



STATE OF CALIFORNIA, COUNTY OF SIERRA  
BOARD OF SUPERVISORS  
AGENDA  
REGULAR MEETING

**Lee Adams, Chair, District 1**

P.O. Box 1 - Downieville, CA 95936 - 530-289-3506 - [supervisor1@sierracounty.ca.gov](mailto:supervisor1@sierracounty.ca.gov)

**Peter W. Huebner, Vice-Chair, District 2**

P.O. Box 349 - Sierra City, CA 96125 - 530-862-1004 - [supervisor2@sierracounty.ca.gov](mailto:supervisor2@sierracounty.ca.gov)

**Paul Roen, District 3**

P.O. Box 43 - Calpine, CA - 209-479-2770 - [supervisor3@sierracounty.ca.gov](mailto:supervisor3@sierracounty.ca.gov)

**Jim Beard, District 4**

P.O. Box 1140 - Loyalton, CA 96118 - 530-414-8126 - [jbeard@sierracounty.ca.gov](mailto:jbeard@sierracounty.ca.gov)

**Scott A. Schlefstein, District 5**

P.O. Box 192 - Loyalton, CA 96118 - 530-993-4900 - [supervisor5@sierracounty.ca.gov](mailto:supervisor5@sierracounty.ca.gov)

The Sierra County Board of Supervisors will meet in regular session commencing at 9:00 a.m. on February 2, 2016 in the Board of Supervisors' Chambers, Courthouse, Downieville, CA. This meeting will be recorded for posting on the Board of Supervisors' website at [www.sierracounty.ca.gov](http://www.sierracounty.ca.gov).

**NOTICE**

If requested, this agenda can be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 and the Federal Rules and Regulations adopted in implementation thereof. Persons seeking an alternative format should contact the Clerk of the Board for further information. In addition, a person with a disability who requires a modification or accommodation, in order to participate in a public meeting should telephone or otherwise contact the Clerk of the Board as soon as possible and at least 48 hours prior to the meeting. The Clerk of the Board may be reached at 530-289-3295 or at the following addresses:

Heather Foster  
Clerk of the Board of Supervisors  
County of Sierra  
100 Courthouse Square, Room 11  
P.O. Drawer D  
Downieville, CA 95936  
[Email](#)

All items posted on the agenda, including under correspondence, may be acted upon by the Board of Supervisors. However, matters under committee reports and department manager's reports may be briefly addressed by the Board or Staff but no action or discussion shall be undertaken on any item not appearing on the posted agenda. (GC 54954.2)

The Board of Supervisors may hold a Closed Session as the agenda schedule permits.

## **REGULAR AGENDA**

### **1. 9:00 A.M. STANDING ORDERS**

- Call to Order
- Pledge of Allegiance
- Roll Call
- Approval of Consent Agenda, Regular Agenda and Correspondence to be addressed by the Board

### **2. PUBLIC COMMENT OPPORTUNITY**

Matters under the jurisdiction of the Board not on this posted agenda may be addressed by the general public during the Public Comment Opportunity time. No action may be taken or substantive discussion pursued on matters not on the posted agenda. Public comment is regulated by the Sierra County Board of Supervisors' Rules and Procedures. You may obtain a copy of the Public Comment rules from the Clerk. The Board limits public comment to three minutes per person and not more than three individuals addressing the same subject.

### **3. COMMITTEE REPORTS & ANNOUNCEMENTS**

Board members will report on committee meetings and/or activities. Board members or members of the public may ask questions for clarification but no action will be taken.

- RCRC January 20, 2016 Board meeting highlights. (CHAIR ADAMS)

Documents: [BoardMeeting\\_Highlights\\_January\\_20\\_2016MEMO\\_FINAL.pdf](#)

### **4. DEPARTMENT MANAGERS' REPORTS & ANNOUNCEMENTS**

Department Managers may provide brief reports on activities within their departments. Board members or members of the public may ask questions for clarification but no action will be taken.

### **5. FOREST SERVICE UPDATE**

Update by District Ranger on items that may affect the County of Sierra.

### **6. PUBLIC WORKS / TRANSPORTATION - TIM BEALS**

- 6.A. Resolution authorizing use of Title III funds in the amount of \$29,163.86 to reimburse Sierra County Local Government Agencies for work done on federal lands in accordance with the provisions of the Secure Rural Schools Act.

Documents: [Title 3.Item.pdf](#)

- 6.B. Discussion and direction regarding request of Sierra County Land Trust for input into a grant application to the Sierra Nevada Conservancy for ultimate development of a land management plan for the Sierra Buttes-Lakes Basin, specifically the Packer Saddle, Sardine Lake, and Volcano Lake area.

Documents: [SCLT Request..Item.pdf](#)

### **7. PROBATION - JEFF BOSWORTH**

- 7.A. Resolution approving agreement between Sentinel Offender Services, LLC and the Sierra County Probation Department to provide alcohol testing services and equipment.

Documents: [Sentinel 2016.pdf](#)

- 7.B. Resolution approving the annual review of Probation's electronic monitoring program rules.

Documents: [Electronic Monitoring Program 2016.pdf](#)

## 8. TIMED ITEMS

- 8.A. 10:00 AM COUNTY COUNSEL SERVICES

- 8.A.i. Resolution adopting first amended policy on the scope of county counsel functions. (CHAIR ADAMS)

Documents: [Res amn cc functions.pdf](#)

- 8.A.ii. Approval of proposed draft contract for county counsel services and request for proposals, and direction to issue same. (CHAIR ADAMS)

Documents: [Proposed draft cc contract and RFP.pdf](#)

- 8.B. 11:00 AM MARIJUANA CULTIVATION ORDINANCE REVISIONS

Discussion regarding proposed revisions to Sierra County Ordinance No. 1055 regarding cultivation of medicinal marijuana and adoption of an urgency ordinance amending Sections 8.01.030 and 8.01.040 of the Sierra County Code and adding Section 8.01.045 pertaining to marijuana cultivation and related activities. (CHAIR ADAMS)

Documents: [Marijuana Ordinance.pdf](#)

- 8.C. 1:00 PM SOLID WASTE APPEAL - Wayne DeLisle

Appeal of Solid Waste Assessment Fees for 2014/2015 filed by Mr. Wayne DeLisle for APN 006-130-024-0 Pike City Road and 006-130-025-0 Pike Short Cut Road.

Documents: [DeLisle Solid Waste Appeals.pdf](#)

## 9. CLOSED SESSION

- 9.A. Closed session pursuant to Government Code 54956.9(d)(2), to review a threat of litigation by Don Russell regarding Sheriffs' office failure to provide records in response to his request.

Documents: [Closed Session - Russell.pdf](#)

## 10. CONSENT AGENDA

Items placed on the Consent Agenda are of a routine and non-controversial nature and are approved by a blanket roll call vote. At the time the Consent Agenda is considered, items may be deleted from the Consent Agenda by any Board member or Department Manager and added to the Regular Agenda directed by the Chairman.

- 10.A. Approval/authorization to purchase 12 bulletproof vests and 8 outer carriers. (SHERIFF)

Documents: [Bulletproof vest item.pdf](#)

- 10.B. Amendment to Professional Services Agreement 97-068 with Bastian Engineering to increase compensation for Fiscal Year 2016. (PUBLIC WORKS)

Documents: [Bastian Amendment.Item.pdf](#)

- 10.C. Software license agreement between the County of Sierra and Democracy Live for online accessible sample ballot and voter guide access, and Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) electronic ballot delivery. (ELECTIONS)

Documents: [Democracy Live Software License Agm.pdf](#)

#### 11. **CORRESPONDENCE LOG**

- 11.A. Letter from Irene Davidson, Carson District Ranger, inviting the Sierra County Board of Supervisors to the Carson Ranger District second annual county partnership meeting to be held on February 18, 2016, to discuss projects and events occurring within Sierra County.

Documents: [US Forest Service Letter.pdf](#)

**ADJOURN**



**To:** RCRC Board of Directors  
**From:** Greg Norton  
President & CEO  
**Date:** January 25, 2016  
**Re:** RCRC Board Meeting Highlights (January 20, 2016)

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**President's Report:** RCRC President & CEO Greg Norton reported that Mary-Ann Warmerdam has accepted a position as a Legislative Advocate with RCRC, officially rejoining RCRC on February 22, 2016. RCRC Legislative Advocate Kathy Mannion has set her retirement date at the end of April 2016 to help ensure a smooth transition.

**Administrative Matters:** The RCRC Board of Directors approved and accepted San Luis Obispo as an RCRC Member County thereby bringing the number of member counties to thirty-five.

Chair Viegas appointed the following Committee Chairs and Vice Chairs:

Legislative Committee

- Diane Dillion, Chair (Napa)
- Nate Beason, Vice Chair (Nevada)

Regulatory Committee

- John Pedrozo, Chair (Merced)
- John Fenley, Vice Chair (Trinity)

Water and Natural Resources Committee

- Roger Abe, Chair (Yuba)
- Doug Teeter, Vice Chair (Butte)

The following five Supervisors were selected by their respective Regions to join the four RCRC Officers to make up the nine members of the 2016 RCRC Executive Committee:

Region 1: John Fenley (Trinity)  
Region 2: Kevin Goss (Plumas)  
Region 3: Diane Dillion (Napa)  
Region 4: Randy Hanvelt (Tuolumne)  
Region 5: John Pedrozo (Merced)

A complete breakdown of RCRC's 2016 Executive Committee can be accessed [here](#).

The RCRC Board of Directors adopted both the proposed revisions to the 2016 Travel Expense Policy which can be accessed [here](#), and the RCRC Board of Directors Code of Conduct, which can be accessed [here](#).

**Governmental Affairs:** RCRC staff presented an overview of the Governor's 2016-17 Proposed Budget. While California's overall Budget picture remains positive, Governor Brown continues to urge Budget constraint in anticipation of the next economic recession. To reflect this, the Governor's 2016-17 Proposed Budget continues to bolster the State's Rainy Day Fund and pay down State debts and liabilities, many of which continue to satisfy K-12 education obligations.

#### Key Issues/Changes for RCRC Member Counties

The Governor's 2016-17 Proposed Budget:

- Provides \$644,000 for the State's Payment in Lieu of Taxes (PILT) Program for 2016-17;
- Provides \$250 million for local jail construction projects for counties that have not been awarded monies under recent jail funding programs;
- Allocates \$3.1 billion in Cap-and-Trade auction proceeds for greenhouse gas reduction programs including transportation, forest health, and waste diversion;
- Provides an ongoing \$2.6 million for the support of local fairs as well as another \$4 million for critical infrastructure needs to complement the \$7 million provided last year; and,
- Provides monies to commence regulatory activities associated with medical marijuana including funding for environmental clean-up activities associated with cultivation.

RCRC's full analysis of the Governor's 2016-17 Proposed Budget, *The Rural Rundown*, can be accessed [here](#).

**Policy Principles:** Patricia Megason presented the 2016 Proposed Policy Principles to the Board for adoption. Each year, RCRC staff submits the RCRC Board of Directors with proposed changes to the RCRC Policy Principles, and issues the draft for Board Member review, edit, and comment. The RCRC Board of Directors then reviews and discusses all proposed changes and amendments at the January Board of Directors Meeting. Following review and discussion, the Board adopted the 2016 RCRC Policy Principles. The updated version including all suggested edits can be accessed [here](#).

**Tree Mortality:** RCRC staff provided an update on the California Tree Mortality Task Force (Task Force), convened to carry out the provisions of the Governor's proclamation of a State of Emergency issued on October 30, 2015. Led by the Governor's Office, the California Department of Forestry and Fire Protection (CAL FIRE), and the Governor's Office of Emergency Services (CAL OES), the Task Force is comprised of a wide range of stakeholders assembled to tackle the urgent issue of tree die-off due to invasive pests in California. The Task Force held its first meeting on November 16, 2015, and has met twice since then, with plans to meet on a monthly basis. The Task Force has developed an Incident Action Plan, and has broken up into subgroups to address the various components of the plan. RCRC will continue to

update the RCRC Board of Directors on the progress of the Task Force, and requests feedback on any county-specific needs related to the issue of tree mortality.

**Legislative Committee:** RCRC staff provided an update on the status of Assembly Bill 21 (Wood), which makes two urgently needed changes to the Medical Marijuana Regulation and Safety Act. Specifically, AB 21 removes a provision of Assembly Bill 243 (Wood) – commonly known as “C 4” – which suggests a March 1, 2016 deadline for localities to have cultivation ordinances in place, otherwise the State would become the sole licensing authority for medical marijuana cultivation. Following the RCRC Board of Directors Meeting, AB 21 secured passage in its second policy committee – Senate Health. This hearing was delayed a week due to concerns about a second component – the revision/repeal of Section G (the local control provision on personal grows and patient caregiver grows), which was also inadvertently included in the enacted AB 243.

While counties would very much prefer to see Section G retained in full, there is much concern with the legal ramification of a full repeal of Section G. Last week, a compromise to revise Section G was reached that included cities, counties, the police chiefs and patient advocacy groups, and that agreement was placed into AB 21 during Wednesday’s hearing. As of this writing, the recently-amended version of AB 21 will move forward and reach the Governor’s Desk later this month.

On the federal front, RCRC staff and Officers are preparing for the National Association of Counties (NACo) trip in February and developing an advocacy platform that will include SRS, Federal PILT, and other Federal issues of priority for 2016.

