

Monday, November 2, 2009

The regular meeting of the Humboldt County Board of Commissioners was called to order on Monday, November 2, 2009, at 10:00 a.m. in the regular place of meeting at the Courthouse, Winnemucca, Nevada. Those present were Chairman Tom Fransway, Commissioners Chuck Giordano, Dan Cassinelli, Garley Amos Jr. and Mike Bell, Deputy District Attorney Angie Elquist, District Attorney Russell Smith, Administrator Bill Deist and Clerk of the Board Tami Rae Spero.

**DISCUSSION & ACTION ON CORRECTION/APPROVAL OF MINUTES - OCTOBER 5, 2009**

**AND OCTOBER 19, 2009:** Chairman Fransway offered a correction to the October 5, 2009 meeting minutes. The following motion was made by Commissioner Bell and passed unanimously:

*To approve minutes of the October 5, 2009, meeting with the corrections as noted.*

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

*To approve minutes of the October 19, 2009, meeting as presented.*

**PUBLIC COMMENTS:** Chairman Fransway asked for public comments. Jean McCoy addressed the Board noting that she and her family have all written letters to the Commission opposing the proposed Jungo landfill and spoke in opposition to the proposed site and addressed each Commissioner individually as to her opposition. Chairman Fransway asked for any further public comment; none offered.

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

1. Approval and authorize signature on contract with Commnet Wireless, LLC for TV/Communication Department: Administrator Deist stated that this item was being removed from the agenda as legal has not yet finished the review on the contract.
2. Approval of Banking Service Agreement with Wells Fargo and authorize signature: A copy of the agreement was provided to the Board for review. *Recommendation: That the Commission approve the agreement and authorize the Chairman to sign.*

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

*To approve the Consent Agenda as presented with item A1 brought back following legal review.*

**SOLID WASTE MATTERS:** Administrator Deist stated that he had nothing on this item.

**PUBLIC LANDS PLANNING MATTERS & FORMULATION OF COUNTY POSITION ON BLM, FOREST SERVICE AND THE FEDERAL FISH AND WILDLIFE SERVICE PROPOSED**

**ACTIONS:** Administrator Deist stated that he had nothing on this item.

**MISCELLANEOUS REPORTS AND CORRESPONDENCE:**

**OTHER INFORMATION AND UPCOMING MEETINGS:** Administrator Deist noted that the Legislative Committee on Public Lands would be holding a meeting here on Friday and asked that if the Commissioners have any input regarding public lands in Humboldt County that they provide the information to him quickly. Administrator Deist stated that a letter regarding the nomination of land for round eleven of the Southern Nevada Lands Act was provided for the Board's review; he noted the location of the land and asked if the Board would like this matter placed on an agenda for discussion. Administrator Deist continued stating that based on advice from legal counsel the questions received from the Nevada's Against Garbage at the last Commission meeting have not been put on the agenda and will not be until after the appeal of the RPC's action on the conditional use permit and the associated issues have been resolved. Administrator Deist noted that in the past when white goods are brought to the landfill the refrigerant or CFC's must be removed and in the past that has been handled by the Road Department staff, following discussion by the Landfill Committee it is believed the process would work better if contracted out so that will be implemented in the future. Upcoming meetings and date of importance were reviewed. Administrator Deist commented on an e-mail provided to the Commission from Elko County regarding a visit from a delegation from Alaska and inviting this Commission to join them for the meeting or dinner; Administrator Deist asked that if anyone intended to attend to please let him know so that he can RSVP. Chairman Fransway commented on the meeting occurring Friday by the Legislative Committee on Public Lands and his planned presentation. Chairman Fransway and Commissioner Giordano both stated that the matter regarding nomination of land for round eleven of the Southern Nevada Lands Act would need to be agendaized to allow people impacted to be involved.

