

The Board of County Commissioners, in and for the County of Otero, State of New Mexico, met in a Public Hearing at the Otero County Courthouse in Alamogordo, County and State aforesaid. Meeting called to order by the Chair person at 6:00 p.m., June 29, 2005; and she announced that reasonable notice for this meeting was given to the Alamogordo Daily News, and to Radio Stations, KPSA, KINN and KYEE.

Present:

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|-----------------|--------------------------|
| Clarissa McGinn | Chair person             |
| Doug Moore      | Vice-Chairman            |
| Michael Nivison | Member                   |
| Ray Backstrom   | Assistant County Manager |
| Bobbie Reyes    | Department Assistant     |
| Lynn Estrada    | Deputy Clerk             |

**DRAFT**

Michael Shinaberry gave the invocation. Commissioner McGinn led the Pledge of Allegiance and the Salute to the Flag of the State of New Mexico.

The purpose of the Public Hearing is to consider approving the Otero County Ordinance No. 01-05 amending the Otero County Subdivision ordinance regarding the Sacramento Mountain Checkerspot Butterfly Conservation Plan.

Commissioner McGinn recognized City Commissioner, Don Cooper, State Representative, Gloria Vaughn, and Fish and Wildlife representatives, Sarah Rinkovich and Julie McIntyre.

Commissioner McGinn gave a brief background on the Ordinance. The purpose of this Ordinance is to protect the public health, safety and general welfare of the citizens of Otero County through the

development of specific measures designed to avoid and/or minimize impacts from the use and development of private lands in and around the community of Cloudcroft, New Mexico on the Sacramento Mountains Checkerspot Butterfly.

The following residents commented on this Ordinance:

1. Jean Valance, Otero County resident, read her statement. She is against the Commission passing this Ordinance.

2. Julie Winkles, she requested on page 2 of the Ordinance Section 4 to remove the two words in/and. Section 7f, who monitors the weeds.

3. Glenn Todd, asked the Commission why are they letting the government tell us what to do.

4. Hans Steinhoff questioned whether the Board is in compliance with the New Mexico Subdivision Act NMSA 47-6-1 thru 47-6-29.

5. Jimmy Bridge stated that we fight different groups every day to work on the mountain. He doesn't know if this is a good Ordinance or not, but feels that you give the government something they always want more.

6. Frances Goss stated that all she has heard tonight is that our Commissioners have thrown in with the Feds. Let me tell you people here that you need to sit in a meeting with the Fish and Wildlife, Forest Service, County Commissioners and the Goss's over the Endangered Species Act. We have got to keep the Butterfly from being listed. If the Ordinance will keep this from happening lets pass it.

7. Rick Lessentine ranches in the effected area of the Butterfly. He is in favor of this Ordinance.

8. John Oliver asked if any property rights will be taken away from the residents. Property that we have bought now the government can come in and tell us exactly what we can do with it. This is criminal.

9. Bill Hornback, what science did the County utilize to call this Ordinance into necessity. Will it benefit the citizens of Otero County. Mr. Hornback stated that this Ordinance is all about zoning. He is totally against this Ordinance.

Commissioner McGinn went back to the questions that were asked. Julie Winkles had a question who was qualified to conduct the survey and cost estimate. Commissioner McGinn stated that what she is referring to is if the person is wishing to subdivide, conduct a survey of items listed 1 – 3. The Planning Coordinator would receive the survey from the property owner and then they would send it to the agency which would be Us Fish and Wildlife. Commissioner Moore stated that the survey can be conducted by the property owner or sub-divider. It will be submitted to the Planning Coordinator, they in turn submit it to the Fish and Wildlife. The cost of the survey will be the responsibility of the property owner.

Dan Bryant addressed Section 10. The Butterfly shall be monitored and reported by the US Fish and Wildlife to the County Commission on an annual basis to determine the effectiveness of the measures contained in the Ordinance. If population is decreasing then we need to do something better. If populating is increasing we will have a basis to sunset the Ordinance as provided and move out of regulations.

Commissioner McGinn stated that the information that was used to base the Ordinance on came about through the 2001 proposed listing of the Butterfly. Most of the information that was obtained was on non private lands. In essence this Ordinance would regulate access on to private property in order to gain more information, studying and monitoring the Butterfly's habitat and endangered possibilities.

Hans Steinhoff asked if the Ordinance needs to be adopted in the Comprehensive Plan prior to enacting the Ordinance. Dan stated that any changes that we make in subdivision regulations have to be consistent with our Comprehensive Plan. Our old Comprehensive Plan is under consideration for adoption by the Board at this time. By nature, Comprehensive Plans are broad general statements and based on what is in the Plan the

Commission has the discretion to either adopt or reject this Ordinance.