**Water and Natural Resources Committee:** RCRC staff presented on the status of the implementation of the Sustainable Groundwater Management Act of 2014 (SGMA) Groundwater Sustainability Plan (GSP) and Alternative Plan regulations. The Department of Water Resources’ (DWR) goal is to release draft GSP and Alternative Plan regulations in late January 2016 for public comment. RCRC staff recommends member counties with high and medium priority basins actively engage during the GSP regulatory process as the various impacted regions/basins may have unique situations that need to be considered and addressed during development of the regulations.

**Regulatory Committee:** RCRC staff presented on the U.S. Environmental Protection Agency’s (EPA) proposed revisions to its Exceptional Events Rule, designed to counteract unintended restrictions on prescribed burning for forest management resulting from the newly finalized 2015 National Ambient Air Quality Standards for ozone. RCRC will be filing comments on the Rule revisions, and will update the RCRC Board of Directors on the progress of the Exceptional Events Rule revisions including implementation once they are finalized by the EPA.

**RCRC Installation of Officers:** The 2016 RCRC Installation of Officers was held in Sacramento following the Board of Directors meeting, and garnered significant media coverage (print and social) throughout the state. RCRC’s “Press Room” webpage, featuring RCRC-issued press releases and statewide media clips, can be accessed [here](#). RCRC’s Twitter page can be accessed [here](#).

*Please refer to the Board Packet and Supplemental Packet for further details related to the items above, as well as all items covered during the January 2016 Board of Directors meeting. The December Board Packet can be accessed [here](#).*

**Sierra County  
Board of Supervisors'  
Agenda Transmittal &  
Record of Proceedings**

<b>MEETING DATE:</b> February 2, 2016	<b>TYPE OF AGENDA ITEM:</b> <input checked="" type="checkbox"/> Regular <input type="checkbox"/> Timed <input type="checkbox"/> Consent
<b>DEPARTMENT:</b> Department of Public Works and Transportation	
<b>APPROVING PARTY:</b> Tim H. Beals	
<b>PHONE NUMBER:</b> 530-289-3201	

**AGENDA ITEM:** Resolution authorizing use of Title III funds in the amount of \$29,163.86 to reimburse Sierra County Local Government Agencies for work done on federal lands in accordance with the provisions of the Secure Rural Schools Act.

**SUPPORTIVE DOCUMENTS ATTACHED:**  Memo  Resolution  Agreement  Other

**BACKGROUND INFORMATION:** The Board of Supervisors adopted a resolution of intent for this matter on November 17, 2015, Resolution 2015-110.

**FUNDING SOURCE: TITLE 3**  
**GENERAL FUND IMPACT:** No General Fund Impact  
**OTHER FUND:**  
**AMOUNT:** \$29,163.86 N/A

<b>ARE ADDITIONAL PERSONNEL REQUIRED?</b>  <input type="checkbox"/> Yes, -- -- <input checked="" type="checkbox"/> No	<b>IS THIS ITEM ALLOCATED IN THE BUDGET?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  <b>IS A BUDGET TRANSFER REQUIRED?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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**SPACE BELOW FOR CLERK'S USE**

<b>BOARD ACTION:</b> <input type="checkbox"/> Approved <input type="checkbox"/> Approved as amended <input type="checkbox"/> Adopted <input type="checkbox"/> Adopted as amended <input type="checkbox"/> Denied <input type="checkbox"/> Other <input type="checkbox"/> No Action Taken	<input type="checkbox"/> Set public hearing For: _____ <input type="checkbox"/> Direction to: _____ <input type="checkbox"/> Referred to: _____ <input type="checkbox"/> Continued to: _____ <input type="checkbox"/> Authorization given to: _____	Resolution 2016- _____ Agreement 2016- _____ Ordinance _____ Vote: Ayes: Noes: Abstain: Absent: <input type="checkbox"/> By Consensus
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**COMMENTS:**  
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 \_\_\_\_\_  
 \_\_\_\_\_

CLERK TO THE BOARD \_\_\_\_\_ DATE \_\_\_\_\_

BOARD OF SUPERVISORS, COUNTY OF SIERRA, STATE OF CALIFORNIA

IN THE MATTER OF DECLARING INTENT  
TO ALLOCATE TITLE III FUNDS FOR  
SIERRA COUNTY LOCAL GOVERNMENTS  
FOR WORK DONE ON FEDERAL LANDS  
AS DESCRIBED IN P.L 114-10

RESOLUTION 2015- 110

**WHEREAS**, The Sierra County Board of Supervisors has Title III allocation from the reauthorization of the Secure Rural Schools and Community Self Determination Act of 2000; and,

**WHEREAS**, Section 300 of HR 1424-2008 provides specific procedures for the Board of Supervisors to follow in considering an allocation of Title III funds; and,

**WHEREAS**, the Sierra County Board of Supervisors has proposed use of funds in the amount of \$29,163.86 to reimburse the participating local governments for search and rescue and other emergency services, including firefighting.

**NOW THEREFORE BE IT RESOLVED** that the Board of Supervisors of the County of Sierra declares its intent to allocate \$29,163.86 in Title III funds from the "Reauthorization of the Secure Rural Schools and Community Self Determination Act of 2000" (PL 114-10) and directs the Director of Transportation and County Counsel to perform the following actions:

- 1) Publish a legal notice advising the public that comments will be received by the Board of Supervisors on a proposed allocation of funds for the specified purpose for a period not to be less than 45 days as required by Section 302 of HR1424-2008; and,
- 2) Submit the proposal to the Sierra County Resource Advisory Committee as required by Section 302 of HR1424-2008; and
- 3) Prepare and present for approval of this Board of Supervisors during the second meeting in January, 2016 a resolution approving the funding of Title III funds for the stated purpose.

**ADOPTED** by the Board of Supervisors of the County of Sierra on the 17th day of January, 2016, by the following vote:

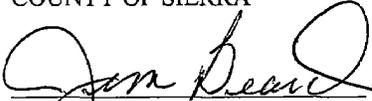
AYES: Supervisors Adams, Huebner, Roen, Schlefstein, Beard

NOES: None

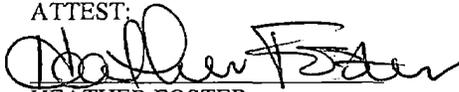
ABSTAIN: None

ABSENT: None

COUNTY OF SIERRA

  
JIM BEARD  
CHAIRMAN, BOARD OF SUPERVISORS

ATTEST:

  
HEATHER FOSTER  
CLERK OF THE BOARD

APPROVED AS TO FORM:

  
JAMES A. CURTIS  
COUNTY COUNSEL

**BOARD OF SUPERVISORS, COUNTY OF SIERRA, STATE OF CALIFORNIA**

**IN THE MATTER OF AUTHORIZING USE OF  
TITLE III FUNDS FOR PAYMENTS TO  
SIERRA COUNTY LOCAL GOVERNMENTS  
FOR WORK DONE ON FEDERAL LANDS  
AS DESCRIBED IN P.L 114-10**

**RESOLUTION 2016-\_\_\_\_\_**

**WHEREAS**, The Sierra County Board of Supervisors has Title III allocation from the reauthorized Secure Rural Schools and Community Self Determination Act of 2000 (HR 1424); and,

**WHEREAS**, the Sierra County Board of Supervisors, by adoption of Resolution 2015-110 on November 17 , 2015 declared its intent to utilize \$29,163.86 to reimburse the participating local governments for search and rescue and other emergency services, including firefighting.

**WHEREAS**, the County has followed all procedures outlined in Section 301 through 303 for implementation of the use of funds.

**NOW THEREFORE BE IT RESOLVED** that the Board of Supervisors of the County of Sierra hereby authorizes use of Title III funds in the amount of \$29, 163.86, \$29,163.86 to reimburse the participating local governments for search and rescue and other emergency services, including firefighting.

**ADOPTED** by the Board of Supervisors of the County of Sierra on the 2nd day of February, 2016, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

COUNTY OF SIERRA

\_\_\_\_\_  
LEE ADAMS, CHAIRMAN  
BOARD OF SUPERVISORS

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
HEATHER FOSTER  
CLERK OF THE BOARD

\_\_\_\_\_  
JAMES A. CURTIS  
COUNTY COUNSEL





PO Box 404, Sierra City, CA96125(530) 265-5433  
www.sierracountylandtrust.org

January 23, 2016

Sierra County Board of Supervisors  
PO Drawer D  
Downieville, CA 95936

Re: Forest Management Plan on SCLT properties, grant application

Members of the Board:

The Sierra County Land Trust would like to apply for a grant to the Sierra Nevada Conservancy for Proposition 1 Category 2 funds to conduct planning and CEQA analysis with the end product being a Forest Management Plan on our acreage (approximately 1525 acres) in the Sierra Buttes/Lakes Basin, specifically the Packer Saddle/Sardine Lake/ Volcano Lake area. (Map attached.) The plan would be prepared by a professional forester with the intent of narrowing down the area of the properties that will require fuel reduction work in order to apply for future on the ground project funds. Since much of our land is very high elevation, we expect that the actual fuel reduction projects in the future will be fairly limited and at the lower elevations, perhaps approximately 300 acres.

The CEQA work is proposed to be an Initial Environmental Study/Mitigated Negative Declaration to pave the way for the actual projects in a later funding phase. It will include biotic and cultural resource studies focused on the treatment areas. We will also include staff time for CEQA and project review. We will work on the budget proposal for County time with Tim Beals.

If funded we will, of course, include staff and the Board of Supervisors in the planning process at key points. The intent is to prepare a "light on the land" management plan which will avoid sensitive features because of the environmental and visual sensitivity of the properties as well as the importance of them to the public for recreation.

We have been in contact with the Sierra County Fire Safe Council and we will be in contact with the local tribes as well as the USFS and the Sierra

Buttes Trails Stewardship Council.

**We would appreciate any input the Board would like to have to our grant proposal so that we can include it in the grant application which is due March 1. (An item on your next agenda would be appreciated.) We would also like a letter of support to include in the application including verification that the County will be the lead agency for the CEQA. And, again, we will include the Board in the planning process as we receive recommendations and options from the Forester.**

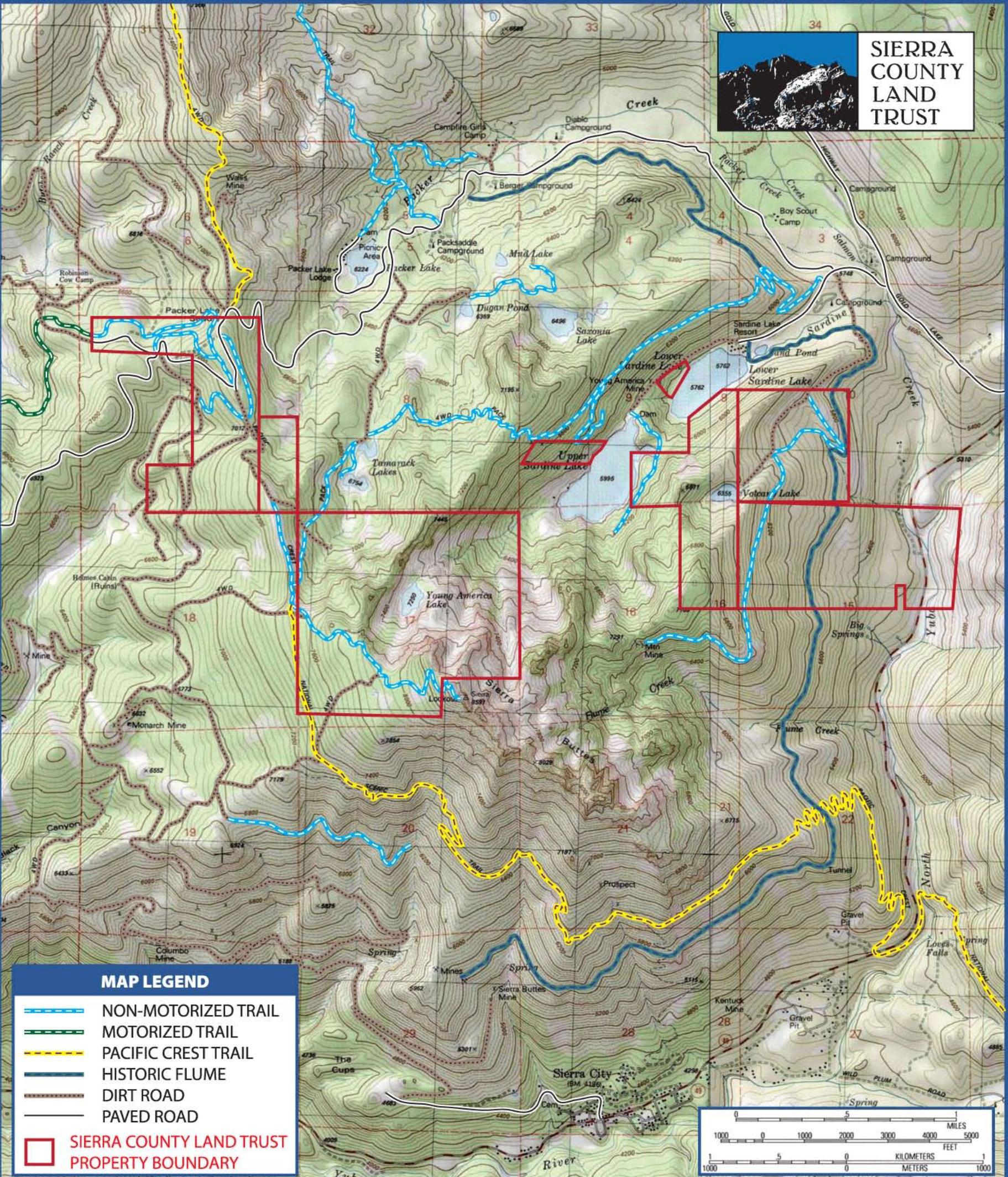
As always, we appreciate your ongoing support. Thank you!