**REPORTS FROM COMMISSIONERS REGARDING OTHER BOARDS AND COMMITTEES**

**THEY SERVE ON:** Chairman Fransway reported on the SLUPAC meeting he had attended.

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

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

**APPROVAL OF RESOLUTIONS RELATED TO SPEED LIMITS PER HUMBOLDT COUNTY**

**CODE 10.04.060:** Copies of the proposed resolutions were provided to the Board for review. Sheriff Ed Kilgore and Road Superintendent Ben Garrett appeared before the Board.

**WESTMORELAND ROAD FROM GRASS VALLEY ROAD TO COMMANDER:** Sheriff Kilgore spoke in support of the request to reduce the speed limit from 45 m.p.h. to 35 m.p.h. based on safety on the

section of Westmoreland Road from Commander to Grass Valley Road. Discussion occurred regarding the speed limits on the surrounding streets. After discussion the following motion was made by Commissioner Bell and passed unanimously:

*To adopt the resolution to reduce the speed limit from 45 to 35 on Westmoreland from Commander to Grass Valley Road as specified from the Sheriff's Department.*

*(Resolution No. 11-02-09)*

**JUNGO ROAD FROM END OF PAVEMENT TO COUNTY LINE:** *(Deputy District Attorney Angie Elquist left the meeting at 10:22 a.m. and was replaced by District Attorney Russell Smith)* Superintendent Garrett spoke in support of the request to reduce the speed limit from 55 m.p.h. to 45 m.p.h. on Jungo Road from the end of the pavement to the County line; he noted that the speed limit on the pavement portion is 45 m.p.h. and increases to 55 m.p.h. on the gravel portion he noted accidents which have occurred on the gravel portion and flat tire issues. Discussion occurred regarding whether the portion being changed was located within the City limits; Administrator Deist stated that the portion of the road being discussed is in the County. Commissioner Giordano noted that the reason this speed limit was raised previously was because that section was being very well maintained by the mine at the time and they had made the request but it is not maintained at the same level now so it would be consistent to go back to the speed limit which is consistent with the rest of it. Commissioner Bell commented on his experience with the road conditions. Sheriff Kilgore stated his support for the change. The following motion was made by Commissioner Giordano and passed unanimously:

*To adopt the resolution as presented.*

*(Resolution No. 11-02-09a)*

**PLANNING MATTERS:** Betty Lawrence, Senior Planning Technician for the Planning Department, appeared before the Board.

**PUBLIC HEARING ON RH-09-04 - A zone change request submitted by Conn Davis as agent for Vern and Owen Brinkerhoff to rezone 1.26 acres of property from RR-1.25 (Rural Ranchette 1.25 acre minimum lot size) District to NC-R (Neighborhood Commercial/Rural District). Property is located along Grass Valley Road; APN #13-481-06:** Provided to the Board for review was a copy of the application with a map, a copy of the Staff Report recommending approval and a copy of the Notice of Public Hearing. Chairman Fransway read the title of the item set to public hearing. Mrs. Lawrence reviewed the application and recommended approval. Chairman Fransway asked if the re-zone fits with the current master plan for the area. Mrs. Lawrence stated it did. Discussion occurred regarding the location of the property and the

reason for the rezone. Chairman Fransway noted that neither the applicant nor a representative was present for the hearing. Chairman Fransway asked for public comment; none offered. The following motion was made by Commissioner Amos and passed unanimously:

*To approve a rezone request on RH-09-04.*

*(Ordinance No. 11-02-09)*

**LP-09-05 - A final map approval for a division of land into large parcel map submitted by Desert Mountain Surveying as agent for Moana Investment, LLC to divide property into 4 lots of approximately 1 @ 164.17 +/-, 1 @ 165.31 acres +/-, 1 @ 166.45 acres +/- and 1 @ 167.59 acres +/-.**  
**Property is located approximately 2 +/- miles north of Jungo Road and 8 +/- miles northeast of Pronto.**  
**Section 9, T36N, R36E, M.D.B. and M., Humboldt County, Nevada. APN #05-361-10:**

