The Honorable Board of Supervisors of Siskiyou County, California, met in regular session this 15th day of November 2016; there being present Supervisors Grace Bennett, Brandon Criss, Michael N. Kobseff, Ed Valenzuela and Ray A. Haupt, County Administrator Terry Barber, Interim County Counsel James M. Underwood and County Clerk and ex-Officio Clerk of the Board of Supervisors Colleen Setzer by Deputy County Clerk Wendy Winningham.

The meeting was called to order by Chair Bennett. Pursuant to AB23, the Clerk announced that the Board members receive no additional compensation for sitting as members of the County Service Area #4. Supervisor Criss led in the salute to the flag of the United States of America.

CLOSED SESSION - Conference with legal counsel, existing litigation pursuant to Government Code §54956.9(d)(1), seven cases, commenced at 8:30a.m., concluded at 10:07a.m., with no action taken.

REPORT ON CLOSED SESSION

Interim County Counsel James M. Underwood advised that closed session concluded at 10:07a.m., with no reportable action taken.

INVOCATION - Chaplain Paul Leeman provided the invocation.

CONSENT AGENDA – Approved.

It was moved by Supervisor Valenzuela, seconded by Supervisor Kobseff and unanimously carried, that the following consent agenda is approved, and the Chair and/or clerk authorized to execute/record any necessary documents:

AUDITOR-CONTROLLER
   Authorize the Auditor-Controller to make the necessary budget appropriations for the Fiscal Year 15/16 per the attached spreadsheet.

COMMUNITY DEVELOPMENT - PLANNING DIVISION
   Approve the hiring of Britt Dveris, as Senior Planner, at Step 3 of the salary schedule, effective January 15, 2017.

COMMUNITY DEVELOPMENT - PLANNING DIVISION
   Approve the increase and new scope of work for the ICF Jones & Stokes, Inc. contract, increasing the not to exceed for 16/17 to $132,049 and authorize the Auditor to make budget changes as necessary.

COUNTY ADMINISTRATOR
   Approve the Air Methods Corporation/Mercy Air Services, Inc. (DBA Lifenet Siskiyou) air ambulance application.

COUNTY ADMINISTRATOR
   Adopt Resolution 16-238 honoring Roger Zwanziger for his commitment and dedication and for his contributions to the County of Siskiyou on the occasion of his passing.

COUNTY COUNSEL
   Approve with the Chair to sign seventeenth addendum to the professional services retention agreement with Best Best & Krieger, LLP, to increase the compensation payable under the contract for $10,000 to an amount not to exceed $571,000. Continued……
CONSENT AGENDA – (continued)

COUNTY COUNSEL
Approve with the Chair to sign tenth addendum to the professional services retention agreement between the County of Siskiyou and Nossaman LLP, to increase the compensation payable under the contract for $20,000 to an amount not to exceed $135,000.

GENERAL SERVICES - AIRPORTS
Authorize the Auditor-Controller to execute all documents and authorize staff to submit documents to Caltrans Aeronautics for California Aid to Airports Program.

HEALTH AND HUMAN SERVICES - BEHAVIORAL HEALTH DIVISION
Approve contract with Butte Valley Family Resource Center for $45,000 from July 1, 2016 through June 30, 2017 to provide prevention services in the Butte Valley area.

HEALTH AND HUMAN SERVICES - BEHAVIORAL HEALTH DIVISION
Approve contract with the Yreka Community Resource Center for $135,000 from July 1, 2016 through June 30, 2016 to oversee prevention services in the Yreka, Montague and Dunsmuir Resource Centers.

HEALTH AND HUMAN SERVICES - BEHAVIORAL HEALTH DIVISION
Approve with the Chair to sign the first addendum to contract for service between the County Health and Human Services Agency, Behavioral Health Division and Grenada Gardens Senior Living LLC.

HEALTH AND HUMAN SERVICES - PUBLIC HEALTH DIVISION
Approve overtime pay for Shelly Davis, RN indefinitely for time spent after hours providing patient care in the Jail and approve her appointment, up to Step 3 of the Director of Public Health Division range, effective November 20, 2016.

PERSONNEL/HEALTH AND HUMAN SERVICES - PUBLIC HEALTH DIVISION
Approve the hiring of Kara Gardner as Correctional Nurse, Step 3, effective November 20, 2016.

PERSONNEL/PUBLIC DEFENDER
Approve the hiring of Margaret Weems as Attorney III, at Step 3, effective November 6, 2016.

TRANSFER OF FUNDS - County Counsel/Flood Control District - $10,000. Resolution 16-239 adopted.