Sincerely,

Laurie Oberholtzer  
Director



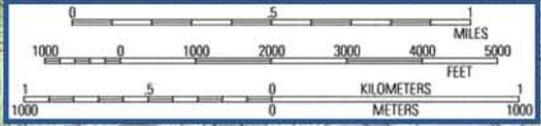
**SIERRA  
COUNTY  
LAND  
TRUST**



**MAP LEGEND**

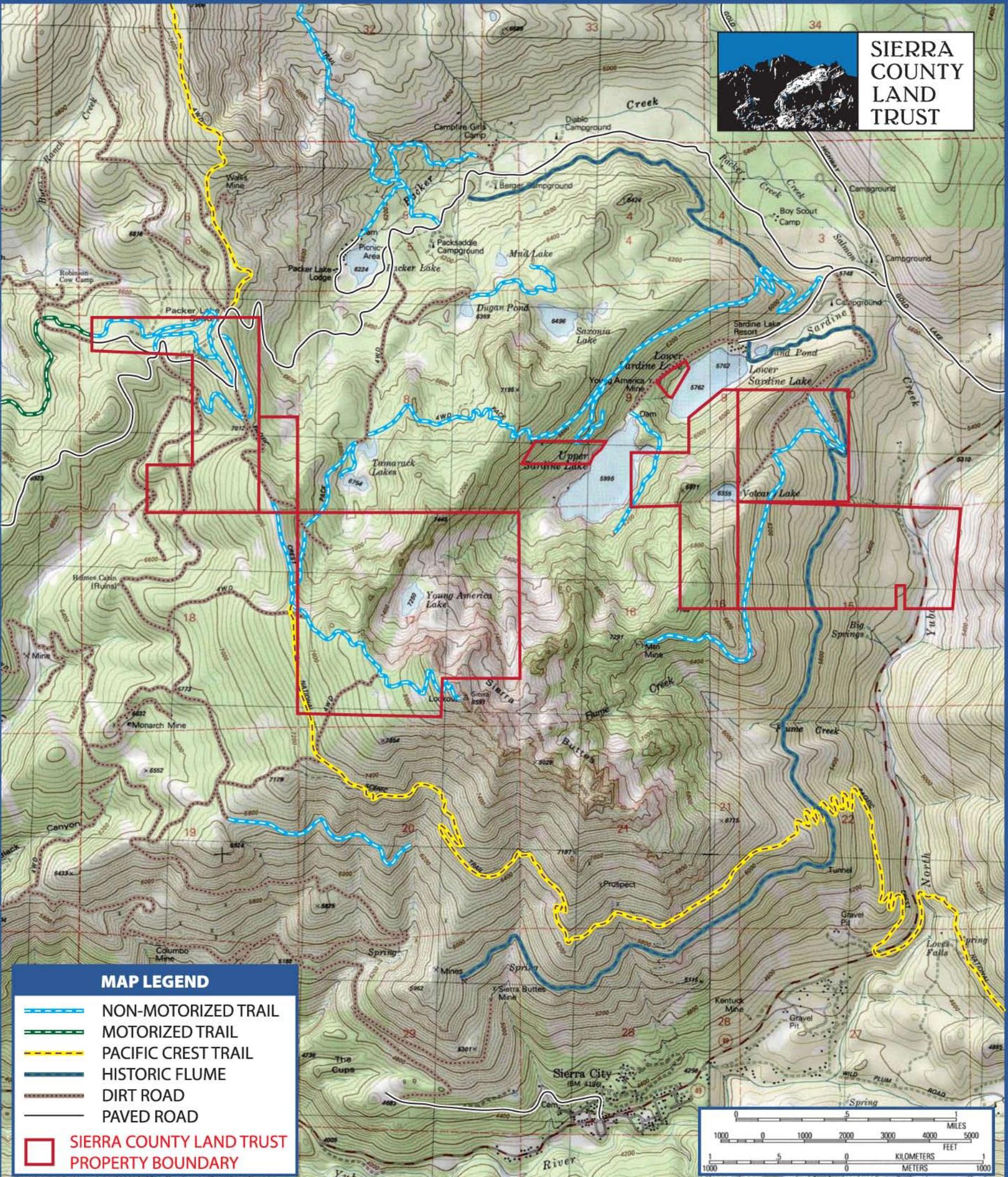
-  NON-MOTORIZED TRAIL
-  MOTORIZED TRAIL
-  PACIFIC CREST TRAIL
-  HISTORIC FLUME
-  DIRT ROAD
-  PAVED ROAD

 **SIERRA COUNTY LAND TRUST  
PROPERTY BOUNDARY**





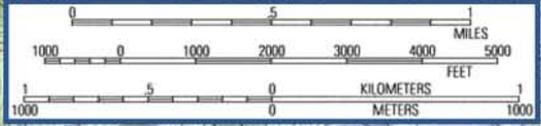
**SIERRA  
COUNTY  
LAND  
TRUST**



**MAP LEGEND**

-  NON-MOTORIZED TRAIL
-  MOTORIZED TRAIL
-  PACIFIC CREST TRAIL
-  HISTORIC FLUME
-  DIRT ROAD
-  PAVED ROAD

 **SIERRA COUNTY LAND TRUST  
PROPERTY BOUNDARY**



**Sierra County  
Board of Supervisors'  
Agenda Transmittal &  
Record of Proceedings**

<b>MEETING DATE:</b> February 2, 2016	<b>TYPE OF AGENDA ITEM:</b> <input checked="" type="checkbox"/> Regular <input type="checkbox"/> Timed <input type="checkbox"/> Consent
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<b>DEPARTMENT:</b> Probation <b>APPROVING PARTY:</b> Jeff Bosworth <b>PHONE NUMBER:</b> (530) 289-3277
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**AGENDA ITEM:** Resolution approving agreement between Sentinel Offender Services, LLC and the Sierra County Probation Department to provide home alcohol testing services and equipment.

**SUPPORTIVE DOCUMENTS ATTACHED:** Memo Resolution Agreement Other Contract

**BACKGROUND INFORMATION:**

**FUNDING SOURCE:** REALIGNMENT (SB678 & AB109)  
**GENERAL FUND IMPACT:** No General Fund Impact  
**OTHER FUND:**  
**AMOUNT:** \$ N/A

**ARE ADDITIONAL PERSONNEL REQUIRED?**  
  
Yes, -- --  
No

**IS THIS ITEM ALLOCATED IN THE BUDGET?** Yes No  
  
**IS A BUDGET TRANSFER REQUIRED?** Yes No

**SPACE BELOW FOR CLERK'S USE**

<p><b>BOARD ACTION:</b></p> <input type="checkbox"/> Approved <input type="checkbox"/> Approved as amended <input type="checkbox"/> Adopted <input type="checkbox"/> Adopted as amended <input type="checkbox"/> Denied <input type="checkbox"/> Other <input type="checkbox"/> No Action Taken	<input type="checkbox"/> Set public hearing For: _____ <input type="checkbox"/> Direction to: _____ <input type="checkbox"/> Referred to: _____ <input type="checkbox"/> Continued to: _____ <input type="checkbox"/> Authorization given to: _____	Resolution 2016- _____ Agreement 2016- _____ Ordinance _____ Vote: Ayes: Noes: Abstain: Absent: <input type="checkbox"/> By Consensus
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**COMMENTS:**

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\_\_\_\_\_  
CLERK TO THE BOARD

\_\_\_\_\_  
DATE



**Jeffrey D. Bosworth**  
Chief Probation Officer

## **Probation Department Sierra County**

P.O. Box 67  
Downieville, California 95936  
(530) 289-3277  
FAX (530) 289-2821



**Hon. Charles H. Ervin**  
Superior Court Judge

To: Board of Supervisors  
From: Jeffrey D. Bosworth  
Date: February 02, 2016  
Subject: Contract w/ Sentinel for Alcohol testing

The purpose of this contract is to augment the probation department's alcohol testing program. At present, the probation department has two methods of testing for alcohol use:

- Hand held PAS device
- Urine testing

The PAS device (breath test) does a good job of testing whether or not someone is currently under the influence of alcohol. The cost is minimal. The only real limitation is that the officer and subject have to meet together at the time of the test.

The urine test is good for testing of past use within the last 80 hours or so. However, it must be sent to the lab (which takes up to two weeks to get results) and is somewhat expensive at about \$40 a test. To get full coverage it takes two tests a week.

The sentinel devices are similar to the PAS device (breath test) except that it is either kept at the defendant's home, or is portable (about the size of a large cell phone). It is inexpensive (giving the same coverage as a urine test at about half the cost) and can be scheduled to randomly test the defendant multiple times a day. The cost is per day, so it costs the same to test someone five times a day as once.

There are a number of safeguards to prevent "cheating." For example, the device takes a photo of the person taking the test at the time of the test, so for example a drunken probationer could not get a sober friend to take the test for them. Sentinel is a reputable company used by various probation departments throughout the state. The contract is "pay as you go" so there is no cost when not in use.

**BOARD OF SUPERVISORS, COUNTY OF SIERRA, STATE OF CALIFORNIA**

**IN THE MATTER OF SIERRA COUNTY**

**RESOLUTION NO. 16-**

**WHEREAS**, alcohol testing of probationers is an important part of the duties of the probation department;

**WHEREAS**, the alcohol testing device and program provided by Sentinel improves the probation department's ability to test for alcohol in accordance with court orders;

**WHEREAS**, the Community Corrections Partnership (CCP) has unanimously approved the contract with Sentinel;

**NOW THEREFORE BE IT RESOLVED**, the Sierra County Board of Supervisors authorizes the probation department to enter in the attached agreement with Sentinel to provide the proscribed services.

Fund: Existing Probation Funding

**ADOPTED** by the Board of Supervisors of the County of Sierra, State of California on the day of \_\_\_\_\_, 2016 by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

COUNTY OF SIERRA

\_\_\_\_\_  
LEE ADAMS, CHAIRPERSON  
BOARD OF SUPERVISORS

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
HEATHER FOSTER  
CLERK OF THE BOARD

\_\_\_\_\_  
JIM CURTIS  
COUNTY COUNSEL

## ALCOHOL TESTING AGREEMENT

This SERVICES AGREEMENT (this “**Agreement**”) dated as of November 1, 2015, is entered into by and between Sentinel Offender Services, LLC, a Delaware limited liability company (“**Sentinel**”), having its principal place of business at 201 Technology Drive, Irvine, California 92618, and the Sierra County Probation Department (“**Customer**”) having its principal place of business at 100 Courthouse, 2<sup>nd</sup> Floor, Downieville, California 95936.

### **RECITALS**

A. Sentinel is engaged in the business of providing the Services (as defined at Section 1.1) to community correctional and monitoring entities.

B. The Customer desires to supervise a certain portion of their offenders via an alcohol testing program that is to monitor the offender through one of the different levels of monitoring provided by Sentinel. Additional services may be provided as needed.

C. Sentinel and Customer desire to enter into a relationship whereby Sentinel shall provide the Services to Customer on the terms and subject to the conditions set forth herein including certain payments and considerations.

NOW THEREFORE, in consideration of the above recitals and in consideration of the mutual agreements and undertakings set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### **Section 1. Services; Equipment; and Customer’s Responsibilities**

1.1 Services to be Performed. During the Term (as defined at Section 3.1), Sentinel shall provide to Customer the services described at **Exhibit “A”** attached hereto (the “**Services**”). Sentinel shall provide the Services by qualified personnel in a professional manner. SENTINEL DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Customer acknowledges that Sentinel’s ability to provide the Services effectively is dependent on factors outside of its control, including without limitation, prompt reporting by Customer of observed defects or deficiencies in any equipment assigned to or retrieved from participant offenders, proper maintenance of equipment by Customer, extended power outages, disconnection or other loss/interruption of telephone lines, operation of wireline and wireless networks, internet connectivity, and scrambling, interruption, suspension, or other interference in the transmission of radio signals or signals to or from global positioning satellites. Accordingly, Customer acknowledges that Sentinel is making no representation or warranty that the provision of Services will be made available without interruption or will operate error- free.

1.2 Equipment. During the Term, Sentinel shall provide and maintain certain equipment (“**Sentinel Equipment**”) in connection with its provision of the Services as set forth in **Exhibit “B”** attached hereto (“**Equipment**”). All Sentinel Equipment provided under this Agreement shall remain the sole and exclusive property of Sentinel. Sentinel Equipment shall be used in accordance with the instructions provided prior to program deployment and on-going as needed. The Customer shall pay to Sentinel the full replacement or repair costs for any alteration, tampering, damage, destruction or loss of such Equipment within 30 days of receipt of Sentinel’s invoice for such replacement or repair costs,

*provided, however*, that the Customer shall not be responsible for damage to Customer-Controlled Equipment that Sentinel determines was caused by ordinary “wear and tear.”

1.3 Customer’s Responsibilities. In addition to any other obligations of Customer set forth herein, Customer shall be responsible for the obligations set forth at **Exhibit “C”** attached hereto (“**Customer Responsibilities**”).