A copy of the application with maps and a copy of the memorandum and Staff Report recommending approval were provided to the Board for review. John H. Milton III of Desert Mountain Surveying appeared on behalf of the applicant. Mr. Milton reviewed the location of the property and noted that the road access, mineral lease and conditional use permit language were all noticed on the map. The following motion was made by Commissioner Cassinelli and passed unanimously:

*To approve LP-09-05.*

**ROAD MATTERS:** Road Superintendent Ben Garrett appeared before the Board.

**APPROVAL TO HAVE MILLER LOOP SURVEYED:** Superintendent Garrett noted that at a previous meeting issues with the right-of-way for the fencing project on Shelton Lane had been noted for the Board; he discussed issues with the easements and the locations of the right-of-ways that will be fenced; he requested approval to have the right-of-way on Shelton and the right-of-way in front of Fred Miller's property surveyed at an estimated cost of \$1,200.00 and a time frame of approximately two weeks. Administrator Deist suggested that while surveyors are in the area that the County have the area referred to as "Miller Loop" surveyed as there will be a need to redo the abandonment as there are some mistakes in the original document and by having the area surveyed it will confirm on whose property the roads lay. After discussion the following motion was made by Commissioner Cassinelli and passed unanimously:

*To approve the survey of the entire Miller Loop.*

Superintendent Garrett noted that the cost would be increased if the entire area is surveyed. Commissioner Cassinelli agreed but noted that it needed to be done.

**PURCHASE OF EQUIPMENT FROM WASHOE COUNTY:** Provided to the Board was a copy of a memo from Road Superintendent Garrett detailing the request (see attached). Superintendent Garrett

reviewed the memo for the Board noting that the cost of the trucks and plows had increased from an original estimate of \$6,300 to \$7,000 each to \$12,700 each; he noted that he had checked the value on auction and the amounts are still lower than the auction price would be. Superintendent Garrett reviewed the current status of the vehicles in the County's fleet, the amount paid by insurance on the wrecked plow and noted that two graders are set to go to auction; he requested approval to continue to pursue the purchase of the same vehicles approved in August at the new cost. Commissioner Cassinelli stated he was fine with it as long as the price does not go up any more. The following motion was made by Commissioner Cassinelli and passed unanimously:

*To grant the Road Foreman's request to purchase these trucks at the new price of \$12,700.00 for two 1995 Internationals and the 94 and 96 International trucks at \$12,700.00 a piece.*

Commissioner Giordano asked if the motor had been gone through on the 95 truck with the 7000 hours. Superintendent Garrett stated both the 95's had been gone through. Discussion occurred regarding transmission issues.

**REQUEST FROM KEVIN LEE, NDOT DISTRICT ENGINEER, TO DISCUSS APPROACH ROAD PERMITS BEING IN HUMBOLDT COUNTY'S NAME:**

Provided to the Board for review was a letter from Mr. Lee regarding the request (see attached). Kevin Lee NDOT District Engineer and Dave Lindeman, Assistant NDOT District Engineer appeared before the Board. Mr. Lee stated that as noted in his letter it had come to his attention that there were a few roads out there that are maintained by the County but the actual permit is in someone else's name such as the developer; he stated he would like to get that straightened out. Mr. Lee continued noting another discussion, which had come up, is in the future if there are developments out there that are truly going to be public roadways, that the County consider those up front so then the paperwork does not have to be worried about years later as is currently occurring; he noted the work can be put on the developer up front and that is occurring in other Counties and Cities currently. Chairman Fransway asked if the County holds the permit for the access will the County be held responsible for the maintenance from then on even though the encroachment and the permit are on NDOT right-of-way. Mr. Lee responded that the access permit states that whomever holds the permit is the responsible party; he discussed that the developer should be required to do the improvements up front but noted that land use changes can affect it but the entity should then have the approval or disapproval process in the zoning requirements. Discussion occurred regarding what the developer would be responsible for, how the County would recoup its costs, how other Counties handle it, what NDOT's requirements are, who would be