PRESENTATIONS FROM THE PUBLIC
Yreka Friends of the Library representative Mary Ann Hotek congratulated Supervisor Bennett on her upcoming retirement, thanked her for her service to the County and City of Yreka and presented Supervisor Bennett with the digitally restored 1887 J.M. Davidson map of Siskiyou County.
COUNTY CLERK - Discussion, direction and possible action re appointments to various Special Districts
In Lieu of Election for persons who filed Declarations of Candidacy and other qualified appointees for terms outlined in the Certificate of Facts. Various appointments in lieu of election made to Tennant Community Services District, Happy Camp Community Services District and Weed Recreation and Parks District. Appointments in lieu of election for Happy Camp Community Services District and Mt. Shasta Fire Protection District continued to November 17, 2016.

County Clerk Colleen Setzer provided an overview of the request, advising of the various vacancies on the Tennant and Happy Camp Community Services Districts, Mt. Shasta Fire Protection District and Weed Recreation and Parks District. Ms. Setzer further advised of the incumbent district officers who filed Declarations of Candidacy and the additional positions needing to be filled.

With regard to Tennant Community Services District, Ms. Setzer advised that three full term positions were available and that incumbents Marie Wear, Robyn Conwell and Stephen Adams had filed Declarations of Candidacy.

It was moved by Supervisor Criss, seconded by Supervisor Kobseff and unanimously carried to appoint in lieu of election Marie Wear, Robyn Conwell and Stephen Adams to the Tennant Community Services District, for four-year terms beginning December 2, 2016, through December 4, 2020.

With regard to Happy Camp Community Services District, Ms. Setzer advised that three full term positions were available and that incumbents Gary A. Hahn and Kathleen M. Toland had filed Declarations of Candidacy.

It was moved by Supervisor Haupt, seconded by Supervisor Bennett and unanimously carried to appoint in lieu of election Gary Hahn and Kathleen M. Toland to the Happy Camp Community Services District, for four-year terms beginning December 2, 2016, through December 4, 2020.

At Supervisor Haupt’s request, the third vacancy on the Happy Camp Community Services District was continued to November 17, 2016.

With regard to the Mt. Shasta Fire Protection District, Ms. Setzer advised that two full term positions were available and that no one had filed a Declaration of Candidacy.

Following discussion between Supervisor Valenzuela, Ms. Setzer and Deputy County Clerk Wendy Winningham regarding one letter of interest that was received by the Clerk’s Office and the deadline for appointing in lieu of election, Supervisor Valenzuela requested continuation of the Mt. Shasta Fire Protection District appointments in lieu to the Board’s special meeting being held on November 17, 2016.

With regard to Weed Recreation and Parks District, Ms. Setzer advised that two full term positions were available and that incumbent Martin Nicholas had filed a Declaration of Candidacy. In addition, Ms. Setzer advised of receiving two letters of interest from Weed residents Evelyn Smith and Katie Benson, who were both eligible to serve.

It was moved by Supervisor Kobseff, seconded by Supervisor Valenzuela and unanimously carried to appoint in lieu of election Martin Nicholas and Evelyn Smith to the Weed Recreation and Parks District, for four-year terms beginning December 2, 2016, through December 4, 2020.

Ms. Setzer provided a brief update regarding the Clerk’s process for finalizing the November 8, 2016 Presidential General Election, advising of an approximate 73% voter turnout.
Interim County Counsel James M. Underwood provided a brief overview of the request and introduced Nossaman LLP law firm representatives Paul Weiland and Ashley Remillard who distributed a 15-page powerpoint presentation entitled Dam Removal: An overview of the issues.

Mr. Weiland presented the powerpoint, including an overview of the location of the Klamath River hydroelectric project facilities, a timeline of the Klamath Project (beginning in 1906 with the Bureau of Reclamation for agriculture water supply development and the timeline associated with development of hydroelectric power generation facilities. Mr. Weiland continued the powerpoint, including an overview and timeline associated with increasing regulations that have impacted the supply of water in the Klamath River system, the negative impacts to agricultural water supply associated with a fish die off in the early 2000’s and the increasing difficulties faced by PacifiCorp to manage the hydroelectric facilities. Mr. Weiland provided an overview of the timeline associated with dam removal efforts, including development of the Klamath Basin Reclamation Agreement (KBRA) and Klamath Hydroelectric Settlement Agreement (KHSA), and development of associated environmental impact reports/studies.