## **Section 2. Service Fees and Payments**

2.1 Service Fees. Sentinel shall invoice the Customer monthly for all tracking and monitoring services provided (collectively, **Exhibit “D” Service Fees**) in accordance with the attached fee structure.

## **Section 3. Term; Termination; and Suspension**

3.1 Term. This Agreement is effective as of November 1, 2015, and shall continue in full force and effect until October 31, 2016, (The “Initial Term”). Termination. Upon a party’s material breach of the terms and conditions of this Agreement, the non-breaching party shall notify the breaching party in writing indicating the nature of such breach. If the breaching party fails to cure the breach within 30 calendar days of its receipt of written notice from the non-breaching party, the non-breaching party may immediately terminate this Agreement.

3.2 Rights Upon Termination. Upon termination or expiration of this Agreement:

(a) Sentinel shall immediately cease to provide the Services; *provided, however*, that Sentinel shall continue to provide the services described at **Exhibit “E”** attached hereto (“**Post-Termination Services**”);

(b) Each party shall return to the other party all copies of any Confidential Information (as defined at Section 5.1) or other materials received from the other party;

(c) Sentinel shall give to Customer all copies of Private Information (as defined at Section 5.3);

(d) Customer shall provide all outstanding payment of fees owed to Sentinel as agreed and acknowledged to under this Agreement as of the date of termination or expiration of this Agreement; and

(e) If requested by either party, the parties will issue a mutually acceptable communication regarding the termination or expiration of the Agreement.

3.3 Suspension. Sentinel reserves the right, but assumes no obligation, to suspend performance immediately if, in Sentinel’s reasonable judgment, Customer has materially breached any obligation set forth herein.

## **Section 4. Marketing**

Customer agrees that Sentinel may include Customer’s name in listings of Sentinel’s customers.

## Section 5. Confidentiality and Privacy

5.1 Nondisclosure and Limited Use. Each party acknowledges that by reason of its relationship to the other party under this Agreement it will have access to certain information and materials concerning the other party's business, plans, customers (including criminal records), technology and products that are confidential and of substantial value to such party ("**Confidential Information**"), which value would be impaired if such Confidential Information were disclosed to third parties. Unless disclosure is otherwise required by any applicable law, including without limitation the California Public Records Act, each party agrees to maintain all Confidential Information received from the other party, both orally and in writing, in confidence and agrees not to disclose or otherwise make available such Confidential Information to any third party without the prior written consent of the disclosing party. Each party further agrees to use the Confidential Information only for the purpose of performing this Agreement. Nothing herein contemplates or obligates County to provide confidential information about any person in contravention of any applicable laws, including without limitation W&I Code Section 827.

5.2 Exclusions. The parties' obligations of non-disclosure and limited use set forth at Section 5.1 shall not apply to Confidential Information which: (a) is or becomes a matter of public knowledge through no fault of or action by the receiving party; (b) was rightfully in the receiving party's possession prior to disclosure by the disclosing party; (c) subsequent to disclosure, is rightfully obtained by the receiving party from a third party who is lawfully in possession of such Confidential Information without restriction; (d) is independently developed by the receiving Party without resort to Confidential Information which is confidential under this Agreement; or (e) is required to be disclosed to a third party by law or judicial order, *provided* that prior written notice of such required disclosure is furnished by the disclosing party to the other party to this Agreement as soon as practicable in order to afford the other party an opportunity to seek a protective order. In the event that a protective order is not promptly obtained by the other (objecting) party and the objecting party notifies the other party that it was not able to obtain the protective order then the disclosure may be made without liability to the disclosing party. Whenever requested by a disclosing party, a receiving party shall immediately return to the disclosing party all manifestations of the Confidential Information, or, at the disclosing party's option, shall destroy all such Confidential Information as the disclosing party may designate.

5.3 Private Information. Sentinel acknowledges and understands that it may produce certain private information, records and other materials concerning inmates, probationers, juveniles and other private persons that are confidential ("**Private Information**"), the disclosure of which may violate applicable privacy laws. Sentinel shall maintain all Private Information in confidence and agrees not to disclose or otherwise make available such Private Information to any third party without the prior written consent of Customer, *provided, however*, that Sentinel shall be entitled to disclose any Private Information to the extent required by law or judicial order. Sentinel further agrees to use the Private Information only for the purpose of performing this Agreement.

## Section 6. Representations and Warranties

Each party to this Agreement represents and warrants to the other that (a) it has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder; (b) this Agreement has been duly authorized by all necessary action on the part of such party and constitutes a valid and legally binding obligation of such party, enforceable in accordance with its terms and conditions; (c) such party need not give any notice to, make any filing with, or obtain any authorization, consent, or approval of any government or governmental agency in order to provide the

services to County contemplated by this Agreement; and (d) such party is not a party to any written or oral agreement, understanding, arrangement or contract that prohibits the performance of its obligations hereunder.

### **Section 7. Acknowledgments**

Customer acknowledges that Sentinel is providing the Sentinel Equipment and the Services specifically referenced in Exhibit A hereto. Sentinel is not involved in establishing criteria or otherwise providing advice or guidance on the selection of participant offenders, it being understood that all risk associated with selection and course of monitoring is expressly borne by Customer. In addition, Customer acknowledges that Sentinel has not made any representation or warranty that the Services will be available without interruption or that they will be provided error-free. Customer assumes full responsibility for responding to alert signals and non-compliance reports indicating violations by participant offenders.

### **Section 8. Limitation of Liability**

8.1 Disclaimer. Customer acknowledges that it is solely responsible for the decision to use the Services and all decisions regarding the selection of third parties that will have access to or contact with the Services, including, without limitation, probationers, juveniles and Customer's employees. SENTINEL DISCLAIMS ANY AND ALL RESPONSIBILITY OR LIABILITY FOR CUSTOMER'S DECISIONS DESCRIBED IN THIS SECTION 8.1.

8.2 Service Availability. SENTINEL DOES NOT WARRANT THAT THE SERVICES WILL BE AVAILABLE ON A SPECIFIED DATE OR TIME OR THAT THE SERVICES WILL FUNCTION ON AN ERROR-FREE BASIS. AT ANY GIVEN TIME, THE EQUIPMENT OR SOFTWARE USED IN CONNECTION WITH THIS AGREEMENT MAY MALFUNCTION AND FAILURES IN THE SERVICES MAY OCCUR FROM TIME TO TIME. CUSTOMER AGREES THAT SENTINEL WILL NOT BE LIABLE FOR ANY DAMAGES OR HARMS, INCLUDING, WITHOUT LIMITATION, PROPERTY DAMAGE, PERSONAL INJURY, BODILY INJURY, ILLNESS OR DEATH, THAT CUSTOMER OR CUSTOMER'S EMPLOYEES, AGENTS OR OTHER AFFILIATES MAY INCUR ARISING OUT OF SENTINEL'S OPERATIONS OR ITS PROVISION OF OR FAILURE TO PROVIDE THE SERVICES.

8.3 Limitation of Damages.

(a) EXCEPT FOR BREACH OF ANY CONFIDENTIALITY OR PRIVACY OBLIGATIONS SET FORTH AT SECTION 5, NEITHER PARTY, NOR ANY OF ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, INDEPENDENT CONTRACTORS, REPRESENTATIVES, OR AFFILIATES SHALL BE LIABLE TO THE OTHER PARTY OR ANY OF ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, INDEPENDENT CONTRACTORS, REPRESENTATIVES, OR AFFILIATES FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR INDIRECT DAMAGES INCLUDING, WITHOUT LIMITATION, LOST PROFITS, ARISING IN CONNECTION WITH THE SERVICES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) Sentinel's aggregate liability to Customer relating to or arising out of this Agreement, whether in contract, tort, or otherwise, shall not exceed (i) the total amounts paid by Customer to Sentinel during the 12 month period immediately preceding the event which gave rise to Customer's claims or (ii) \$10,000, whichever is less.

## Section 9. General Provisions

9.1 Assignment. This Agreement and all rights and duties hereunder may not be assigned, mortgaged, sublicensed, delegated, or otherwise encumbered by any party or by operation of law without the prior written consent of the other party, which consent shall not be unreasonably withheld, except that a party's rights hereunder may be transferred to a successor of all or substantially all of the business and assets of the party regardless of how the transaction or series of related transactions is structured.

9.2 Notices. All notices, requests, or other communications required or permitted to be given hereunder or which are given with respect to this Agreement shall be in writing (including telecopy) and, unless otherwise expressly provided herein, shall be delivered (a) by hand during normal business hours, (b) by Federal Express, United Parcel Service or other reputable overnight commercial delivery service (collectively, "**overnight courier**"), (c) by registered or certified mail (return receipt requested) or (d) by telecopy, addressed as follows:

If to Sentinel:

Sentinel Offender Services, LLC  
201 Technology Drive  
Irvine, California 92618  
Telephone No.: (949) 453-1550  
Facsimile No.: (949) 453-1554  
Attention: Alan Velasquez, President

If to Customer:

Sierra County Probation Department  
100 Courthouse, 2<sup>nd</sup> Floor  
Downieville, California 95936  
Telephone: (530) 289-3277  
Attention: Jeffrey Bosworth, Chief Probation Officer

Any such notice shall be effective for purposes of determining compliance with the time requirements herein (a) at the time of personal delivery, if delivered by hand, (b) at the time accepted for overnight delivery by the overnight courier, if delivered by overnight courier, (c) at the time of deposit in the United States mail, postage fully prepaid, if delivered by registered or certified mail, or (d) at the time of confirmation of receipt, if delivered by telecopy.

If either party changes its address for purposes of notices hereunder, such party shall give written notice of such change to the other party in accordance with this Section 9.2.

9.3 Entire Agreement. This Agreement (together with the other written agreements specifically referred to herein) shall constitute the entire agreement between the parties hereto and shall supersede any other agreements (including the existing monitoring agreement presently in effect with Customer), whether oral or written, express or implied, as they pertain to the transactions contemplated herein. No revision, change, amendment, addendum or modification of this Agreement shall be effective unless made in writing and signed by both of the parties hereto.

9.4 Arbitration. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in Sierra County, California, unless some other venue

is mutually agreed upon by the parties. Arbitration shall be in accordance with the Rules of the American Arbitration Association then in effect. Any award issued as a result of such arbitration shall be final and binding between the parties thereto, and shall be enforceable by any court having jurisdiction over the party against whom enforcement is sought. The arbitrator(s) shall have the right to award costs to the prevailing party and shall be bound by limitations on liability or remedies set forth in this Agreement.

9.5 Governing Law And Choice Of Forum. This Agreement shall be construed and governed in accordance with the internal laws of the State of California. In the event any legal action becomes necessary to enforce or interpret the terms of this Agreement, including but not limited to any applications for temporary restraining orders, temporary or permanent injunctions, or to enforce the decision of an arbitrator rendered in accordance with Section 9.4, the parties agree that such action will be brought in the Orange County Superior Court or in the U.S. District Court for the Central District of California, Orange County Division, and the parties hereby submit to the exclusive jurisdiction of said courts.

9.6 Attorney's Fees. In the event of any action, claim or arbitration between the parties hereto relating to the Agreement or the breach, the prevailing party in such action shall be entitled to recover from such other party the costs and expenses of such prevailing party, including reasonable fees of attorneys and other advisors, incurred in taking or defending such action or claim.

9.7 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

9.8 Severability. If any provision of this Agreement is found by any court of competent jurisdiction to be invalid or unenforceable, such provision shall be deemed to be modified to the minimum extent necessary to cause it to be valid and enforceable and the invalidity or unenforceability of such provision prior to such modification shall not affect the other provisions of this Agreement and all provisions not affected by the invalidity or unenforceability shall remain in full force and effect.

9.9 Remedies Not Exclusive. No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy, except as expressly provided in this Agreement or any Exhibit thereto, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

9.10 Waiver. Failure of either party at any time to require the performance of any provision under this Agreement shall not affect the right of such party to require full performance thereafter and a waiver by either party of a breach of any provision of this Agreement shall not be taken or held to be a waiver of any further or similar breach or as nullifying the effectiveness of such provision.

9.11 Force Majeure. If performance hereunder is interfered with by any condition beyond a party's reasonable control (a "**Force Majeure Event**"), the affected party shall be excused from such performance to the extent of such condition, *provided, however* that if a Force Majeure Event detrimentally affects a party's performance of a material covenant hereunder for 30 days or more, the other party can terminate this Agreement. The party whose performance is prevented by a Force Majeure Event shall immediately inform the other party of the state of affairs.

9.12 Independent Contractors. Sentinel and Customer are independent entities, and no agency, partnership, franchise, joint venture or employment relationship is intended or created by this Agreement. No party shall make any warranties or representations on behalf of any other party.

*[signatures follow]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, all as of the day and year first above written.

**“Sentinel”**

**“Customer”**

By: \_\_\_\_\_  
Its: Alan Velasquez  
Vice President

By: \_\_\_\_\_  
Its: Jeffrey Bosworth  
Chief Probation Officer

\_\_\_\_\_

By: \_\_\_\_\_  
Its:

## **EXHIBIT “A”**

### **THE SERVICES**

- **Basic Services**

Sentinel will provide alcohol testing equipment that is to be used by the Customer. The selection of offenders to participate in this program shall be compatible with the welfare of society as determined by the Customer who shall bear all responsibility for program participants. Any other monitoring and equipment that may be required to meet the needs of the program may be added to this agreement at agreed upon daily rates.