responsible for maintenance of turn lanes and the approaches and that the permit holder would be responsible but that does not happen under the access management manual systems & standards currently in place. Commissioner Giordano asked for clarification on the maintenance issue. Mr. Lee stated the actual turn lane would fall under NDOT's maintenance but once the turn is made the approach maintenance falls to the permit holder. Chairman Fransway noted that the people using the accesses pay County fuel tax and that may be an argument for the County to have the approaches in their name as long as the County is not responsible for the turn lanes and the travel area in the highway itself, just the approach; he continued that before any legal agreement could be entered into it would need to be on paper. Mr. Lee reviewed what other Counties do. Commissioner Bell asked if this would help with the Mallory situation. Mr. Lee stated no that in concept it would help in the future but it would not solve things from the past. Chairman Fransway suggested that NDOT draw something up on paper which details everyone's responsibilities and bring it before the Commission; he noted there would be questions on right-of-ways and that this would only apply to County maintained roads. Mr. Lee agreed that it needs to start somewhere; he noted that the only ones he is aware of are on US 95 north of town and they would have to be looked at on a case by case basis. Administrator Deist stated that if Mr. Lee would get the legal work to him he would review it at the staff level and forward it to the District Attorney for legal review and then it can be scheduled before the Commission. Chairman Fransway stated that a motion is not needed on this item, that the Board has consensus that NDOT needs to work with staff to develop something to bring back before the Commission.

**REQUEST FROM MR. AND MRS. MALLORY TO CONTINUE DISCUSSION OF REOPENING**

**BRUCE DRIVE:** Kevin Lee, NDOT District Engineer and Dave Lindeman, Assistant NDOT District Engineer appeared before the Board. Cleve and Delores Mallory appeared before the Board. Chairman Fransway reviewed what had occurred regarding this matter previously; he noted that the request was for the County to reopen Bruce Drive and he reiterated that the County does not have jurisdiction to reopen the approach the jurisdiction belongs to NDOT; he noted that at a previous meeting the Mallory's had been asked to resubmit an application for an encroachment permit to NDOT; he asked if that had occurred. Mr. Lindeman reviewed the application submitted by the Mallory's noting that section two was blank; he stated that Mr. Mallory had indicated that what would be entered on the application would be discussed at this meeting but that as it stands currently the application would be denied. Chairman Fransway asked the Mallory's why the application was incomplete. Mr. Mallory responded that at the first meeting the Commission had told Mr. Lindeman to put the cattle guard back in and put the approach back in and the details would be worked out later which Mr. Lindeman did not do; he continued stating that he did not feel that he should have to sign for the approach because it was Jim Delaney's approach, that Delaney was

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responsible for the upgrades and everything which needed to be done but for some reason the Commission allowed Mr. Delaney to drop his responsibilities on this approach and now the Commission feels that they (the Mallory's) should take it up and he does not understand that as they just bought property from Delaney, they did not take over the approach as it has nothing to do with their property except that it border lines their property; he again questioned why they should be required to take on the responsibility. Chairman Fransway commented on notifications sent to Mr. Delaney from NDOT stating their intent to close Bruce Drive unless some improvements were made to the approach, the decision by Mr. Delaney not to make the improvements and his awareness of the closure, the opening of a commercial establishment by the Mallory's on Bruce Drive which changed the use of the road and changed the requirements of the encroachment. Mr. Lindeman concurred stating that the Delaney permit was only for residential and the change to a commercial use changed the approach requirements. Chairman Fransway continued stating that since that time the Mallory's have requested that the Commission reopen Bruce Drive which the Commission cannot do and NDOT has required a study and probably at least a right-hand turn lane. Mr. Lindeman concurred noting NDOT's policy. Commissioner Bell asked if a reduction in speed in the area would help. Mr. Lee explained how NDOT determines speeds and said they cannot just go out and reduce the speed; he said that he was not saying whether it would help or not, it is just not the procedure; he said a speed study would need to be done and that could be done if the Commission requested it. Commissioner Bell noted the area is highly recreated with the sand dunes and there is a lot of traffic, so 70 m.p.h. versus 55 m.p.h. could make a difference when you have traffic turning into the sand dunes; he noted that there have been some incidents out there and questioned if regardless of what is done here if that might not be a bad way to go as it may help mitigate some issues with safety. Commissioner Cassinelli questioned if it would noting that it made sense but he is not sure it would help, if people would actually slow down. Commissioner Bell stated a turn lane would definitely help. Commissioner Giordano noted that over the past month with the construction and the 55 m.p.h. speed limit in place, people were still doing 70 m.p.h.; he stated that it would be a hard one to enforce. Commissioner Amos stated that a business opens up out there and then their access road is closed and he would like to see business owners and the state get together and take care of this situation as it is an NDOT road and it is a shame to see the access to the business shut down and it is not being very conducive for inviting other businesses to the County, the County should try and help as the County is looking for businesses and he would like to see something done in a positive manner. Chairman Fransway agreed but stated that the number one priority is the safety of the traveling public, so as the Mallory's started a business they need to do what is necessary to have access into that property, so what needs to be done is what was