Mr. Weiland continued the powerpoint, including an overview of the various analyses to support dam removal (i.e. biological assessment, Klamath facilities removal environmental impact statement/report) and the availability of those analyses/documents, and an overview of the dam removal concept, which includes the United States, the States of California and Oregon, California and Oregon’s Public Utilities Commissions, PacifiCorp and a non-profit Dam Removal Entity (DRE) corporation. Mr. Weiland summarized the anticipated dam removal costs, including the contributions that would come from PacifiCorp ratepayers and the State of California, advising of the unknowns related to the DRE’s ability to take on the task of dam removal.

Continuing the powerpoint, Mr. Weiland provided an overview of the various impacts of dam removal that would not be mitigated, including short-term decrease in downstream water quality (increased suspended sediments and decreased dissolved oxygen), short-term impacts to salmon habitat and scenic resources, decreased reservoir recreation and property tax value and associated tax revenue. Mr. Weiland provided an overview of key steps that would be taken prior to dam removal, including transfer of the hydroelectric facility license from PacifiCorp to the DRE, surrender of the license from the DRE to the Federal Energy Regulatory Commission (FERC), preparation of various environmental documents, and issuance of various water quality permits by the State of California, Regional Water Boards and Department of Fish and Wildlife.

In response to Supervisor Bennett, Mr. Weiland advised of the anticipated opportunities and associated timelines for the public and the County to comment regarding the upcoming dam removal process.

Discussion followed between members of the Board and Mr. Weiland regarding the timelines/processes associated with environmental analysis, concerns regarding the anticipated timing of surrender of the hydroelectric facility license to FERC before the license is transferred from PacifiCorp to the DRE, the need for consultation with local Native American tribes regarding potential dam removal and with the US Fish and Wildlife Service regarding certain bird species and the anticipated National Environmental Protection Act (NEPA) and California Environmental Quality Act (CEQA) processes.

Shasta Nation representative Betty Hall spoke in opposition to dam removal efforts, sharing various concerns related to the lack of salmon in the upper reaches of the Klamath and the potential negative impact of dam removal on Shasta Nation historical burial/village sites.

Local rancher and Siskiyou County Water Users Association representative Richard Marshall spoke in opposition to dam removal and suggested the use of the 1957 Klamath Compact, also known as the Law of the River, in addressing dam removal efforts.

Continued........
Local resident Bob Rice shared concerns regarding dam removal, including the potential negative impacts of dam removal to the Klamath River’s water supply/flow and degradation of water quality, the need to address increasing salmon population at the ocean and the need for NEPA to address the entire Klamath River system, not only the portion nearby the dams to be removed.

In response to Chair Bennett, Assessor-Recorder Mike Mallory summarized the estimated value of the hydroelectric facilities on the County’s tax roll and the potential 40-60% loss in value with the removal of the hydroelectric facilities/dams and shared concerns regarding the unknowns related to the value of property under the water (above Copco and Iron gate dams).

Discussion followed between members of the Board and Mr. Mallory regarding the previous process and associated estimates of property values following dam removal conducted by the US Department of the Interior, ongoing and potential negative impacts to the property owners living near/around the dams and potential negative impacts of reduced tax revenue on the Hornbrook school district.

Further discussion followed, including Ms. Remillard regarding the potential and unknown negative impacts associated with utilizing the yet to be created DRE and the various benefits associated with the dams remaining in place.

COUNTY ADMINISTRATOR - Discussion, direction and possible action re Resolution consenting to inclusion of properties within the County's unincorporated area in the California HERO Program to finance distributed generation renewable energy sources, energy and water efficiency improvements and electric vehicle charging infrastructure and approving the amendment to a certain Joint Powers Agreement related thereto. Resolution 16-242 adopted.

County Administrator Terry Barber introduced HERO Program Market Development Manager Robert Bendorf who provided an overview of the request to adopt a Resolution to allow residents of the unincorporated areas of the County to participate in the HERO Program. Mr. Bendorf advised that the cities of Yreka, Weed, Dorris, Mt. Shasta and Dunsmuir were participants of the Program which would allow homeowners to finance certain energy and water efficiency improvements to be installed on their property.

In response to Supervisor Haupt, Mr. Bendorf summarized the process related to the voluntary financing of home improvements based on the property owners’ equity and the process for the assessment (lien) to be paid through the County’s Tax Collector’s Office.

It was moved by Supervisor Kobseff and seconded by Supervisor Valenzuela to approve the request and adopt the Resolution.

Following further discussion between members of the Board, Mr. Bendorf and Treasurer-Tax Collector Wayne Hammar regarding the fixed rate available to homeowners, the HERO Program’s focus on residential properties versus commercial, the Property Assessed Clean Energy (PACE) financing process and the typical timeframes associated with the loan and repayment, Supervisor Kobseff called for the question.