- **Training Services**

Sentinel will train the required individuals from the Customer in order to allow the program to be administered properly. Training shall be accomplished via webinar sessions.

- **Hours of Operation**

The Sentinel offender monitoring software operates 24 hours a day, 7 days a week, 365 days a year. Our National Service Center supports this operation at all times. The National Service Center operates seven (7) days a week, twenty-four (24) hours a day, throughout the year.

- **Reports**

For activity information, the Customer will be able to access our software through either a standard computer or laptop connection. Report format may be modified to better meet the needs of the program.

- **Record Retention**

All program data will remain accessible for a period of five (5) years. Retrieval of current client records is accessible immediately, while retrieval of records that may have been archived due to extensive completion dates may require a minimum of 72 hours to retrieve and deliver to Customer personnel.

**EXHIBIT “B”**

**EQUIPMENT**

As required by this Agreement, Sentinel will provide to the Customer the required amount of monitoring equipment in order for successful operation of the program. This equipment will be provided at no cost to the Customer.

All equipment used by offenders on this program, will be the sole responsibility of said offender. All program participants will be required to sign a “Participant Contract” that shall be used in a Court of Law in the event that the equipment is damaged, lost, stolen, or not returned by the participant either during or upon completion of his participation in the Electronic Monitoring Program.

**DAMAGED/LOST/STOLEN EQUIPMENT SCHEDULE**

Portable Breath Alcohol Testing Unit	\$ 850.00
Charging Cords	\$ 25.00
Carrying Case	\$ 15.00
Residential BAT Unit	\$ 975.00

## **EXHIBIT “C”**

### **CUSTOMER RESPONSIBILITIES**

Customer will be responsible for the safekeeping of the equipment in the interim between its use on program participants. Customer agrees to maintain equipment in a safe and secured location as to prevent any theft or damage due to negligence. Customer understands that the daily limited, maintenance of the equipment will be the responsibility of its personnel, which maintenance shall consist of cleaning equipment when returned by participants, ensuring the devices and related supplies are kept in a safe location away from moisture and other items that may impact its use.

**EXHIBIT “D”**

**SERVICE FEES**

<b>Portable Breath Alcohol Testing</b>	<b>\$5.75/day</b>
<b>Residential Breath Alcohol Testing</b>	<b>\$3.95/day</b>
<b>Device Blow Tubes (set of 20 Tubes)</b>	<b>\$ 25.00</b>
<b>Monitoring Center Support 24/7</b>	<b>No Cost</b>
<b>Webinar Training</b>	<b>No Cost</b>

- **Note: No Cost for Shelf Stock equal to 10% of active unit count. Excess stock will incur shelf fee of \$1.50/day. Stock provided to the County under this Agreement shall consist of two portable and one landline, residential unit.**
- **Shipping provided via 3-4 day ground transit at No Cost to the Customer. Express or overnight shipments will be the responsibility of the Customer.**
- **The alcohol monitoring devices are intended to be assigned to County’s client/probationer so they can be tested at any time. There is no cost for the device when it is not assigned to a probationer. The charge per the above daily rate only applies when a devices is assigned to a probationer who is being tested and not for the time that the equipment is otherwise in the County’s possession.**

## **EXHIBIT "E"**

### **POST-TERMINATION SERVICES**

In the event that either party terminates this agreement, all procedures and requirements will be finalized according to the agreed upon manner. Sentinel will provide all services up until the expiration date of the contract, upon which it will be the Customer's responsibility to return all monitoring equipment and supplies that are in the possession of the Customer or an offender to Sentinel.

Sentinel will not be responsible for the monitoring of any offender once the agreement expiration date has past. Any monitoring services after said date will have to be described in writing, and consented to by both parties. Any fees associated with this hold over of services period will be due and payable in the same manner as all other fees were collected.

All program data will remain accessible for a period of five (5) years. Retrieval of current client records is accessible immediately, while retrieval of records that may have been archived due to extensive completion dates may require a minimum of 72 hours to retrieve and deliver to Customer personnel.





## Probation Department Sierra County



**Jeffrey D. Bosworth**  
Chief Probation  
Officer

P.O. Box 67  
Downieville, California 95936  
(530) 289-3277  
FAX (530) 289-2821

**Hon. Charles H. Ervin**  
Presiding Judge  
Sierra County Superior Court

DATE: February 2, 2016  
TO: Sierra County Board of Supervisors  
FROM: Jeff Bosworth  
RE: Annual Review of Electronic Monitoring Program Rules

There are several electronic monitoring (EM) programs authorized by statute, not all of which are utilized by Sierra County. Of the three that are used, only the first two listed are required to have the rules reviewed annually by the local board of supervisors. As for the third, the chief probation officer has the intrinsic authority to implement the program for those individuals subject to probation supervision.

In order to be eligible for either of the first two programs, the defendant must be approved by the court, after consultation with the district attorney and the public defender. After consulting with the sheriff, the chief probation officer will make the final decision as to which eligible individuals will participate in the program. It is extremely unlikely that anyone would be placed on either of the first two programs over the objection of the sheriff.

1203.016 PC: In lieu of jail sentence (post sentence)  
Initial Board Approval: Resolution 15-010

This particular program allows for certain individuals to serve all or a portion of their jail sentence on electronic monitoring. In order to qualify for participation in Sierra County's Post Sentence Electronic Monitoring Program, the inmate must be serving a local sentence with no holds or outstanding warrants.

1203.018 PC: In lieu of bail (pretrial)  
Initial Board Approval: Resolution 13-085  
First Annual Renewal: February 03, 2015

This program is targeted at individuals who cannot afford bail, but at the same time do not represent a safety risk to the community, yet for one reason or another are not an appropriate candidate for a release on their own recognizance.

1210.7 PC                      Persons on Probation

This portion of the program can be used on any individual who is subject to probation supervision. The program is used as an intermediate sanction between counseling and jail, as well as an aid to supervision when we feel the need to constantly monitor the individual's whereabouts.

Sierra County's EM program costs a little less than \$5 a day per person. In round numbers, it currently costs about \$80 a day to house someone in the Nevada County Jail (Juvenile Hall is \$90). If each of the 928 days of EM had been spent in custody, rather than on EM, the extra cost to the county could have been as much as \$75,000.

Funding for the program depends on the status of the participant. Realignment funding (primarily SB678) pays for felons; the existing probation budget covers misdemeanants and juveniles.

Although there is a provision to bill individuals for the cost of the program in certain circumstances, participation is not based upon ability to pay. In other words, no one will be denied the opportunity to participate based upon their ability to reimburse the county for the cost of the program.

As previously stated, the rules for the post sentence program (1203.016 PC) and the pre-trial program (1203.018 PC) are required to be reviewed by the board on an annual basis. Those rules are attached for the board's review. There are no proposed changes to the rules; they remain unchanged from those approved by the board last year. Below is a brief statistical review of the program since it began in early 2013.

<b>Program</b>	<b>Indiv.</b>	<b>No.</b>	<b>Days</b>	<b>Sat</b>	<b>Tech</b>	<b>Conv</b>
In Lieu of jail sentence: 1203.016	0	0	0	0	0	0
Pre-trial in Lieu of Bail: 1203.018	7	6	377	6	1	0
Probation:	8	11	431	8	3	0
Juveniles	3	4	120	3	1	0
<b>TOTALS</b>	<b>18</b>	<b>21</b>	<b>928</b>	<b>17</b>	<b>5</b>	<b>0</b>

**KEY:**

Probation:	All adults supervised by probation, including standard probationers, PRCS (parolees supervised by probation) and ICOTS (on probation in another state, but living and being supervised by Sierra County).
Individual	The number of different individuals who have been on that particular EM program (some have been on more than once). Example: one individual on EM on two separate occasions counts as one here.

Number	The number of different occasions that people have been on EM. Example: One individual with two separate instances of being on EM counts as two here.
Days	Total number of days on EM
Sat	Satisfactory: Completed time on EM without incident
Tech	Technical violation of program rules
Conv	Arrested and/or convicted of new offense while on EM

### Results of technical violations

	Program	Date	Nature of violation & disposition
1	Pre-trial	8/2014	Use of marijuana, spent weekend in jail, released OR; No longer lives in county
2	ICOTS	5/2015	Avoiding supervision, returned to Nevada
3	PRCS	5/2013	Meth use; revoked 180 days in jail – has now left county
4	Misd Probation	12/2013	Absconded; warrant issued (family returned device) – lives in Reno
5	Juvenile	12/2015	School suspension, time on EM extended

**BOARD OF SUPERVISORS, COUNTY OF SIERRA, STATE OF CALIFORNIA**

**IN THE MATTER OF SIERRA COUNTY  
PRETRIAL ELECTRONIC MONITORING PER 1203.018 PC AND  
POST SENTENCE ELECTRONIC MONITORING PER 1203.016 PC**

**RESOLUTION NO. 16-**

**WHEREAS**, the various electronic monitoring programs operated by the probation department have proven to be quite successful;

**WHEREAS**, Penal Code section 1203.016(d)(1) requires that the Rules, Regulations and Administrative Policies of the post sentence program be reviewed by the Board of Supervisors on an annual basis;

**WHEREAS**, Penal Code section 1203.018(e) requires that the Rules, Regulations and Administrative Policies of the presentence program be reviewed by the Board of Supervisors on an annual basis;

**NOW THEREFORE BE IT RESOLVED**, the probation department is hereby authorized to continue operating both programs under the attached Rules, Regulations and Administrative Policies.

**ADOPTED** by the Board of Supervisors of the County of Sierra, State of California on the day of \_\_\_\_\_, 2016 by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

COUNTY OF SIERRA

\_\_\_\_\_  
LEE ADAMS, CHAIRPERSON  
BOARD OF SUPERVISORS

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
HEATHER FOSTER  
CLERK OF THE BOARD

\_\_\_\_\_  
JIM CURTIS  
COUNTY COUNSEL

## 1203.018 PC – Pre Trial Program

### ELECTRONIC MONITORING RULES

- I. **Eligibility:** In order to qualify for participation in Sierra County's pre-trial electronic monitoring program, the inmate must be an inmate with no holds or outstanding warrants and one of the following circumstances must apply:
  1. Have been held in custody for at least 30 calendar days from the date of arraignment pending disposition of only misdemeanor charges
  2. Have been held in custody pending disposition of charges for at least 60 calendar days from the date of arraignment.
  3. The inmate is appropriate for the program based on a determination by the courts
  
- II. **Basic Rules and Notices to the Defendant**
  1. I understand that any violations of these conditions may result in a return to custody without further order from the court.
  2. I will not tamper with the Electronic Monitoring equipment that has been issued to me, nor will I permit tampering by any other person.
  3. Intentionally failing to return to the place of detention on time may be punished as escape (4532 PC). Intentionally damaging the equipment may be punishable as escape by force.
  4. Intentionally damaged or lost equipment may also result in formal misdemeanor/felony charges being filed with the court.
  5. I understand that my participation in the program will be monitored by a tamper-resistant, non-removable G.P.S. ankle bracelet, which I agree to wear 24 hours a day during the entire period of the Electronic Monitoring Program
  6. I understand that willful failure to abide by the pre-determined schedule established by the Probation Officer may be cause for an arrest and return to custody without further order from the court.
  7. I understand that the loss of a receiving signal or the receipt of a tamper signal by the monitoring device shall constitute prima facie evidence that I have violated my probation/PRCS. I further agree that the computer printout may be used as evidence in a Court of Law to prove said violation. Loss, intentional damage, or damage sustained to the unit(s) or

their components due to negligence, and/or failing to follow the charging instructions will result in a return to custody without further order from the court.

8. In the event of loss or damage, I will be held financially responsible for all equipment issued to me not to exceed \$2000.00. The actual replacement and or repair cost will be determined by the contracted monitoring company. Reimbursement will be set up through the Probation Department.
9. I may be required to have a private residential phone line with basic service only. **(At the discretion of the probation officer)**. Optional services, such as call-waiting or call-forwarding, may not be allowed. Cordless phones and answering machines are not permitted while on this program. Computer internet services are not permitted unless they are on a separate line. These services must be removed within 5 days of being placed on the program.
10. I understand that it is my responsibility to advise all individuals residing in my residence of the rules and regulations of this program. All residents of the household and I will grant admittance to my home to any peace officer and or probation officer at any hour of the day or night.
11. I agree to notify the Probation Staff of any threatening or dangerous animals at my residence. Any threatening or dangerous animal at the offender's residence must be restrained or removed when any law enforcement officials are present.
12. I will keep my telephone in good repair and the line available for incoming calls. All telephone conversations will be limited to ten (10) minutes in duration or less.
13. I will not possess dangerous or deadly weapons.
14. I will not consume or possess any alcoholic beverages, illegal drugs, or narcotics. I will advise the Probation Officer of any prescription drugs I am required to take.
15. I understand that my employer may be contacted, either in person or by telephone, to verify my continued employment and working hours.
16. During any curfew period, if I am allowed to leave my residence I will proceed directly to and from the destination(s) that had/have been approved by the Probation Officer.
17. I will be financially responsible for any medical expenses incurred while participating in the Electronic Monitoring Program.
18. I will notify the Probation Officer as soon as possible of any changes in status of my employment, school studies, job training, treatment program, or other Electronic Monitoring Program component or extension.