previously asked which was to have the Mallorys submit an official complete application for the permit and as that has not been done he suggested the item be stopped until that is done. Mr. Lee noted for the Commission that the Mallorys had also been told that they could apply for a permit for access onto their property. Mr. Mallory asked why Delaney was not held responsible for this as he put the development in to make the upgrades. Chairman Fransway commented on the development by Delaney and Lambert years ago but noted that going back to the past won't do anything, the present needs to be dealt with; he stated he wanted it brought back with a qualified application and asked Mr. Lindeman to notify staff when a bonafide application is received and the matter will be brought back before the Commission. Mrs. Mallory asked why the Commission is picking on them, why not get the house next door to apply for the permit; she noted that it was already in Delaney's name, with permission given by the Commission to the development, they changed the use of it when they commercialized that property before he sold it to them as commercial property and now it is falling back on them when it should be either Delaney or the County because Delaney changed the use of it when he turned it into commercial property. Chairman Fransway again asked that an application be brought back before the Commission and it would be discussed further at that time noting that unless a Commissioner disagrees with him that is the way it would be handled; he noted that Mr. Lee might have to return. Mr. Lee stated he would. Chairman Fransway asked that we work together and get this thing resolved.

**REPORT OF PENDING ROAD DEPARTMENT PROJECTS:** Superintendent Garrett updated the Board on the status of the stimulus fund project including administrative processes and time frames and discussed the try out of carbine blades, the status of road grading and cattle guard repairs.

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

**PROPOSED FINDING BASED ON APPEAL OF VOTE, DECISION AND FINDINGS BY THE HUMBOLDT COUNTY REGIONAL PLANNING COMMISSION REGARDING REVOCATION OF CONDITIONAL USE PERMIT #UH-07-05 OF JUNGO LAND AND INVESTMENTS, INC:**

Provided to the Board for review were a copy of an Appeal of Vote, Decision, and Findings by the Humboldt County Regional Planning Commission Regarding Conditional Use Permit UH-07-05 with attached exhibits filed by Robert E. Dolan and Massey K. Mayo on October 14, 2009, a copy of the Regional Planning Commission's Findings Based on Petitions Requesting Revocation of Conditional Use Permit #UH-07-05 of Jungo Land & Investment, Inc., a copy of correspondence from John Frankovich of McDonald-Carano-Wilson LLP representing Jungo Land & Investment Inc., regarding their request to dismiss appeal of Planning Commission's October 8, 2009 vote on CUP UH-07-05 and a copy of the proposed Humboldt County Board of Commissioners' Findings Based on Appeal of Vote, Decision and Findings by the