The motion to adopt Resolution 16-242 consenting to inclusion of properties within the County's unincorporated area in the California HERO Program to finance distributed generation renewable energy sources, energy and water efficiency improvements and electric vehicle charging infrastructure and approving the amendment to a certain Joint Powers Agreement related thereto and authorize and direct the County Auditor-Controller and Treasurer-Tax Collector to develop and enter into an agreement to recover associated administrative costs within 180 days carried unanimously.
COUNTY ADMINISTRATOR - Discussion, direction and possible action re first reading of an ordinance repealing Chapter 4 of Title 7 of the Siskiyou County Code regarding the Department of General Services and first reading of an ordinance amending Chapter 3 of Title 7 of the Siskiyou County Code regarding the duties of the Director of Public Works, related to the merger of the Public Works and General Services Departments. First reading of both ordinances approved. Public hearing for the second reading of each set for December 13, 2016 at 10:30a.m.

County Administrator Terry Barber provided an overview of the request, advising of the efforts to return the General Services Department to the Public Works Department (as it was prior to late 2008).

In response to Supervisor Kobseff, Ms. Barber advised that a Deputy Director of General Services position had been created, including a change to the job description to require an engineering background and that recruitment for the position was ongoing.

Discussion followed between members of the Board and Ms. Barber regarding the two Deputy Director positions that would be in the Public Works’ Department (one over the Road Department activities and one over General Services), the anticipated jobs duties associated with the new Deputy Director of General Services position and potential costs associated with re-organization of the Public Works Department.

It was moved by Supervisor Criss and seconded by Supervisor Kobseff to approve the first reading of an ordinance repealing Chapter 4 of Title 7 of the Siskiyou County Code regarding the Department of General Services and an ordinance amending Chapter 3 of Title 7 of the Siskiyou County Code regarding the duties of the Director of Public Works. The Clerk read both ordinance titles into the record and the motion to approve the first reading of both ordinances and set a public hearing for the second reading on December 13, 2016 at 10:30a.m., carried unanimously.

BOARD OF SUPERVISORS' REQUESTS - Review status of local emergency related to drought conditions as declared by Resolution 14-35; action to extend or terminate local emergency. Local emergency extended.

Following discussion between members of the Board and County Administrator Terry Barber regarding the possible need to terminate the emergency declaration, it was moved by Supervisor Kobseff, seconded by Supervisor Haupt and unanimously carried to extend the local emergency related to drought conditions as declared by Resolution 14-35.

BOARD OF SUPERVISORS' REQUESTS - Review status of local emergency related to imminent threat of catastrophic wildfire as declared by Resolution 14-154; action to extend or terminate local emergency. Local emergency extended.

Following discussion between members of the Board and Natural Resource Policy Specialist Elizabeth Nielsen regarding the possible relationship of the emergency declaration and the tree mortality task force, it was moved by Supervisor Haupt, seconded by Supervisor Criss and unanimously carried to extend the local emergency related to imminent threat of catastrophic wildfire as declared by Resolution 14-154.

APPOINTMENTS - Appointment of one member to the County Service Area #3 (CSA3) Advisory Committee, Member at Large position, for a three-year term from the date of appointment. Continued to a later date.

Deputy County Clerk Wendy Winningham provided an overview of the request, advising that no letters of interest in serving on the Advisory Committee had been received.

Chair Bennett advised that the item was continued to a later date.
It was moved by Supervisor Bennett, seconded by Supervisor Kobseff and unanimously carried to approve the October 18, 2016 minutes as presented.

**BOARD AND STAFF REPORTS**

Supervisor Valenzuela advised of his attendance at a Seismic Safety Commission meeting and a meeting with Monte Mendonhall from PacifiCorp. Supervisor Valenzuela additionally advised of serving at the Elks Veterans Day Dinner.

Supervisor Haupt advised of speaking at a Scott River Watershed meeting, his participation in the Etna Veterans Day Parade, attendance at Deputy Hopkins’ memorial service, a meeting with Yreka Library staff regarding the Library ‘backbone’ and an Economic Development Council meeting. Supervisor Haupt additionally advised of his participation in the Read Across Siskiyou event at the Etna Pre-school, a conference call regarding nano-technology with County and Forest Service representatives and a Criminal Justice Partners meeting regarding Proposition 64.