Commissioner McGinn stated that in her opinion that if we enact this Ordinance that the information obtained by that access from monitoring on private property could provide just as much information that would cause the proposed listing to begin all over again. Frances Goss stated that once these people decide to list something, unless our County Commission, who are charged with our safety, health and welfare can step in and stop it from happening, it will be listed. Once it is listed, it is forever.

To answer John Oliver's question, Commissioner Moore stated that in his opinion, yes we are taking away private property rights. Commissioner McGinn stated that she believes we are as well and that isn't what she wants to see. This Ordinance proposes exactly that. Not only people having to monitor in perpetuity, the purchaser of any sub-divided land having to move plant species having to monitor this and provide this information whether they want to or not would be taking away private property rights. Commissioner Nivison stated that he has a different view. The Subdivision Ordinance as it sits, makes a private property owner do certain things. For the last 10 years Commissioner Nivison has been to every meeting concerning endangered species and has sat in court several days with our local ranchers only to see their allotments attacked. By working out a plan this is so much better than having another species direct what happens in the forest.

Dan Bryant stated that at the last Public Hearing we had questions about the survey. Dan obtained a document which is a guidance for conducting surveys to document the presence of the Sacramento Mountain Checkerspot Butterfly. There is introductory language that tells you what they look like and where to look for them. To summarize the survey techniques, essentially you walk through the open meadows in the mixed conifer forest at 8 to 9 thousand feet. You can use binoculars or take a camera to get pictures. Walk carefully to avoid trampling either the food plant species, the Butterfly, or their larva. You walk and look and make

notes.

The next question to be answered is how the science was used to make the purpose of the Ordinance which was based on the threats within the proposed listing in 2001. Commissioner McGinn requested Sarah Rinkovich from U.S. Fish & Wildlife address this question. Ms. Rinkovich stated that when the Butterfly was proposed we did a conservation agreement to keep the Butterfly from being listed. In order to make this a strong conservation plan the County offered doing this Ordinance. The threats were based on what we knew from other Butterfly species. Mowing, grazing and thinning were all considered. Commissioner Nivison stated that in the original threats it was skiing, bicycling, hiking, and camping. Ms Rinkovich addressed the surveys. The Fish & Wildlife will do everything they can to help out with the surveys. They will hold workshops or come out to the property owners land.

Commissioner McGinn opened the floor for further questions or comments.

G.B. Oliver approached the Board. He stated that Ms. Rinkovich said that this Ordinance is a living breathing document. He believes what the Board is going to pass is completely different from how the Fish & Wildlife read this document. Mr. Oliver stated that the Board is setting a precedence for future wildlife. There will be no end to it. These are just tools to take away our property rights.

Prentice Blansett stated that the Board's responsibility is to represent the people of Otero County. What is the consensus of the people that they are representing? He wants to hear that tonight. Commissioner McGinn stated that is what we are doing tonight. That is the purpose of the Public Hearing to hear what the people think.

John Norris a private property owner in the effected area in Cloudcroft. If we pass this Ordinance then they won't lower their big hammer and put the Butterfly on the endangered list. Sounds like blackmail to me. We will never appease the environmentalist or the government.

Commissioner Moore stated that he is happy to see everybody here tonight. We have been having Public Hearing on the Butterfly for 2 ½ years. This just didn't start tonight it started 2 ½ years ago when this species was proposed for listing. We have been beat up by endangered species and what has got us in the past is that we have just ignored it. We as the people let the federal regulators run their game. In the end the people of the community lost. The only way we can control our own destiny is to get involved in this process.

Jimmy Goss agrees with Commissioner Moore. He is very much for this Ordinance.

Charles Walker a rancher in Sixteen Springs. He is proud of the County Commission in keeping this Butterfly off the list.

Commissioner Moore stated that the science that we have collected within the last 2 years while we constructed this Conservation Plan was instrumental in getting this species a no list status. The data was used by the higher ups in the Fish & Wildlife to make the no list call at the federal level.

Dan Bryant would like to go back to Rick Lesstentine's remark about being in court. Mr. Bryant stated that he stood in a Federal Court Room with about 60 Otero County ranchers and farmers and 2 members of the County Commission. On that day we were talking about the Mexican Spotted owl and cattle grazing. The environmental group had their scientist there and the Forest Service had their guys there who in writing had said one thing about the kind of habitat that the Mexican Bull needed so it could be eaten by the owl and the owl could be OK. Dan stated that we had zero science. The judge wouldn't even let us speak. From that day forward Dan stated that Otero County will get the science. Since that time the County Commission has been doing the Conservation Plan and collecting the science on the Poppy, Butterfly, Salamander and Thistle. Dan read the manifesto from the Forest Guardians that said their goal is to drive the humans out of the forest. The only thing Dan had that day was his passion, and the manifesto and the backing of Otero County ranchers and farmers. But without the data, the science, the monitoring and without the efforts of this Ordinance we are

hogtied.