Humboldt County Regional Planning Commission Regarding Revocation of Conditional Use Permit #UH-07-05 of Jungo Land & Investments, Inc. Respondent John Frankovich of McDonald-Carano-Wilson representing Jungo Land & Investments Inc. appeared before the Board. Chairman Fransway stated that the first thing would be to address a request from Jungo Land & Investments that the Chair recuse himself from these proceedings. Mr. Frankovich addressed the Board detailing his request stating that the respondents believe that they are entitled to a fair and impartial hearing on this appeal and all matters related thereto and with all due respect to Commissioner Fransway they believe his actions and statements have clearly indicated that he is not able to fairly and impartially consider this appeal. Mr. Frankovich noted numerous statements on the record which indicated Commissioner Fransway's opposition to the project, Commissioner Fransway's efforts to solicit other members of the Commission to state their position on the record which they have not done officially because they have not had anything before them and Commissioner Fransway's appearance at the public hearing conducted by NDEP at which he had encouraged them not to issue the air quality permit for the project. Mr. Frankovich continued stating his understanding that Commissioner Fransway has enlisted friends and other residents of Winnemucca to appear and oppose this project and that he has contacted Senator Harry Reid to initiate a federal process to oppose this project, all of which leads the respondent to believe that it would be very difficult to have a fair and impartial hearing with Commissioner Fransway participating. Chairman Fransway responded stating that he has never asked anyone to come before this Board and oppose anything to anyone at anytime nor has he contacted Senator Reid's Office; he continued stating that as far as his statements in opposition and his statement that he would do anything to stop the project, his comment was that he would do anything that he could find legally to stop the project; he stated that he is not biased and he is not prejudiced that they say he is biased and prejudiced, that he says that he has an opinion and his opinion is based on fact and his constituents have the right to know what his opinion is as he is a duly elected member of this Board, he will not voluntarily step aside so that Recology can stack the deck. Chairman Fransway asked for legal advice from District Attorney Smith. District Attorney Smith stated that the legal opinion which has been determined by his office following research is that the Chairman may sit and do this vote at this time and that there is nothing that would require the Chairman to recuse himself from this matter. Commissioner Giordano stated that as long as the legal opinion was that it is not a problem, he is fine with the Chairman continuing. Chairman Fransway informed Mr. Frankovich that he would remain as Chair. Mr. Frankovich stated he respected the opinion. Chairman Fransway detailed the purpose of the hearing today referring to the appeal filed by Mr. Dolan of the Regional Planning Commission's granting of a conditional use permit and the RPC's decision not to hold a hearing

of revocation based on certain facts; he set forth the procedure for today's hearing. Discussion occurred regarding time limits on testimony; Chairman Fransway stated that he would not set a time limit and that any comments received would need to be relevant to the issue today, the appeal. Appellants, Robert E. Dolan and Massey K. Mayo appeared before the Board. Mr. Dolan addressed the proposed findings of the Board of Commissioners and directed his comments to item number two of the findings regarding the RPC not abusing their discretion when it found that there were no misrepresentations made by Jungo regarding their CUP; he detailed information regarding misrepresentation of facts by the applicant in the CUP application and offered his opinion that as a result of the fraud allegations this Board has the inherent power to review the application de novo, review and revoke the conditional use permit or to remand the matter back to the Regional Planning Commission with instructions for them to conduct an evidentiary hearing on the issues of fact asserted by Jungo to see if evidence exists to support the assertions; he discussed the proposed findings regarding standing as persons of interest and standing as aggrieved parties; he continued to discuss issues with the findings made by the RPC including the requirement of the CUP for an annual review. Chairman Fransway noted the biggest issue with the annual review on CUPs, medical variance and the like is that Humboldt County has no enforcement arm at this time. Ms. Massey commented on the need and requirement for the review process and the powers of the governing bodies regarding the issue; she continued regarding the specific need for a review with the landfill matter and the lack of dialog and evidence at the hearing before the RPC; she stated that the Regional Planning Commission abused their discretion in indicating that there was sufficient evidence to state that the Jungo Land has not made any misrepresentations, there was a misrepresentation made. Upon a question from Commissioner Amos, Ms. Mayo stated that the misrepresentation was when the question was asked "Will the use effect abutting properties or the uses permitted thereon?" and Jungo Land's answer in the CUP application was "no effect on abutting properties." Mr. Dolan commented on the response stating that if it had been genuine the response would have been "yes there is an effect on abutting properties but in our opinion said effect is consistent with State, Federal and local law"; he continued that it was an absolute expression of fact, it was not conditioned, therefore he asserted that it was an intentional misrepresentation of fact especially when the applicants presented themselves as being experienced and knowledgeable in the landfill management area; he continued stating that as he had argued that no fact that is sought by the government in this application process or others is immaterial and because the government is allowed to rely on the assertions made by the application then the government is allowed to revoke the previous grant of license or permit if the governmental entity determines that there was a material misrepresentation of fact in the application; he noted that the questions raised in the petition have never been addressed at the RPC level as it was changed

