chairperson Hartman referred to comments at the last meeting with regard to how to address the valuation issue with the conservation easement, if the Board of Supervisors does not approve Mr. Fagen's plans. He noted that the Baseline Condition Report provides parameters. Mr. Fagen knows his plan and can go forward, with a conservation easement which states the meadow will be kept open and subject to agricultural uses. This approach will provide Mr. Fagen more assurance and the City more definition. Assuming the Baseline Condition Report is acceptable to the committee, Mr. Guzman advised of having committed to agendizing the conservation easement for review by the Board of Supervisors at their September 21st meeting.

In response to a question, Mr. Fagen advised of having submitted the conceptual development plan earlier in the day for the multi-agency review, scheduled for September 19th. In response to a question, Mr. Guzman explained the multi-agency review process. He expressed the belief that, at this point, a document could be drafted allowing Mr. Fagen to develop a parcel map with no more than three parcels. Chairperson Hartman suggested this would provide parameters for the conservation easement and the development area. Whether that is accomplished by parcel map or record of survey, it only gets Mr. Fagen "part way" to getting the Board of Supervisors' approval.

Mr. Fagen demonstrated the method by which the property could be subdivided into two twenty-acre parcels and one forty-acre parcel. He suggested it may be advisable to accomplish the subdivision as soon as the property could be surveyed. He pointed out the proposed development area on a map displayed in the meeting room, and advised that all the rest of the property can have "as stringent no build, no touch" restrictions "as feels comfortable to everybody." He expressed a preference to construct fences and possibly a barn near the development area in the event someone would want to use it in the future for horses. He advised of his intent to continue to rent to the Schulzes into the future.

In response to a question, Steve Walker of Walker & Associates, provided background information on his education and experience in natural resources, and his experience in evaluating and writing conservation easements. He explained his approach to evaluating a conservation easement. He advised that the most important elements of the subject property are irrigation high up on the watershed, a nice, open meadow area that offers green, from a wildlife habitat standpoint, surrounded by cover. The green area is also a major recharge area high on the watershed. The important elements of the conservation easement are keeping the irrigation system intact, enhancing the groundwater recharge, keeping the meadow green. To do so, it is imperative to keep the meadow irrigated.

Mr. Walker advised that, approximately ten years ago, the Natural Resources Conservation Service installed a contour ditch system to better distribute the water in the meadow. He explained the contour ditch system operation. [Member Fischer arrived at 4:21 p.m.] Mr. Walker expressed the opinion that the contour ditch system is working very well, and is a "key feature." He commented that keeping the whole irrigation system intact is "very, very important from a conservation easement standpoint."

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The other issues to consider are “what else does the property offer.” Mr. Walker described the property as being a transitional area between the upland shrub and woodlands communities. He assumed the area was logged during the Comstock era. With the exception of areas with enhanced water availability, there are generally 120-year-old, 60-foot tall trees which are less than two feet in diameter. The trees offer cover for deer and bear, roosting areas for blue grouse and song birds, etc. The riparian areas on the site, which Mr. Walker pointed out on a displayed map, are also very important. Mr. Walker described them as “very convex, in good condition ecologically, ... stable as can be, and need to be left as they are. The management of those should be leave them alone.”

Mr. Walker pointed out a granitic fan adjacent to the meadow on the displayed map, and described it as being dominant on the east side. In grazing operations typically dominated by herbaceous vegetation, cows tend to get tired of eating the grass and clover and go to eating bitter brush. Mr. Walker noted that bitter brush is a large component of the granitic fan. Without being fenced, the bitter brush areas are heavily utilized in the fall “and yet the meadow is in good condition and well grazed.” Mr. Walker advised that granitic fans are “classic deer winter range of the Sierras,” and that protection of these areas would enhance the deer winter range. He expressed the opinion that the conservation easement should mandatorily include stabilization of the existing head cuts. He suggested placing rocks and planting willows. He further suggested not allowing any commercial logging operation. Fuel cutting or pre-commercial thinning “would be a good idea.”

He explained that photo points should be established for the conservation easement monitoring program. He suggested five critical photo points on the site, which he pointed out on the displayed map. In response to a question, Mr. Walker recommended a pipe to carry water rather than a liner for the ditch. From a conservation easement standpoint, ensuring maintenance as an open ditch with bed rock and a mixture of soils would be better. He noted conveyance loss, but pointed out that it creates an aspen forest below, with bitter cherry and a small grove of incense cedar. He reiterated the recommendation to maintain the ditch. Mr. Fagen advised that the ditch has been there since 1859. Mr. Walker noted that the water right was adjudicated in 1872, and that the ditch “has a history of doing okay with maintenance.” He expressed the opinion that the area is a “great place for Carson City to do a conservation easement. ... It’s got the components that are really limited in Nevada.”