19. I understand any expense for special adapters necessary in the installation of electronic equipment and/or the expense of phone calls incurred to monitor this equipment shall be at my own expense.
20. I understand that I may be billed up to \$10 a day (depending upon ability to pay) during this program. Inability to pay will not preclude me from participating in the program.
21. Willful failure to make payments as directed may result in my termination from the program (subject to ability to pay). Program failure does not guarantee program refunds

**III. Additional Rules and Notices used on a case by case basis**

- I understand that I will be required to stay within the interior premises of my home, and/or within the areas determined by the courts/probation while on the program.
- The primary use of voicemail for contacting the Probation Department is for emergency situations which necessitate my leaving my home at unauthorized times or to request a return call. I understand that leaving a message on **voicemail is NOT an authorization** to change my schedule or leave my home. I must obtain prior approval in person or by telephone from the Probation Officer to change my schedule
- I will submit any schedule change request at least one week in advance. I will supply any documentation requested by the Probation Officer to verify my schedule. Schedule change requests will be kept to a minimum to maximize the efficiency of the program.
- If released from work or any other program component earlier than usual, or if work or other program component is canceled for the day, I will immediately return to my residence and notify the Probation Officer.
- My assigned curfew is:  
Monday – Friday: \_\_\_\_\_ p.m. to \_\_\_\_\_ a.m.  
Saturday- Sunday: \_\_\_\_\_ p.m. to \_\_\_\_\_ a.m.  
Holidays: \_\_\_\_\_ p.m. to \_\_\_\_\_ a.m.
- I will only leave my residence during my assigned curfew for the following

reasons:

- a) To attend work as **pre-approved** by the Probation Officer.
- b) To attend and participate in a treatment program or counseling as **pre-approved** by the Probation Officer.
- c) To attend to personal affairs as **pre-approved** by the Probation Officer.
- d) When directed to do so by emergency personnel, i.e. police, fire, paramedic, etc.
- e) When an emergency situation, such as serious illness or injury, or injury to my immediate family or myself necessitates my leaving the residence.
- f) In case of (d) and (e) I will immediately, or as reasonably practical, call the Electronic Monitoring Program and advise the Probation Officer of such incidents during business hours. If the incident occurs during non-business hours, I will call the Probation Officer's voice mail and explain the nature of my emergency or incident requiring me to leave. I will provide written proof of any incident to the EMP staff the next business day or as soon as reasonably practical.
- g) All other absences require the prior approval of the Probation Officer. I will be required to provide written documentation verifying these absences.

I will not enter the following exclusion zone(s):

1. \_\_\_\_\_

(reserved for additional terms)

#### IV. BASIC INSTRUCTIONS FOR WEARING THE EM DEVICE (tag)

1. Attach the charging device by clipping it to both sides of the tag
2. Light on front indicates contact with charger, not battery level
3. Remove the charger by gently detaching its clips from the tag
4. Charge 2 x day for 30 continuous minutes each time
5. If a 30 minute charge is skipped, charge for 60 continuous minutes
6. If you feel a low battery vibration (2 x every 10 min.) charge for 2.5 continuous hours
7. Do not charge while sleeping or driving
8. Do not submerge device in water (such as baths, pools, etc.)
9. Do not force a boot over device
10. A sock can be worn over and or under device
11. Device is hypoallergenic and cannot overheat
12. Do not tamper with the device
13. Do not expose to extreme temperature (below -4°F or above 131°F)
14. Notify probation immediately if a medical procedure requires removal of the tag
15. Do not press "status call button" on device unless specifically instructed

16. If the tag vibrates or beeps call your probation officer ASAP
17. If the light shines or blinks (when off charger) call your probation officer ASAP

## 1203.016 PC – Post Sentence Program

### ELECTRONIC MONITORING RULES

- I. **Eligibility:** In order to qualify for participation in Sierra County's Post Sentence electronic monitoring program, the inmate must be serving a local sentence with no holds or outstanding warrants and be approved for participation by the court.
  
- II. **Basic Rules and Notices to the Defendant**
  1. I understand that any violations of these conditions may result in a return to custody without further order from the court.
  2. I will not tamper with the Electronic Monitoring equipment that has been issued to me, nor will I permit tampering by any other person.
  3. Intentionally failing to return to the place of detention on time may be punished as escape (4532 PC). Intentionally damaging the equipment may be punishable as escape by force.
  4. Intentionally damaged or lost equipment may also result in formal misdemeanor/felony charges being filed with the court.
  5. I understand that my participation in the program will be monitored by a tamper-resistant, non-removable G.P.S. ankle bracelet, which I agree to wear 24 hours a day during the entire period of the Electronic Monitoring Program
  6. I understand that willful failure to abide by the pre-determined schedule established by the Probation Officer may be cause for an arrest and return to custody without further order from the court.
  7. I understand that the loss of a receiving signal or the receipt of a tamper signal by the monitoring device shall constitute prima facie evidence that I have violated my probation/PRCS. I further agree that the computer printout may be used as evidence in a Court of Law to prove said violation. Loss, intentional damage, or damage sustained to the unit(s) or their components due to negligence, and/or failing to follow the charging instructions will result in a return to custody without further order from the court.
  8. In the event of loss or damage, I will be held financially responsible for all equipment issued to me not to exceed \$2000.00. The actual replacement and or repair cost will be determined by the contracted monitoring

company. Reimbursement will be set up through the Probation Department.

9. I may be required to have a private residential phone line with basic service only. **(At the discretion of the probation officer)**. Optional services, such as call-waiting or call-forwarding, may not be allowed. Cordless phones and answering machines are not permitted while on this program. Computer internet services are not permitted unless they are on a separate line. These services must be removed within 5 days of being placed on the program.
10. I understand that it is my responsibility to advise all individuals residing in my residence of the rules and regulations of this program. All residents of the household and I will grant admittance to my home to any peace officer and or probation officer at any hour of the day or night.
11. I agree to notify the Probation Staff of any threatening or dangerous animals at my residence. Any threatening or dangerous animal at the offender's residence must be restrained or removed when any law enforcement officials are present.
12. I will keep my telephone in good repair and the line available for incoming calls. All telephone conversations will be limited to ten (10) minutes in duration or less.
13. I will not possess dangerous or deadly weapons.
14. I will not consume or possess any alcoholic beverages, illegal drugs, or narcotics. I will advise the Probation Officer of any prescription drugs I am required to take.
15. I understand that my employer may be contacted, either in person or by telephone, to verify my continued employment and working hours.
16. During any curfew period, if I am allowed to leave my residence I will proceed directly to and from the destination(s) that had/have been approved by the Probation Officer.
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18. I will notify the Probation Officer as soon as possible of any changes in status of my employment, school studies, job training, treatment program, or other Electronic Monitoring Program component or extension.
19. I understand any expense for special adapters necessary in the installation of electronic equipment and/or the expense of phone calls incurred to monitor this equipment shall be at my own expense.
20. I understand that I may be billed up to \$10 a day (depending upon ability to pay) during this program. Inability to pay will not preclude me from participating in the program.

21. Willful failure to make payments as directed may result in my termination from the program (subject to ability to pay). Program failure does not guarantee program refunds

**III. Additional Rules and Notices used on a case by case basis**

I understand that I will be required to stay within the interior premises of my home, and/or within the areas determined by the courts/probation while on the program.

The primary use of voicemail for contacting the Probation Department is for emergency situations which necessitate my leaving my home at unauthorized times or to request a return call. I understand that leaving a message on **voicemail is NOT an authorization** to change my schedule or leave my home. I must obtain prior approval in person or by telephone from the Probation Officer to change my schedule

I will submit any schedule change request at least one week in advance. I will supply any documentation requested by the Probation Officer to verify my schedule. Schedule change requests will be kept to a minimum to maximize the efficiency of the program.

If released from work or any other program component earlier than usual, or if work or other program component is canceled for the day, I will immediately return to my residence and notify the Probation Officer.

My assigned curfew is:

Monday – Friday: \_\_\_\_\_ p.m. to \_\_\_\_\_ a.m.

Saturday- Sunday: \_\_\_\_\_ p.m. to \_\_\_\_\_ a.m.

Holidays: \_\_\_\_\_ p.m. to \_\_\_\_\_ a.m.

I will only leave my residence during my assigned curfew for the following reasons:

- a) To attend work as **pre-approved** by the Probation Officer.
- b) To attend and participate in a treatment program or counseling as **pre-approved** by the Probation Officer.
- c) To attend to personal affairs as **pre-approved** by the Probation Officer.
- d) When directed to do so by emergency personnel, i.e. police, fire,

paramedic, etc.

- e) When an emergency situation, such as serious illness or injury, or injury to my immediate family or myself necessitates my leaving the residence.
- f) In case of (d) and (e) I will immediately, or as reasonably practical, call the Electronic Monitoring Program and advise the Probation Officer of such incidents during business hours. If the incident occurs during non-business hours, I will call the Probation Officer's voice mail and explain the nature of my emergency or incident requiring me to leave. I will provide written proof of any incident to the EMP staff the next business day or as soon as reasonably practical.
- g) All other absences require the prior approval of the Probation Officer. I will be required to provide written documentation verifying these absences.

I will not enter the following exclusion zone(s):

1. \_\_\_\_\_

(reserved for additional terms)

#### **IV. BASIC INSTRUCTIONS FOR WEARING THE EM DEVICE (tag)**

1. Attach the charging device by clipping it to both sides of the tag
2. Light on front indicates contact with charger, not battery level
3. Remove the charger by gently detaching its clips from the tag
4. Charge 2 x day for 30 continuous minutes each time
5. If a 30 minute charge is skipped, charge for 60 continuous minutes
6. If you feel a low battery vibration (2 x every 10 min.) charge for 2.5 continuous hours
7. Do not charge while sleeping or driving
8. Do not submerge device in water (such as baths, pools, etc.)
9. Do not force a boot over device
10. A sock can be worn over and or under device
11. Device is hypoallergenic and cannot overheat
12. Do not tamper with the device
13. Do not expose to extreme temperature (below -4°F or above 131°F)
14. Notify probation immediately if a medical procedure requires removal of the tag
15. Do not press "status call button" on device unless specifically instructed
16. If the tag vibrates or beeps call your probation officer ASAP
17. If the light shines or blinks (when off charger) call your probation officer ASAP

**Sierra County  
Board of Supervisors'  
Agenda Transmittal &  
Record of Proceedings**

<b>MEETING DATE:</b> February 2, 2016	<b>TYPE OF AGENDA ITEM:</b> <input type="checkbox"/> Regular <input type="checkbox"/> Timed <input type="checkbox"/> Consent
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**DEPARTMENT:** Board of Supervisors  
**APPROVING PARTY:** Lee Adams, Chairman, District No. 1  
**PHONE NUMBER:** 530-289-3295

**AGENDA ITEM:** Resolution adopting first amended policy on the scope of county counsel functions.

**SUPPORTIVE DOCUMENTS ATTACHED:**  Memo  Resolution  Agreement  Other

**BACKGROUND INFORMATION:**

**FUNDING SOURCE:**  
**GENERAL FUND IMPACT:** No General Fund Impact  
**OTHER FUND:**  
**AMOUNT:** \$ N/A

**ARE ADDITIONAL PERSONNEL REQUIRED?**  
  
 Yes, -- --  
 No

**IS THIS ITEM ALLOCATED IN THE BUDGET?**  Yes  No  
  
**IS A BUDGET TRANSFER REQUIRED?**  Yes  No

**SPACE BELOW FOR CLERK'S USE**

<p><b>BOARD ACTION:</b> <input type="checkbox"/> Approved <input type="checkbox"/> Approved as amended <input type="checkbox"/> Adopted <input type="checkbox"/> Adopted as amended <input type="checkbox"/> Denied <input type="checkbox"/> Other <input type="checkbox"/> No Action Taken</p>	<p><input type="checkbox"/> Set public hearing For: _____ <input type="checkbox"/> Direction to: _____ <input type="checkbox"/> Referred to: _____ <input type="checkbox"/> Continued to: _____ <input type="checkbox"/> Authorization given to: _____</p>	<p>Resolution 2016- _____ Agreement 2016- _____ Ordinance _____ Vote: Ayes: Noes: Abstain: Absent: <input type="checkbox"/> By Consensus</p>
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**COMMENTS:**  
\_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
CLERK TO THE BOARD

\_\_\_\_\_  
DATE

**BOARD OF SUPERVISORS, COUNTY OF SIERRA, STATE OF CALIFORNIA**

**IN THE MATTER OF FIRST AMENDED POLICY ON  
THE SCOPE OF COUNTY COUNSEL FUNCTIONS**

**RESOLUTION NO. 16- \_\_\_\_**

**WHEREAS**, the duties of the Office of Sierra County Counsel need periodic updating, and this resolution updates prior Resolution No. 93-256,

**BE IT RESOLVED** that the Board of Supervisors approves the following policy on the scope of County Counsel functions:

**BOARD OF SUPERVISORS' POLICY ON THE  
SCOPE OF COUNTY COUNSEL FUNCTIONS**

1. County Counsel's primary responsibility is to provide counsel to the Board of Supervisors as the elected representatives of the citizens of Sierra County, including but not limited to:
  - a) Advising the Board on the desirability, downside risks, rewards and/or ramifications (including legal, business, or other possible consequences or results<sup>1</sup>) of any matter under the jurisdiction of the Board of Supervisors, in its various capacities;
  - b) Advising of legislative and administrative law impacts;
  - c) Drafting and/or approving as to form and legal effects contracts, agreements, leases, financial arrangements, ordinances, resolutions, orders, policy statements, correspondence and communications as requested by the Board, and/or Department Managers on specific projects when authorized by the Board;
  - d) Representing the Board and the Departments in litigation, contractual negotiation, legislative and/or Board approved policy advocacy, or in any other communication or representative capacity as may from time to time be requested by the Board.
  - e) Recommending to the Board the hiring and subsequent supervision of the work of outside counsel for litigation, specialized advice and in instances of potential conflict of interest.
  - f) Undertaking such special tasks, representation and/or providing advice to the Board of matters as the Board may from time to time request;

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<sup>1</sup> The words "financial" and "political" were removed from the original draft with the understanding that all department managers, including County Counsel give such advice to the Board from time to time without such activities being necessarily part of County Counsel's exclusive duty or function.