Supervisor Kobseff advised of his attendance at a Local Transportation Commission (LTC) meeting, a meeting regarding the Lake Shastina Property Owners Association, a meeting with California Air Resources Board (CARB) staff and Environmental Justice Committee concerning climate change with Natural Resource Policy Specialist Elizabeth Nielsen and a County Service Area #3 (CSA3) special meeting. Supervisor Kobseff additionally advised of speaking at a Hammond Ranch Property Owners Association meeting, participating in the Read Across Siskiyou event at Mt. Shasta and Weed schools, the Veterans Day service at the Memorial Sculpture Garden and helped cook for the Veterans Breakfast at the Sons of Italy Hall in Weed.

Supervisor Criss advised of his attendance at a Butte Valley Fire Protection District Board meeting, a Community Services Council (CSC) meeting, a Sierra-Sacramento Valley EMS meeting, the memorial service for Deputy Hopkins, a townhall meeting at the Copco Community Center, Butte Valley Ambulance training and a CalTrans meeting in Dorris regarding Highway 97. Supervisor Criss additionally advised of participating in the Read Across Siskiyou event at Dorris and Butte Valley schools and advised of an upcoming CSC stakeholders meeting and a mass casualty event/training in Montague.

Supervisor Bennett advised of her attendance at a nano-technology meeting, a meeting with Public Works’ Director regarding possible uses of nano-technology materials and reported on an ESSA Pacific State Marine Fisheries) meeting.

**CLOSED SESSION** - Conference with legal counsel, existing litigation pursuant to Government Code §54956.9(d)(1), seven cases, commenced at 12:12p.m., concluded at 1:25p.m., with no action taken.

**REPORT ON CLOSED SESSION**

Interim County Counsel James M. Underwood advised that closed session concluded at 1:25p.m., with no reportable action taken.

**PUBLIC HEARINGS** - BOARD OF SUPERVISORS - Public hearing for an appeal filed by C.H. McMillan III, CFO BCM Ltd. on the decision of the Siskiyou County Planning Commission on the appeal of the BCM, Ltd Vesting Determination by the Planning Commission.

This was the time set for a public hearing for an appeal filed by C.H. McMillan III, CFO BCM Ltd. on the decision of the Siskiyou County Planning Commission on appeal of the BCM, Ltd. Vesting Determination by the Planning Commission.

Chair Bennett opened the public hearing and read the order of presentation into the record.

Continued……….
Interim Community Development Director William John Navarre and appellant Clifton H. McMillan III were sworn in at 1:40 p.m.

Mr. Navarre provided a brief overview of the Community Development Department’s submitted documents/evidence, marked as Respondent Exhibit #1 (containing 550 pages of various exhibits, photos and documents). Mr. Navarre advised that a powerpoint presentation was available to identify certain Planning Department exhibits contained within Respondent Exhibit #1.

Mr. McMillan (appellant) made an opening statement, referencing Exhibits C.3 and C.4 within Respondent Exhibit #1, including the Public Resources Code (PRC) related to Geology, Mines and Mining and various maps/photos of the subject property. Mr. McMillan testified regarding a person shall be deemed to have vested rights if, prior to January 1, 1976, the person had diligently commenced surface mining operations and incurred substantial liabilities for work/materials necessary for surface mining operations. Mr. McMillan identified the subject property and a history of mining operations on various maps/photos (Respondent Exhibits #1.C.4.a-g). Mr. McMillan testified regarding mining/excavation that had taken place prior to 1974 in various locations identified on the maps in Respondent Exhibits #1.C.4.a-g, including information he had obtained from a previous owner of the property regarding pre-1976 mining operations associated with logging/excavation.

In response to Chair Bennett, Interim County Counsel James M. Underwood advised that the Board can accept information (either evidence or hearsay information), at the Board’s discretion.

Chair Bennett advised that Mr. McMillan’s testimony regarding certain pre-1976 mining operations would be accepted as hearsay information from a third party source.

Mr. McMillan continued his testimony regarding various locations where mining operations took place and testified to Respondent Exhibit #1.C.5-7 – three statements/affidavits from Mr. McMillan, Mr. Roger Bridwell and Mr. Larry Titus, regarding prior mining operations and to Respondent Exhibit #1.C.17 – purchase/sales receipts that indicated the purchase of various mining equipment.

In response to Chair Bennett, Mr. McMillan advised that the property, obtained from the Forest Service via a land trade, had been clear cut/logged by the Forest Service and then the previous property owner removed and burned the remaining stumps. Mr. McMillan further advised that the property was under a Williamson Act contract beginning in 1971-72.

In response to Supervisor Haupt, Mr. McMillan advised that the previous property owners’ land exchange with the Forest Service took place in about 1963.