In response to a question, Mr. Walker advised that the 1872 water right adjudication was not based so much on irrigated pasture as running the flume. This was the largest percentage of Clear Creek given to an irrigated area. Mr. Walker reviewed his calculations and the history of the irrigated pasture. He suggested focusing more on “how much of the meadow is staying the same,” considering an indication of the system and not getting into the details. He advised that he used 6 percent of the average annual flow of Clear Creek as a duty. Member Scott commented that “the decree is an accident waiting to happen. This property is well located and shouldn’t be adversely affected by further effort.” He noted it is 6 percent of the entire flow of Clear Creek and the subject property is not on the entire system. He agreed there seems to be a good balance. Anything applied will be consumed by a limited amount of agriculture or will run off. Historically, it hasn’t been an issue of controversy. In preservation, “it appears to be not only a good balance, there’s nobody above ... that can adversely affect it.” Vice Chairperson Jacquet expressed appreciation that the water is in some sort of equilibrium between what is diverted and the size of the pastures. He noted the expectation to see the pasture largely remain as it is now. In response to a comment,

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Mr. Walker noted “there’s priority and then there’s ‘highority,’ and this place has got both. ‘Highority’ on limited stream flows in Nevada is just as important as priority.” He noted the basic details of the civil adjudication were included in the Baseline Condition Report, and recommended that the water stay with the land as a component of the conservation easement.

Mr. Walker pointed out a protected spring discharge on the displayed map, and advised it is an important component of the irrigation system. He expressed the opinion that discharge out of the spring would be lost if the irrigation ditch was lined. He provided an overview of his description of the vegetation on the property. In response to a question, Mr. Walker suggested adding another photo point to monitor vegetation. He described the various grasses on the property, and suggested monitoring species composition annually without having to measure water.

Mr. Walker noted another point is the relationship between the Schulzes and the property owner. He commented on the importance of a conservation easement to maintain an “agricultural lifestyle.” Mr. Fagen discussed the goal of having the Schulzes participate in a parallel easement. He explained “on full flow seasons, normally it would be three-quarters, one quarter, but that can be adjusted based on the needs of the pasture.” Mr. Walker suggested including language providing for installation of a water flow structure in the event the lease relationship changes. He noted that the neighborly relationship maximizes the water resource. Mr. Fagen advised this was one reason for his suggestion of a ditch liner or a pipe. He explained that, in dry years, sometimes it takes as long as two weeks for the water to get from the head gate to the diversion box. Mr. Walker expressed appreciation for the opportunity, and the committee members thanked him for his presentation.

With regard to public access, Member Scott referred to the Andersen Ranch and advised he appreciates it for what it is. He expressed the belief that maintaining the Horse Creek Ranch without public access but with public viewing, is not an issue over which to be concerned. He expressed a preference for the property to be managed without access because it will be of more benefit and more enjoyment to more people. He referred to the open space survey conducted in conjunction with development of the Open Space Master Plan element, and noted public input indicated a desire to enjoy open space areas visually. Mr. Fagen expressed appreciation for Member Scott’s comments. He advised that if the goal is to protect the whole meadow and treat it as “one biological entity ... the Schulzes would never go for public access.” If public access is included in the conservation easement, the City would never be able to approach the Schulzes with it. Mr. Fagen expressed the opinion that there will be “semi-public access” with construction of the retreat center which will be accessible by reservation. Member Scott noted that the City owns the road and that the property is visible from many places along the road. He inquired as to whether the concept of going forward to the Board of Supervisors in a more generalized way, as suggested by Chairperson Hartman, would be more acceptable to Mr. Fagen. Mr. Fagen expressed the belief that Chairperson Hartman’s suggestion was a wise approach because it would allow “test[ing] the water first.”

In response to a question, Mr. Fagen advised that the development plan is a “work in process,” and represents a “worst case scenario as far as number of units.” He expressed the belief that the ultimate design will be different. Given the previous time frame, the plan represented a working document. Mr. Fagen advised there would be no cabins. The unit labeled “main building” will be enlarged to accommodate whatever number of beds were in the cabins. It will be less expensive to construct, less impact on the surroundings, and less expensive to operate with regard to energy. In response to a question, Chairperson Hartman advised that the conservation easement will be restricted to the meadow. He noted

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that the Baseline Condition Report will serve as a guide. Mr. Fagen will present plans for development, and the two will be “melded together.” Mr. Fagen referred to a pond on the plan in roughly the same area as Mr. Walker referred to a head cut which needs to be addressed. He discussed plans to fix the head cut at the same time as building a pond. In developing the one parcel, he expressed the hope to mitigate and enhance “whatever needed to be as far as the conservation easement.”