- g) Prioritizing work flows and activities according to directions of the Board and Counsel's professional judgment;
2. Provide representation to Department Managers when requested by them in the same manner and scope as provided to the Board of Supervisors to the extent that the latter is not in conflict with representation to the Board.
  3. Provide those services, on a time available basis, as generally described in Attachment A.
  4. Provide such other duties as may be reasonably requested which are not in conflict with Counsel's ethical, legal, or contractual responsibilities.
  5. The foregoing constitute a permissible and desirable scope of responsibility but, in light of limited time and resources, does not constitute required functions or otherwise alter County Counsel's statutory and contractual duties or requirements.
  6. County Counsel does not:
    - a) Make decisions for the Board, Commissions, or other public agencies.
    - b) Make administrative decisions for other Department Managers.
    - c) Provide legal advice as a governmental official to non-governmental entities or individuals.

**ADOPTED** by the Board of Supervisors of the County of Sierra, State of California on the 2<sup>nd</sup> day of February, 2016, by the following vote:

AYES:  
 NOES:  
 ABSTAIN:  
 ABSENT:

COUNTY OF SIERRA

---

LEE ADAMS  
 CHAIRMAN, BOARD OF  
 SUPERVISORS

ATTEST:

APPROVED AS TO FORM:

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HEATHER FOSTER  
 CLERK OF THE BOARD

---

ROBERT SHULMAN  
 SPECIAL COUNSEL

**ATTACHMENT "A"**  
**COUNTY OF SIERRA RESOLUTION NO. 16-**

**DUTIES OF COUNTY COUNSEL**

Over one hundred state laws, as well as many local ordinances, resolutions and policies, specifically refer to the duties of the County Counsel, an Office established by Chapter 2.16 of the Sierra County Code.

By far the most global directive is found in Government Code §§27642 and 26529, which authorizes the County Counsel to perform all duties vested by law in the District Attorney other than those of a criminal prosecutor. In other words, the County Counsel is authorized to represent the County and its officers and employees in all civil law matters. Such representation may be carried out directly by County Counsel, or by attorneys working under the direction of County Counsel.

Sierra County government is, in essence, an aggregate of over thirty separate "businesses", each of which has a separate "mission" and is governed by a unique set of laws or regulations. For each of these departments, and for special districts (subordinate entities of the County), and for the school district, the Office provides a range of legal services, including general legal counseling; the drafting and reviewing of legislation, leases, contracts, resolutions, ordinances, deeds and other legal instruments; training to boards, commissions and County employees; representation in civil and administrative trials and proceedings; and appellate representation.

The following summarizes the responsibilities of the Office of County Counsel to "the client" the citizens of the County of Sierra, a political subdivision or the State of California, as the latter are represented by the Sierra Counties highest elected body, the Board of Supervisors ("the Board"), consistent with Federal, and State law and applicable ethical cannons for the practice of law in the State of California.

**1. BOARD OF SUPERVISORS**

The County Counsel is legal advisor to the Board, and shall attend all meetings of the Board. (Government Code §26526). Because it directs and controls litigation, the Board may by supermajority vote employ counsel to assist the County Counsel in his or her duties (Government Code §25203). County Counsel works directly for the Board in providing advice, rendering legal opinions, drafting ordinances, resolutions and contracts representing the Board during regular meetings and closed sessions and representing the Board in negotiations with other entities and individuals.

It is within the discretion of the Board to determine the level of service to be provided to it by County Counsel, consistent with County Counsel's legal and ethical duties, and within the financial limits of any agreement between the County and the attorney serving as County Counsel.

With support from the Board, and with the involvement of department heads, County Counsel has also participated in a variety of special projects' committees and task forces over the years.

**2. ASSESSOR**

The County Counsel may provide representation to the Assessor in Assessment Appeal Board (AAB) hearings and in litigation resulting from administrative hearing decisions (Government Code §31000.7). The Board's policy is to request that County Counsel represent the Assessor when taxpayer appellants are represented by counsel. The Board of Supervisors sits in a quasi-judicial capacity when it sits as the constitutionally established county board of equalization (the AAB) determining rights between a taxpayer appellant and the Assessor, and it may also need representation by outside counsel or County Counsel.

**3. BUILDING DEPARTMENT**

County Counsel provides legal advice to the Building Department as requested and with the department has instituted a comprehensive Building Code Enforcement Program (Sierra County Code Part 1 Chapter 17).

**4. CHILD PROTECTIVE SERVICES "CPS"**

The County Counsel represents CPS in cases where the physical or mental well-being of a child is at risk and dependency proceedings are instituted (Welfare & Institutions Code §318.5). This involves the rendering of general advice as well as, providing representation at hearings, trials and appeals. CPS cases are complex, emotion-charged, and have inherent high liability exposure for the Department of Human Services and the County..

**5. CODE ENFORCEMENT**

The County Counsel's office is charged with the responsibility of advising County enforcement agencies in code enforcement proceedings. These include administrative "nuisance abatement" proceedings, civil injunction, and other special civil proceedings. (Civil Code §3491 (remedy public nuisance); H&S Code §11470.1 (recovery of expenses in seizure and destruction of controlled substances); §17980 et seq. (state housing law violations); 116670 and 117035 (water standards and supply violations); 2060 et seq. (vector control); 14880 (weed abatement); and 25180-25185 (hazardous waste); also Sierra County Code Chapters 1.17 and 8.20.)

**6. COLLECTIONS**

In that County Counsel represents the County in civil matters, the Office may file actions against various persons and entities to collect debts owed the County, generally as directed by the Board.

**7. CONTRACTS**

All contracts are "reviewed as to legal form" by the Office of County Counsel except certain standardized or routine state and federal contracts. The Office also drafts and/or examines in depth many contracts per month.

**8. COUNTY CLERK-RECORDER/ELECTIONS**

The County Counsel provides general legal advice to the County Clerk/Recorder. In addition, Elections Code §§9105, 9160, 9313, 9314, and 9500 require the County

Counsel to provide ballot titles, summaries and impartial statements regarding County initiatives and bond measures, special district and school district initiatives and bond measures.

**9. DEPARTMENT MANAGERS**

In addition to the mandated functions described in other sections, County Counsel generally represents all Department Managers in connection with operation of their various departments. This representation should be clearly understood in the context of the role of County Counsel representing the public entity Sierra County, which precludes representation of any department manager personally. No information provided by any department manager (or other Sierra County public official) is privileged against being communicated or otherwise revealed to the “County”- generally as it is managed by the Board of Supervisors) and no “attorney client privilege” exists between the County Counsel and the department manager or other public official in relationship to the County. Any Department Manager who believes they may have personal liability or culpability for acts or omissions in contravention or outside their scope of duty as a Sierra County official, should consult with their own attorney to preserve attorney client privilege.

**10. GRAND JURY**

The County Counsel is required to provide legal advice to the Grand Jury on civil matters (Penal Code §934). County Counsel generally meets with the Grand Jury and provides general orientation and meets with the Foreperson as requested. The level of service varies according to the needs of the particular Grand Jury. County Counsel reviews Grand Jury Final Reports for potential defamation- not to approve or edit the report’s content. County Counsel also assists the Board of Supervisors, when requested, in formally responding to the Grand Jury Final Report on an annual basis.

**11. LABOR NEGOTIATIONS**

The Board has requested that County Counsel represent the Board as its negotiator (with assistance from the Auditor) to bargain with all classified employee units and the AFL-CIO Operating Engineers. This is not a mandated function of the Office, but because there are significant legal, economic and political consequences in this area, the Board’s policy has been to rely on legal counsel instead of other possible labor negotiators.

**12. LOCAL AGENCY FORMATION COMMISSION “LAFCO”**

Government Code §§56000 et seq. allows for the County Counsel's Office to provide legal advice to LAFCO §56384 provides that the Commission may appoint legal counsel other than the County Counsel; however, because LAFCO activities are entirely financed by the County, primarily through user fees, the appointment of outside counsel would not result in any cost savings to the County.

**13. LAND USE MATTERS**

The Office attends all meetings held by the Board of Supervisors and Planning Commission concerning land-use matters. County Counsel’s Office is expected to be on legal alert about proceedings described in the State Zoning and Planning Law (Gov. Code §§65000 et seq.); the Subdivision Map Act (Gov. Code §§66410, et seq.); the California Environmental Quality Act (CEQA) (Public Resources Code §§21000, et seq.); the

Surface Mining and Reclamation Act (SMARA) (Public Resources Code §§2710, et seq.).

The Office may also be involved with the exercise of the County's other various regulatory responsibilities such as: the California Land Conservation Act of 1965 (Williamson Act) [Government Code §51200, et seq.]; the Timberland Productivity Act of 1982 [Government Code §51100, et seq.]; the Improvement Act of 1911 [Streets & Highways Code §5000, et seq.]; the Infrastructure Financing Districts [Government Code §53395, et seq.]; the Landscaping and Lighting Act of 1972 [Streets & Highways Code §§22500, et seq.]; the Mello-Roos Community Facilities Act [Government Code §53311, et seq.]; the Open-Space Easement Act of 1974 [Government Code §51070, et seq.]; and the Benefit Assessment Act of 1982 [Government Code §54703, et seq.].

The County has adopted and implemented local regulations consistent with these underlying statutory mandates (Sierra County Code Parts 14, 15, & 17). As a practical matter, if not by express statutory *proviso*, this legal service is mandatory if the County is to function in a manner that avoids constant litigation over its regulatory actions or omissions. As the Board is aware, the land use area breeds litigation.

#### **14. LITIGATION**

Litigation is divided into a number of areas. Because of the County's participation in Trindel for risk coverage, all tort defense (suits against the County for damages) is handled by outside counsel selected by Trindel, a joint powers authority. County Counsel generally participates in case management and advising the Board on the desirability of settlement proposals. Land Use Litigation may be handled by County Counsel but because of the complexity of the Land Use area, County Counsel generally recommends that Land Use decisions should be defended by outside counsel under County Counsel's supervision.

#### **15. MANAGEMENT INFORMATION SYSTEMS DEPARTMENT**

County Counsel provides service to this department on an as-needed basis, such as contracts, litigation holds and e-evidence issues, and public records requests.

#### **16. MENTAL HEALTH DEPARTMENT**

County Counsel provides general legal services to the Mental Health Department, but this excludes LPS matters (Lanterman-Petris-Short provisions for the gravely disabled..

#### **17. ORDINANCES AND RESOLUTIONS**

All ordinances and most resolutions of the County are drafted or reviewed by the Office of the County Counsel, which then codifies all ordinances, prepares Code supplement instructions, and transmits the supplements to the Clerk's office for distribution thereby keeping all code volumes up to date.

#### **18. PERSONNEL DEPARTMENT**

County Counsel provides advice to the "Personnel Department" regarding the drafting of personnel rules and policies, and other related legal matters. In conjunction with the Personnel Director (currently shared between the Auditor/Tax Collector and the District Attorney), County Counsel provides specific advice in serious disciplinary matters,, and other related matters such as harassment allegations. The advice is initially

provided to the affected department upon request from the Department Manager. If the matter is not resolved, County Counsel supervises and monitors the work of outside litigation counsel specializing in public employment or personnel litigation.

**19. PERSONNEL MATTERS**

By Board direction, County Counsel provides legal services to the Department Managers, especially in the context of disciplinary actions. County Counsel assists department heads in drafting charges and determining appropriate discipline, including representation of the department heads during pre-disciplinary conferences (“Skelly”) and, ultimately, appeals to administrative hearings and to the courts.

**20. PLANNING DEPARTMENT**

County Counsel provides service to the Planning Department in connection with specific land use applications and projects (subdivisions, land use entitlements) and in connection with General Plan and implementation activities (see Land Use matters, Para. 14 above).

**21. PUBLIC ADMINISTRATOR**

The County Counsel is available to act as attorney for the Public Administrator in all probate estates managed by him. While the Public Administrator may employ private counsel, as a practical matter, the estates handled by the Public Administrator do not have assets enough to allow the hiring of private counsel. Legal duties in probating estates include the drafting of pleadings, court appearances, and legal research. Since the Public Administrator is the District Attorney, the latter has generally not sought County Counsel’s services.

**22. PUBLIC GUARDIAN**

The County Counsel is available to provide legal services to the Public Guardian, including petitioning for conservatorship and appearing and representing the Public Guardian in court and jury trials. Although Probate Code §2941 allows the Public Guardian to employ private attorneys where estate funds or satisfactory pro bono services are available, few conservatorship estates managed by the Public Guardian's office have sufficient assets to pay for private counsel and there are no pro bono services available. The District Attorney, appointed as Public Guardian, generally does not request County Counsel services.