Mr. McMillan testified regarding the investment in mining that was evidenced by Respondent Exhibit #1.C.11 – a land Use Permit for O’Hair Construction Company to erect/operate a portable crusher and hot plant (batch plant) in May 1973 and testified regarding mining as a compatible use under Respondent Exhibit #1.C.8 – Agriculture Preserve/Williamson Act contract for Timberhitch, Inc. dated February 26, 1971.

In response to Chair Bennett, Mr. McMillan advised that Agriculture Preserve/Williamson Act contracts were obtained for the subject property in 1969, 1971 and 1972.

Mr. McMillan continued his testimony regarding an investment in mining that was evidenced by the Timberhitch, Inc. water impoundment reservoir project (that was reviewed by the California Soil Conservation Service) and identified within Respondent Exhibit #1.A.18 – an email chain to/from C.H. McMillan from/to Community Development Director Greg Plucker regarding the Butte Creek Minerals LTD. vesting mining rights determination application.

Continued……..
In response to Supervisors Kobseff, Bennett and Haupt, Mr. McMillan advised that the water impoundment reservoir project constituted a mining (the excavation of material) operation, was an improvement on the property and that there was no completion report at the project’s completion.

Mr. McMillan continued his testimony regarding Respondent Exhibit #1.C.23 – Siskiyou County Ordinance No. 902, Book 5 (adopted June 26, 1979) and the County’s awareness of the need for all existing mines to be examined/evaluated under the PRC/state law for reclamation plans.

In response to Chair Bennett, Mr. McMillan advised that 1979 was the first time he applied for a mining related permit, that earlier mining operations were performed under earlier PRC authorizations.

Mr. McMillan continued testifying regarding the various mines in the County that were issued reclamation plan and Use Permit numbers by the Planning Department, following adoption of Ordinance 902, Book 5, and questioned the Community Development statements made in Respondent Exhibit #1 – Planning Department Staff Report dated November 15, 2016, with regard to the Department’s ‘burden of proof’ statements and the information in Respondent Exhibit #1.C.15 – a portion of the Planning Commission Appeal heard by the Board of Supervisors on January 22, 2008 related to no Use Permit requirement for mining operations under production prior to 1974. Mr. McMillan testified regarding Appellant Exhibits A.E1 and A.E2 – Court documents that were filed in Siskiyou County Superior Court related to violation of the Law of Case Doctrine with regard to County comments that no Use Permits were required for pre-1974 mining operations. Mr. McMillan testified to Respondent Exhibit #1.C.8 - Agriculture Preserve/Williamson Act contract for Timberhitch, Inc. dated February 26, 1971 and the authorized uses listed in the Williamson Act contract, section 4.

In response to Chair Bennett, Mr. McMillan advised that the property was zoned either prime agricultural and/or open space.

Mr. Navarre advised that the property was zoned A1, unrestricted, at the time of the Williamson Act contract.

Mr. McMillan testified to Respondent Exhibit #1.C.10 – Siskiyou County Superior Court Decision on Administrative Writ, by Judge Dixon, regarding the validity of Williamson Act contracts and to Respondent Exhibit #1.D.11 – Siskiyou County Resolution No. 404, adopted January 28, 1969 (establishing an Agricultural Preserve with uniform rules including compatible uses) Section A, regarding uses permitted which included mining as natural resource development.

In response to Supervisors Kobseff and Bennett, Mr. Navarre advised that natural resource development could include mining.

In response to Supervisor Haupt, Mr. Underwood advised that the Williamson Act did not preclude the need to otherwise comply with existing land use requirements.

Mr. McMillan continued testifying to Respondent Exhibit #1.D.11 regarding the uses authorized without a permit and the uses that were authorized that would require obtaining a Use Permit.

In response to Supervisor Kobseff, Mr. Navarre advised that the Resolution points out certain uses that require a permit and other uses that don’t require a permit.

In response to Chair Bennett, Mr. McMillan testified to the amount of acreage/property that was under three different Williamson Act contracts and a portion of the property that was not under a Williamson Act contract. Mr. McMillan additionally advised that the Williamson Act was created to limit urban expansion rather than only to preserve agricultural land.