Vice Chairperson Jacquet expressed concern over using too general language in the conservation easement in that it may be subject to the judgment of future boards of supervisors. Chairperson Hartman pointed out that the development is approved by the Board of Supervisors. He expressed understanding for Vice Chairperson Jacquet’s concerns, but noted that “it requires creating detail with knowledge that we don’t yet have.” Mr. Fagen advised that whatever is written for the meadow below “can be more restrictive if we can give less restrictive” to the development piece. “If we have to approach the same acreage at the bottom as we do at the top, ... neither side is going to get the optimum solution.” In response to a comment, Mr. Guzman advised that Mr. Fagen seemed willing to accept the three parcels within the easement provided the two top parcels have general parameters about what he can do. That was the premise upon which the conservation easement was started. This includes two single-family dwellings and general language providing for accessory buildings in keeping with the conservation easement. Chairperson Hartman expressed the opinion that the committee will be better off dealing with open space issues. More specificity can be accomplished in a development agreement between Mr. Fagen and the Board of Supervisors, with the Open Space Program as a third-party beneficiary, if necessary. Chairperson Hartman expressed the opinion the committee would be overstepping its bounds by getting into approval of the development. He responded to additional questions regarding valuation of the property, and discussion took place regarding the proposed development. Chairperson Hartman commented that the project is not appreciably different than a planned unit development with clustering. The issue is how much of the development entitlements were used and how much were purchased that weren’t used. Additional discussion followed with regard to the potential development. Mr. Fagen provided background information on his architect, and advised that the design has been done in such a way as to not be visible from Kings Canyon Road. He advised that the main lodge will most likely be visible by someone standing at the Schulz property looking up the meadow, but it will be hidden in the trees as much as possible. He advised of the goal, both from an aesthetic and a security standpoint, to minimize the visual impact of the development. Chairperson Hartman advised that this would be one of the committee’s recommendations. He expressed appreciation that Mr. Fagen’s goals dovetail with those of the committee.

In response to a question, Chairperson Hartman advised that only the land subject to the conservation easement can be restricted. The Board of Supervisors will restrict the development land. The conservation easement will not be effected until the development parcels are approved. Chairperson Hartman responded to questions of clarification, and discussion followed. Chairperson Hartman entertained a motion. **Member Fischer moved to recommend to the Board of Supervisors adoption of a baseline analysis document to be incorporated into the Horse Creek Ranch conservation easement, providing for the description of the environmental values of the 200-acre meadow area to be the subject of the conservation easement, located approximately three miles west of the paved terminus of Kings Canyon Road, at Kings Canyon in Carson City, Nevada, APN 007-051-78. Member Perock seconded the motion.** In response to a question, **Member Fischer agreed to amend his motion to indicate an approximately 161-acre meadow. Member Perock continued his second.**

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Mr. Kiel expressed the belief that the baseline document, as currently drafted, is too general to be accepted by the State. In response to a question, he advised that the document does not include sufficient measurable parameters in order to serve as a strong baseline document for monitoring purposes into the future. He acknowledged he was referring to monitoring the quality of the meadow, types of vegetation, etc. He expressed the opinion that the descriptions are too general. Member Perock inquired as to established standards which Mr. Walker could utilize. Mr. Kiel advised he knew of no specific standards. He expressed the opinion that a "key word is looking for measurable parameters rather than general descriptors." He acknowledged a suggestion that the committee not approve the baseline document, and request Mr. Walker to edit it and return to the committee with a revised draft. Mr. Kiel suggested the funding agreement may not be executable utilizing the baseline condition report as part of the conservation easement document "because it may not be ... specific enough for monitoring purposes ten years from now." He referred to the meadow conditions described as "good" as an example. Member Scott suggested there are functioning conditions on streams and other specifics which could be introduced. He expressed no concern over going forward to the Board of Supervisors with the existing baseline condition report with the idea of working to get more detail in a way that works for Mr. Fagen and also provides the State the kind of parameters to ensure funding isn't an issue. He expressed the opinion this could be done on a parallel track. Chairperson Hartman expressed the opinion that whether the State funds the conservation easement or not is irrelevant. He expressed no concern over being able to create monitoring criteria, with Mr. Walker's assistance, that can be incorporated into the conservation easement. Mr. Walker discussed monitoring based on species composition. **Member Fischer agreed to amend his motion to indicate that more specificity would be added in terms of monitoring criteria. Member Perock continued his second.** Chairperson Hartman called for additional comment.