Commissioner McGinn stated that we do not have to pass these kinds of restrictions on private property rights through an Ordinance in order to gain that kind of science. Voluntary participation from private property owners, if they so choose, could help provide that, as well as County tax dollars now go towards paying for the kind of research we are talking about, from Range Improvement Task Force at NMSU. This is not the only outlet to gain that kind of information.

Erica Luna is working with the Range Improvement Task Force for her Master's Degree. Some property rights might be taken away but there is a lot of good coming out of this Ordinance.

Don Cooper, City Commissioner, lives in Alamogordo but is an Otero County resident. Mr. Cooper is against this Ordinance.

Commissioner McGinn stated that we have had several suggestions for changes within the Ordinance. One of them was brought up by Julie Winkles in Section 4 changing the "in and" to "around the community" and striking it to read "of private lands around the community." Another question from Hans Steinhoff was notifying the State agencies before such an Ordinance could be passed. They would be notified upon contingent approval of this notice upon state agency review and approval of amending this Subdivision Ordinance. Hans stated that this Ordinance would go into effect 30 days upon passage, would that be adequate time for the state agencies to review and send back comment before the amendment in the Ordinance can be made. Dan Bryant stated that the way the rule works, is after the Commission takes action and if the Ordinance passes, we have to generate it to final form with the amendments that were offered tonight. While this is happening we would then send a copy to the state agencies. Once we get this finalized and signed we then record it in the County Clerk's Office. It will become effective 30 days after its been recorded. Dan Bryant is expecting either no comment or deferrals from all six state agencies.

Commissioner McGinn had a question about Section H6 page 6. Does the conservation requirements include mowing and clearing the land. Commissioner McGinn believes this will continue forever the monitoring, moving of species, looking for Butterflies and larva, from the guy who owns it to sub-divider to the purchaser. Dan Bryant stated he didn't think so, not the way the Ordinance is drafted. The Ordinance does not require relocation or reseeded if you are going to mow. It requires relocation or reseeded if you are going to disturb plants during construction.

Betty Stoots stated that it's time to draw a line and say no you aren't taking anymore of our rights, not the County, not the Feds, or anyone.

Gloria Vaughan asked the Board if this article was being presented throughout the State of New Mexico. Commissioner Nivison stated that anything with the Checkerspot Butterfly is only in Cloudcroft. Ms. Vaughan asked how this will benefit our people here by protecting the Butterfly. Commissioner Moore stated his opinion on this. It protects the people's rights to continue to use the forest while helping ensure that this species is monitored until we can understand whether it is or isn't threatened and endangered. Once we establish that we need to enhance its population. We know how to do this and this will allow that mechanism to happen and then the Ordinance sunsets. It will sunset in 2011 if not sooner.

Mr. Noriega stated that the Board is very courageous for doing this Ordinance.

Julie McIntyre, Fish & Wildlife, stated that she would be willing to help anyone with conducting a survey as brought forth in the Ordinance. If anyone is interested she will teach them how to identify the species.

Pete Griffin would like to know how much this will cost the property owner. Commissioner Moore stated that the only thing it will cost is time.

Bill Hornback asked if this was just a draft. Commissioner McGinn stated that it has been modified with public input like today at the last 2 Public Hearings. He asked if further input be allowed to the Commission

for changes to this draft. Commissioner McGinn stated that yes changes can be made. Commissioner Moore stated that at the conclusion of comments he intends to propose a motion to pass this Ordinance with stricken words. Mr. Hornback would like to propose changes now before the motion. Mr. Hornback started with page 2 Section 5 under definition of person to add governmental agencies and non-government organizations. Section 7G, this is the first step towards zoning. Mr. Hornback would like all reference to zoning stricken from the Ordinance.

Commissioner Moore made a motion to adopt Ordinance No. 01-05 with the following amendments, third Whereas, strike the word zoning, fourth Whereas, strike the word zoning. Section 2, include New Mexico Statute 92-04, Section 4 Paragraph 1 line 3, strike the word in and the, Section 5 item 6, insert the word government agency and non government organizations, Section 6, paragraph B, include the language see exhibit B, Section B item iii substitute the word “or” for “of” on the first line, first of. The motion was seconded by Commissioner Nivison. A vote was taken and the motion passed 2-1 with Commissioner McGinn voting no.

There being no further business before the Board the Chair person adjourned the meeting at 8:47 p.m.

APPROVED:

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Clarissa McGinn, Chair person

ATTEST:

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Robyn Silva, County Clerk

Public Hearing June 29, 2005