from the "effect" to an "adverse effect" which is not how the application was worded. Mr. Dolan discussed the number of signatures gained on the petition in opposition of the landfill. Responding to a comment by Chairman Fransway, District Attorney Smith stated that this Board is not serving in a quasi-judicial manner as there are legal requirements under Nevada law which are not being followed. Chairman Fransway commented that the most egregious misrepresentation was the fact that the RPC in the SCUP application was led to believe that the facility would be on one section of land, APN #05-411-07 and after the CUP was granted Jungo Land came before the County Commission and the Landfill Committee and said that they had three other sections of land that they either owned or were working on acquiring in some fashion; he stated that is a misrepresentation which warrants further review and questioned what the other three sections of land would be used for. Chairman Fransway stated that he was not going to go to the question of whether it was meant to mislead just that it was a misrepresentation and that if the RPC would have had that information they may have made a different decision or not. Mr. Dolan commented on the Commission's power to act as governed by NRS to protect the health, safety and welfare of the citizens of Nevada and Humboldt County and on his opinion that the Board's review is not limited to what the appellant's have presented. Commissioner Cassinelli stated his understanding that the permit was only issued on one piece of land and that it is not the Commission's business if they want to own other property. Chairman Fransway disagreed stating that it is when it comes to a CUP with the possibility that they could expand their operations onto the other pieces of land. Commissioner Amos stated that he thought Chairman Fransway was out of line and the hearing should continue. Chairman Fransway stated that he was not out of line, that he was stating why he feels that there was a misrepresentation. Commissioner Amos stated that it was not the time for Commissioners to make their statements. Mr. Dolan continued and commented on testimony given at the RPC meeting when the CUP was approved regarding the reliance on the strict regulatory environment in California for monitoring of the waste; he noted that in the petition he discusses the fact that the California State agency that regulated the behavior no longer exists come January 2010, it has been replaced by a new agency with substantially less regulatory powers and notes that is a material change of circumstances. Chairman Fransway questioned Mr. Dolan on the timing of the decision to replace the California State agency and noted that as the decision was made after the CUP was granted that would not be a misrepresentation of fact. Mr. Dolan agreed and stated that it was a material change in circumstances which allows for, upon an annual review of the CUP by the bodies in Humboldt County, modification or adjustment of the CUP. Mr. Dolan continued and asked that the CUP acceptance form be reviewed as it is not signed by Jungo Land, it is signed by an individual by the name of Don Gambolin and in the CUP application he

represents himself as doing business as. Mr. Dolan stated that there is no D.B.A. in the records of Humboldt County and there never was and that to this day Jungo Land has not properly signed the acceptance form and under the conditions of the CUP it is not effective until the applicant signs. Commissioner Giordano asked Mr. Dolan how far out he is going in abutting property. Mr. Dolan stated he interpreted it to be adjoining and discussed the location of the property and his activities in the area. Commissioner Giordano asked how much of the abutting property is privately owned and how much is BLM. Mr. Dolan noted that the BLM land is available for use by the public and that land abuts/adjoins the property; he discussed the difference between abutting and adjoining.