Continued…….
Mr. McMillan testified to various exhibits, including Respondent Exhibit #1.C.15 - a portion of the Planning Commission Appeal heard by the Board of Supervisors on January 22, 2008 related to a Use Permit requirement for mining operations under production prior to 1974, Respondent Exhibit #1.C.2 – Court of Appeal opinion on rehearing, Respondent Exhibit #1 - Planning Department Staff Report dated November 15, 2016, Respondent Exhibit #1.C.11 - a land Use Permit for O’Hair Construction Company to erect/operate a portable crusher and hot plant (batch plant) in May 1973, Respondent Exhibit #1.C.13 – A note from Mr. McMillan to Community Development Director Greg Plucker advising of a nonconforming exemption (and that a Use Permit was not necessary) for the Timberhitch, Inc. land Use Permit application dated February 21, 1973 and Respondent Exhibit #1.D.8 – Planning Department letter to Clifton McMillan, dated August 23, 1990 regarding Timberhitch Use Permit (UP-79-31), as documentation clarifying that significant mining operation was taking place prior to 1976 and that certain permits were not required/necessary. Mr. McMillan provided an original of the Timberhitch, Inc. land Use Permit application (identified in Respondent Exhibit 1.C.13) for the Board members to examine, advising that the original form was returned to him after he attempted to file it with the Planning Department in 1973, as the Planning Director would not accept the application as the required permit was a nonconforming exemption for the O’Hair Construction batch plant.

Mr. McMillan testified to Respondent Exhibit #1.A.11 – a two-page spreadsheet identifying various mines, operators, status and the type of material/commodity created and to Respondent Exhibit #1.A.2 – Siskiyou County Ordinance 13-12, establishing procedures for conducting vesting rights determinations, advising that the spreadsheet footnotes indicated that the Butte Creek Minerals (aka Timberhitch) mine was vested prior to January 1, 1976 and that the reclamation plan was contained with the issued Use Permit and that written documentation from the County was the only requirement to acknowledge a vested right. Mr. McMillan further testified to Respondent Exhibits #1.A.12-15 – correspondence between Siskiyou County Community Development and Mr. McMillan and Respondent Exhibit #1.C.19 – November 5, 2013 Board of Supervisors’ minute order related to Ordinance 13-12, regarding the County’s inconsistency in determining vested rights, including vested determination for a mine owned by John Bennett.

Chair Bennett advised that the issue of a mine owned by her brother-in-law John Bennett was not pertinent to the current appeal/issue.

Mr. McMillan testified to Respondent Exhibit #1.A.14 – two-page notes following a phone conversation between Community Development Director Greg Plucker and Mr. McMillan regarding Siskiyou County Ordinance 99-07 and the later locating of the spreadsheet identified in Respondent Exhibit #1.A.11, advising that the spreadsheet noted other Siskiyou County mines as vested prior to January 1, 1976.

In response to Chair Bennett regarding the Silva Quarry (obtained by John Bennett from a family member), Mr. Navarre advised that Mr. Bennett was given information regarding the vested rights determination process and that the issue of crushing rock at the quarry/mine was not pertinent to the appeal/issue at this time.

Discussion followed between members of the Board, Mr. Navarre and Mr. McMillan regarding Respondent Exhibit #1.A.11 – a two-page spreadsheet identifying various mines, operators, status and the type of material/commodity created, the former Planning Department staff member who created the document and Mr. McMillan’s Use Permit and associated reclamation plan.

In response to Supervisors Haupt and Bennett, Mr. Navarre testified to Respondent Exhibit #1.D.13 – Use Permit and Environmental Review Application for Timberhitch, Inc. dated April, 2, 1979, regarding the boundaries/area identified in the permit application and the affected acreage (20 acres) and to Respondent Exhibit #1.C.14 – Siskiyou County Planning Commission July 9, 1984 minutes related to Timberhitch, Inc. Use Permit/Reclamation Plan, regarding the five-year intervals for review of Use Permits/Reclamation Plans.

Continued……..
In response to Supervisor Haupt, Mr. Navarre advised that certain mines identified in Respondent Exhibit #1.A.11 (spreadsheet) had reclamation plans submitted during the Use Permit process and that none of the mines listed on the spreadsheet went through the vesting determination process.

Mr. McMillan testified that the spreadsheet (Exhibit #1.A.11) was obtained from a Public Records Act (PRA) request, making it an official County document.

In response to Chair Bennett, County Administrator Terry Barber advised that the State requested changes in the County’s processes related to mining in 2007-08 and that the spreadsheet (Exhibit #1.A.11) was created prior to 2007.

In response to Supervisor Kobseff, Mr. McMillan testified regarding the spreadsheet (Exhibit #1.A.11), the possible process utilized by a former Planning Department staff member who created the document and the requirement under County Ordinance 13-12, section (g)(2) (Exhibit #1.A.2) that official County documentation met the vested right determination requirement.