(1-1859) In response to a question, Mr. Fagen advised that maintenance of the ditch will be included in the conservation easement. Chairperson Hartman and Mr. Fagen explained the provisions by which the conservation easement will be enforced. Mr. Fagen responded to additional questions regarding maintenance of the ditch.

Chairperson Hartman called for additional comment and, when none was forthcoming, a vote on the pending motion. **Motion carried 6-0.**

3-B. ACTION TO RECOMMEND TO THE BOARD OF SUPERVISORS A FUNDING AGREEMENT BETWEEN THE NEVADA STATE DIVISION OF STATE LANDS' CONSERVATION AND RESOURCE PROTECTION GRANT PROGRAM (QUESTION #1) AND CARSON CITY TO REIMBURSE CARSON CITY FOR FUNDS USED TOWARDS THE PURCHASE OF THE HORSE CREEK RANCH CONSERVATION EASEMENT (1-1930) - Mr. Guzman reviewed the staff report and the attachments. With regard to the Non-Revocable Agreement to Restrict Property, Chairperson Hartman expressed concern with regard to paragraph 5, Condemnation. If the property was to be condemned by a third party or a circumstance arose where there was to be a transfer, and the fair market value of the property increased substantially, the State should only receive back "what they put in." Chairperson Hartman requested Ms. Madden to check into this issue. With regard to the hold harmless language, he noted that the City would be entitled to governmental immunity. With regard to the force majeure provisions, he noted that "one of the things that is always out of our control is the actions of agencies and the failure of agencies to act in a timely fashion." He requested Ms. Madden to speak with Deputy Attorney General George Taylor regarding this language as well. He suggested deferring action on this item until the next meeting.

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Chairperson Hartman referred to the issues raised by Mr. Kiel under item 3-A, and reiterated the importance of waiting for the Board of Supervisors' action before proceeding. Member Scott noted that the appraiser will then be able to appraise "everything that's left." **Member Fischer moved to table this item until a future meeting. Vice Chairperson Jacquet seconded the motion.** Chairperson Hartman noted the previous direction for Ms. Madden to work with Mr. Taylor to refine the language. In response to a question, he suggested developing a time table to sequence the documents. Mr. Kiel advised that the deed restriction language is "template language." If the language is perfected, it will be used for other Question #1 projects for which the City will request funding. Discussion followed. Chairperson Hartman called for a vote on the pending motion; **motion carried 6-0.**

3-C. ACTION TO RECOMMEND TO THE BOARD SUPERVISORS A FUNDING AGREEMENT BETWEEN THE NEVADA STATE DIVISION OF STATE LANDS' CONSERVATION AND RESOURCE PROTECTION GRANT PROGRAM (QUESTION #1) AND CARSON CITY TO REIMBURSE CARSON CITY FOR FUNDS USED TOWARD THE PURCHASE OF THE HORSE CREEK RANCH FEE TITLE ACQUISITION (1-2204) - Mr. Guzman acknowledged that this item should be deferred as well. **Member Fischer moved to table this item. Vice Chairperson Jacquet seconded the motion.** Chairperson Hartman advised that Ms. Madden would work with Deputy Attorney General George Taylor to resolve the language and return the agreement to the committee. He called for a vote on the pending motion; **motion carried 6-0.**

4. NON-ACTION ITEMS:

STATUS REPORTS AND ANNOUNCEMENTS FROM STAFF (2-2226) - Mr. Guzman reviewed the July 12, 2006 letter, included the agenda materials, from Nevada Division of Forestry Forest Legacy Program Coordinator John Houk. He reviewed the other "FYI" items included in the agenda materials. In response to a question, he provided a status report on the Carson River Aquatic Trail project, and advised that the plan and the map will be presented to the Board of Supervisors in the near future.

MEMBERS' ANNOUNCEMENTS AND REQUESTS FOR INFORMATION - None.

5. FUTURE AGENDA ITEMS - Previously covered.

6. ACTION ON ADJOURNMENT (1-2347) - Member Fischer moved to adjourn the meeting. Member Scott seconded the motion. Motion carried 6-0.

The Minutes of the September 5, 2006 Carson City Open Space Advisory Committee meeting are so approved this 20th day of November, 2006.

STEPHEN D. HARTMAN, Chair