Mr. Frankovich appeared before the Board. Mr. Frankovich noted that he has not seen the proposed findings by this Commission and so cannot say if he agrees or disagrees with them; he stated that based on the County's own ordinances the matter before the Board today is a very limited issue, it is not a review of the project, it is not even a review of the appeal, the question before the Board today is whether a public hearing should be set to review the RPC's decision not to hold a public hearing on the petitions filed by Mr. Dolan; he commented on the fact that this is an unusual proceeding as the entire process including the petitions and appeal are not authorized by any local or state law, that the issues raised by Mr. Dolan do not matter as the decision, the approval of the CUP in 2007, pursuant to the County's own ordinances became final when it was not appealed and you cannot revisit that final decision two and a half years later as that is when property rights start attaching; he continued stated that the only basis, subsequent to the issuance and finalization of a CUP, for which it can be revoked is if there is a violation which is what the annual review is for. Mr. Frankovich stated that this project is not at that point, as the project has not been built yet and you cannot violate conditions before you put the project in place; he stated that the only claim in the petition that even links to any of the conditions is number nine which states that there has to be no interference with the peace and contentment and general welfare of the area which is a standard condition which is put on all Humboldt County CUPs and that cannot be determined now as there is nothing out there so it is premature; he noted that the project is still under review by NDEP and it is unknown what additional conditions they may put on the project. Mr. Frankovich stated that while Humboldt County's legal counsel has stated that there is standing for Mr. Dolan to present this appeal, he is not going to go into those issues but he does not think that Mr. Dolan can claim that there is impact on property that he does own, it has been established that this property is surrounded by property which is owned by the BLM who were noticed, who have not complained and had a representative at the RPC meeting. Mr. Frankovich discussed the authority of the County Commission per County ordinance on an appeal of a CUP; he offered an opinion that if the County Commission allows this process to continue that they are compromising and undermining the planning

process in Humboldt County. Mr. Frankovich addressed the comments of Chairman Fransway about the most egregious misrepresentation, stating that the facts on the record are very clean that Jungo Land has an option on four sections, they have not bought any of them yet but optioned to determine which one is most suitable, they got a special use permit on one of them, only one, and they can build that facility on that one parcel that they got approval on if they get approval from NDEP, the fact that the company may have options on other properties in Humboldt County is totally irrelevant to this process. Chairman Fransway responded to Mr. Frankovich and referred to the August 3, 2009, minutes of the County Commission which referenced four sections of land being owned by the company with one section designated for the landfill and offered the concern that at some date in the future the company will use those other sections to put garbage on. District Attorney Smith interjected and stated that this is totally outside the scope of what the Board is here for today and stated that he does not believe the Board has the authority to ask someone to disclose what they have intentions for on properties that aren't before the Board. Commissioner Cassinelli asked if the company would have to go back before the Planning Commission to obtain another CUP if they wanted to do anything on the other pieces of property. District Attorney Smith stated that is correct. Chairman Fransway stated not necessarily as they already have a conditional use permit and there is nothing in the conditional use permit or the stipulations of the conditions that says that if they acquire more property they have to go before the RPC. Administrator Deist stated that the conditional use permit is for one section of ground, if they wanted to move to another piece of ground they must come back for another conditional use permit as this CUP only covers this section not any others. Chairman Fransway asked why it was not disclosed at the April 2007 meeting that there were other properties out there. Mr. Frankovich stated he did not know why it was not disclosed but he does not believe it was an issue. Chairman Fransway voiced concerns about the ability of Jungo Land to put the proposed amount of waste on one section of land. Mr. Frankovich stated if they can't, they can't and noted that the amount of waste proposed had been decreased by the State; discussion occurred regarding the amount reduced.

Chairman Fransway asked if anyone else would like to give testimony pertinent to what is being heard today. Jim French, a 27-year resident of Humboldt County, offered comments relative to points of appeal that are offered with this action being proposed today; he commented on the potential effects on the State's groundwater noting requirements set forth by NDEP for a class I landfill location in relation to surface water and static water levels and issues with the water depth set forth in the applicants own documents, issues with the water aquifers, issues with the accuracy of the applicants statements regarding air quality presented to the RPC and issues with NDOW not being involved in the process relative to the