Mr. Navarre testified to the Community Development Staff Report, Respondent Exhibit #1, including the Community Development/Planning Department’s history related to the subject property and mining activities, advising that the Department was unable to recommend that sufficient mining activities occurred to support a vested mining right pursuant to the California Public Resources Code, Division 2, Chapter 9, Article 5 (Respondent Exhibit #1.C.3) and Siskiyou County’s various ordinances/regulations related to the requirement that a Use Permit be obtained for surface mining activities. Mr. Navarre testified regarding Siskiyou County Ordinance 256, adopted May 14, 1953, that required a Use Permit to use heavy power equipment and engage in commercial excavation within 100 feet of a public road, advising that the Appellant has not shown that a Use Permit was obtained at that time (May 14, 1953) for the property to legally engage in surface mining operations. Mr. Navarre further testified that Siskiyou County Ordinance 902 implemented State Mining and Reclamation Act of 1975 (SMARA) requirements, including the requirement that a Use Permit to mine be obtained. Mr. Navarre testified to Respondent Exhibit #1.C.11 - a land Use Permit for O’Hair Construction Company to erect/operate a portable crusher and hot plant (batch plant) in May 1973 was not for surface mining operations and testified regarding the compatible uses allowed under Williamson Act contracts, Respondent Exhibit #1.D.11 – Siskiyou County Resolution No. 404, adopted January 28, 1969 (establishing an Agricultural Preserve with uniform rules including compatible uses), advising that the Contract does not authorize those compatible uses (without an associated Use Permit).

Mr. Navarre continued testifying to Respondent Exhibit #1.A.11 - a two-page spreadsheet identifying various mines, operators, status and the type of material/commodity created, Respondent Exhibit #1.A.12 – an email from Community Development Director Greg Plucker to Mr. McMillan with regard to a request for confirmation of vested mining rights status, Respondent Exhibit #1.A.15 – an email from Community Development Director Greg Plucker to Mr. McMillan with regard to reconsideration of denial of confirmation of vested rights, advising that an appeal of that decision was not filed.

Mr. Navarre concluded his testimony and staff report and presented Respondent Exhibit #2 – a one-page document entitled: (Community Development/Planning) staff’s proposed findings (total seven findings related to questions posed on page 4 of the staff report within Respondent Exhibit #1.

Attorney Jonz Norine requested to speak on behalf of the Williamson family/farm (owners of the subject property, Mr. McMillan owns the mineral rights) regarding the appeal and subject property.

Following brief discussion between Chair Bennett and Mr. Underwood, Chair Bennett requested that Mr. Norine be sworn in prior to speaking.
Mr. Norine was sworn in at 4:25 p.m.

Mr. Norine provided a powerpoint presentation, including drone footage (from the air above) and still photos of the subject property, testifying regarding the lack of evidence (in the photos and footage) of surface mining operations were taking or had taken place.

Chair Bennett advised that Mr. Norine’s comments/testimony would be conditionally accepted as hearsay/third person information and treated as such.

In response to Supervisor Haupt, Mr. Norine testified regarding the type of soil/gravel at various locations on the subject property.

Mr. Norine spoke in support of the Community Development/Planning Department’s recommendations related to the vested mining rights determination. Mr. Norine commented regarding a lawsuit involving the Williamson family and Mr. McMillan and to the compatible uses applicable in the associated Williamson Act/Agricultural Preserve contracts. Mr. Norine testified to obtaining depositions from individuals disputing the Appellant’s facts related to the vested mining rights determination and spoke in support of the County’s need to be consistent with prior rulings concerning vested mining rights (i.e. Kidder Creek Sand and Gravel operation-found not vested).

The Appellant Mr. McMillan provided a rebuttal, advising that the photos/footage were taken after reclamation of prior mining activity and advising of the amount of material (gravel) removed from the property by the O’Hair operation in 1973 (prior to SMARA becoming effective in 1976).

It was moved by Supervisor Valenzuela, seconded by Supervisor Kobseff and unanimously carried to close the public hearing.

Brief discussion followed between members of the Board and Mr. Underwood regarding the anticipated process for County Counsel’s Office to prepare findings for consideration and possible action on December 6, 2016 and the process related to reopening a public hearing for additional documentation.

It was moved by Supervisor Valenzuela and seconded by Supervisor Bennett to accept the Planning Department staff’s recommendations/findings.

Following discussion regarding the anticipated process for County Counsel to review the Planning staff’s recommendations/findings and prepare an associated Resolution and the Board’s ability to deliberate further at the December 6, 2016 meeting, Chair Bennett called for the question and the motion carried unanimously.

The Clerk’s Office received a compact disc containing the still photos and drone footage presented by Mr. Norine on November 22, 2016.

ADJOURNMENT - There being no further business to come before the Board of Supervisors, the meeting was adjourned.

ATTEST: Grace Bennett, Chair
COLLEEN SETZER, COUNTY CLERK

By: ______________________
Deputy