**23. PUBLIC HEALTH DEPARTMENT**

The County Counsel is required by law to prosecute civil actions necessary to support the duties of the Public Health Officer. In addition, the County Counsel provides general legal services to the department, including preparing abatement orders, administrative search warrants, inspection orders and general operational advice.

**24. RISK MANAGEMENT**

County Counsel reviews all tort claims with the Risk Manager and may participate on any type of risk management committee. The Office provides advice with regard to certain aspects of workers' compensation matters and personnel matters involving exposure to liability. County Counsel also provides general legal services to Risk Management as requested (e.g. drafting releases, reviewing agreements).

**25. ROAD DEPARTMENT**

County Counsel provides service for issues primarily arising under the Streets and Highways Code and the Sierra County Code pertaining to encroachment permits, transportation permits and personnel matters.

**26. SCHOOLS**

Government Code §§26520 and 26522 and Education Code §§35041.5, 35203 and 72419.5 authorizes the County Counsel to provide legal services to school districts, including legal services necessary for the issuance of school bonds. In practice, legal assistance to the school district has been limited due to staffing limitations, and the customary practice of the district to use private counsel.

**27. SERVICE AREAS 1 THROUGH 5**

County Counsel provides service to each of the County Service Areas as directed by the Board and requested by the Supervisor for each Service Area,

**28. SHERIFF**

The County Counsel provides general legal services to the Sheriff. Government Code §26529 requires the County Counsel to defend against writ of habeas corpus proceedings brought against the Sheriff alleging substandard jail conditions. In addition, the County Counsel represents the Sheriff in "Pitchess motions" when the court is asked to allow disclosure of certain confidential files about county peace officers or custodial officers (Evidence Code §1043).

**29. SOLID WASTE ENTERPRISE FUND**

County Counsel represents the Solid Waste Administrator and Fee Administrator on an "as needed" basis, in that the Office drafted the Solid Waste Appeals System and revised all of the implementing resolutions to comply with the requirements of Government Code §25830. County Counsel represents the Fee Administrator in appeals of Solid Waste Fees.

**30. SPECIAL DISTRICTS**

Government Code §27645 mandates that counties provide legal representation to special districts where the governing board is, in whole or in part, composed of members of the Board of Supervisors. Additionally, because the Board of Supervisors is required to take certain actions with regard to independent special districts, such as the appointment of district directors or the calling of elections, a modest level of legal services is also required for those districts. While County Counsel may charge the affected independent district a fee covering the cost of such services unless specifically precluded by statute (Government Code §26520 and §26529), as a practical matter, County Counsel's assistance to independent special districts has been extremely limited

**31. SUBPOENAS & CONFIDENTIALITY**

Various departments, in particular Social Services, Probation and the Sheriff's Department, all receive a number of subpoenas for documents each year and have an obligation to protect the confidentiality of those records. It falls to the County Counsel to

take the necessary legal steps to adequately protect that confidentiality by petitioning the court to quash or limit the subpoenas or to seek the issuance of protective orders.

**32. SUPERIOR COURT**

The County Counsel often interacts with the Presiding Judge and the CEO of the Superior Court in matters of common interest and concern. In particular, the County and the Court share the courthouse facility and infrastructure under a Facilities Use Agreement with the State of California.

**33. TREASURER-TAX COLLECTOR**

Because the Tax Collector may be a named creditor in many bankruptcies, the County Counsel may bring or defend adversary proceedings in Federal Bankruptcy Court as necessary to preserve the rights of the Tax Collector to collect all taxes due. In addition, there are various sections in the Revenue and Taxation Code which provide for legal actions to be taken against taxpayers who fail to timely pay their taxes. The Office is representing the Treasurer-Tax Collector in on-going proceedings.

**Sierra County  
Board of Supervisors'  
Agenda Transmittal &  
Record of Proceedings**

<b>MEETING DATE:</b> February 2, 2016	<b>TYPE OF AGENDA ITEM:</b> <input checked="" type="checkbox"/> Regular <input type="checkbox"/> Timed <input type="checkbox"/> Consent
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<b>DEPARTMENT:</b> Board of Supervisors <b>APPROVING PARTY:</b> Lee Adams, Chairman, District No. 1 <b>PHONE NUMBER:</b> 530-289-3295
---

**AGENDA ITEM:** Approval of proposed draft contract for county counsel services and request for proposals, and direction to issue same. (CHAIR ADAMS)

**SUPPORTIVE DOCUMENTS ATTACHED:** Memo Resolution Agreement Other  
Draft Request for Proposals and County Counsel Contract

**BACKGROUND INFORMATION:**

**FUNDING SOURCE:**  
**GENERAL FUND IMPACT:** No General Fund Impact  
**OTHER FUND:**  
**AMOUNT:** \$ N/A

<b>ARE ADDITIONAL PERSONNEL REQUIRED?</b>  <input type="checkbox"/> Yes, -- -- <input type="checkbox"/> No	<b>IS THIS ITEM ALLOCATED IN THE BUDGET?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No  <b>IS A BUDGET TRANSFER REQUIRED?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No
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**SPACE BELOW FOR CLERK'S USE**

<b>BOARD ACTION:</b> <input type="checkbox"/> Approved <input type="checkbox"/> Approved as amended <input type="checkbox"/> Adopted <input type="checkbox"/> Adopted as amended <input type="checkbox"/> Denied <input type="checkbox"/> Other <input type="checkbox"/> No Action Taken	<input type="checkbox"/> Set public hearing For: _____ <input type="checkbox"/> Direction to: _____ <input type="checkbox"/> Referred to: _____ <input type="checkbox"/> Continued to: _____ <input type="checkbox"/> Authorization given to: _____	Resolution 2016- _____ Agreement 2016- _____ Ordinance _____ Vote: Ayes: Noes: Abstain: Absent: <input type="checkbox"/> By Consensus
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**COMMENTS:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CLERK TO THE BOARD _____	DATE _____
--------------------------	------------

**ROBERT J. SHULMAN**  
**Attorney at Law**  
238 N. Auburn St., Grass Valley, CA 95945  
530-575-5511  
[robertjshulman@gmail.com](mailto:robertjshulman@gmail.com)  
State Bar No. 075306

**For Board Meeting of February 2, 2016**

The Board of Supervisors  
County of Sierra  
100 Courthouse Square  
Downieville, CA 95936

**Re: Information Requested: Professional Resume**

TO: Chair Lee Adams, and Honorable Members of the Board of Supervisors

FROM: Rob Shulman, Special Counsel

I am providing my professional resume in an abbreviated form. This is to set forth my qualifications to serve as your Special Counsel during the recruitment, selection, and contracting of an attorney to perform the duties of county counsel.

I am currently an active member of the State Bar of California, and the Nevada County Bar Association. I am in good standing to practice in state and federal courts.

**CHRONOLOGY OF LAW PRACTICE starting at present time:**

November 2009 to Present: Practice of law in Nevada County as a sole practitioner, semi-retired, in which I assist on private cases referred by other attorneys. Also, I have undertaken engagements by contract for public entities such as the County of Monterey, the City of Nevada City, the Penn Valley Fire Protection District, and now the County of Sierra.

The Monterey County contract was to serve as the employment law attorney representing management in confidential matters involving approximately 4,500 employees. This included working opposite the SEIU and doing multiple labor arbitrations, as well as being the chief advisor to the human resources department.

September 2003 to October 2009: Served the County of Nevada as county counsel, responsible for all areas of civil practice. Among the most significant accomplishments were the following: in matters in litigation; in mental health law (developing practice guidelines for "Laura's Law" on assisted outpatient treatment; in land use (solving problems related to utilities, wastewater, and roads); and in code enforcement (administrative citation system).

October 1985 to August 2003: Served the County of Plumas as county counsel, responsible for all areas of civil practice. Among the most significant accomplishments were the following: assisting public works in major transformations of the solid waste system and imposition of a post-closure fee; expanding the airport facility at Chester-Lake Almanor; addressing “watershed issues” of a state water contractor with “area of origin” rights, including the Lake Davis water supply and fishery; and the defense of the County in various types of litigation, including civil rights actions.

July 1983 to September 1985: Served the County of Plumas as Deputy County Counsel. I put together the first comprehensive county personnel rules, I served as interim county counsel for most of 1985. At this time I also was founding president of the Plumas Crisis Intervention and Resource Center.

March 1982 – June 1983: In San Luis Obispo CA, and served as lecturer on law-related courses at Cal Poly State U. in the Agricultural Business Dept. Prior to that I had been involved in overseas agricultural development projects, mostly in West Africa.

#### **EDUCATION**

Juris Doctor (degree in Law): Class of 1976 U. of California at Berkeley.

Masters of Arts in Political Science: 1969 U. of California at Berkeley.

Bachelor of Arts in History: 1967 Ohio University, Athens Ohio.

#### **COMMUNITY INVOLVEMENT**

I volunteer regularly for the following: St. Joseph Cultural Center in Grass Valley; Friends of the Nevada County Library; Domestic Violence Coalition DVSAC for Nevada County; Public Law Center’s “Lawyer in the Library” program; and participation in work- days for various non-profits in the area.

I appreciate having the opportunity to work with, and assist, Sierra County.

cc: Heather Foster, Clerk of the Board

## COUNTY COUNSEL CONTRACT

County of Sierra  
State of California

This County Counsel Contract (hereinafter referred to as "Agreement") is entered into as of the Effective Date last set forth below by and between the COUNTY OF SIERRA, a Political Subdivision of the State of California (the "COUNTY"), and \_\_\_\_\_, attorney at law (hereinafter referred to as "ATTORNEY").

### RECITALS

The COUNTY heretofore has retained the services of an attorney under contract for a period of approximately 18 years and the latter has given notice that he intends to retire at the end of fiscal year 2015/16 (June 30). Accordingly, both ATTORNEY and the COUNTY believe that it is in their respective best interest to enter into an initial "Interim-Contract" for a period of one year, and thereafter, if the relationship is working well for both parties, subject to a 60 termination notice period as set forth below, this Agreement shall automatically renew for terms of four years, as provided for in Government Code Section 26520 *et seq.*

**NOW, THEREFORE**, in consideration of the foregoing, and each and every covenant and condition contained herein, the parties hereto agree as follows.

### OPERATIVE PROVISIONS

#### 1. ENGAGEMENT OF SERVICES.

Pursuant to Government Code §27640, *et seq.*, and Part 2 Chapter 16 of the Sierra County Code, and subject to the initial one year Interim Contract period, the parties agree that ATTORNEY shall be and hereby is appointed to represent the COUNTY as Sierra County Counsel. ATTORNEY shall represent the COUNTY as Sierra County Counsel as provided by law and pursuant to the terms of this Agreement.

#### 2. TIME ALLOCATIONS.

##### 2.1 MINIMUM HOURS.

ATTORNEY shall devote up to 140 hours per month for an average of 35 hours per week, in service to the COUNTY, as such duties may be reasonably required in both direct legal and administrative service, participation in County Counsel meetings and continuing education, and otherwise representing the County in meetings with California State Association of Counties (CSAC) and other appropriate organizations. In no event shall the COUNTY be responsible for compensating ATTORNEY or reimbursing the latter for meetings or continuing educational hours beyond five percent (5%) of ATTORNEY'S minimum hours per month unless authorized in advance, in writing by COUNTY Board of Supervisors, or its designee.

## 2.2 COUNTY COUNSEL & ASSISTANTS.

ATTORNEY shall be allowed to utilize other lawyers in ATTORNEY's law firm, and/or such other lawyers as ATTORNEY may deem appropriate, provided that: (1) the ATTORNEY shall be solely responsible for supervising and compensating such other lawyers for their work and no additional compensation shall be required to be paid by COUNTY, except as may be separately provided by agreement between COUNTY and ATTORNEY; and, (2) ATTORNEY may appoint and authorize such other lawyers as assistants and/or deputy county counsels; provided, however, that such appointments are subject to the concurrence of the Board of Supervisors. As of the date of this Agreement, ATTORNEY intends to appoint \_\_\_\_\_ as Assistant County Counsel and \_\_\_\_\_ as Deputy County Counsel. (Unless the context otherwise requires the term ATTORNEY shall be deemed to include such additional attorneys.) The foregoing shall not pertain to the COUNTY entering into Professional Service Agreements with "outside counsel" as has been the practice of the COUNTY for over 25 years.

### 3. COMPENSATION - FLAT RATE FOR SERVICES RENDERED.

During the amended term of this Agreement, ATTORNEY shall be entitled to compensation for services performed at the rate of \$\_\_\_\_\_ per month, payable on the last day that checks are issued by the County for Department Head payroll in each successive month. To the extent that ATTORNEY works in excess of the above required minimum, the hours worked shall be accumulated and applied to any month in which the minimum hours worked fall below the minimum required under this Agreement. Except as otherwise expressly provided for herein or by further agreement with COUNTY, ATTORNEY shall not be compensated for work in excess of that required herein. However, total hours worked in excess of that required under this Agreement ("excess hours") shall be carried forward from month-to-month and may be utilized to offset any months' hours of work which fall below the minimum then required. In the event that ATTORNEY does not perform any services for the COUNTY for a continuous period of thirty (30) days, compensation to ATTORNEY shall cease until services are resumed, irrespective of the number of "excess hours" which are accumulated. Attorney shall provide monthly billing statements in a form showing a breakdown of services consistent with a "chart of accounts" approved by the county auditor.

### 4. TRAVEL AND SUPPORT.

#### 4.1 TRAVEL, MEETINGS AND MCLE.

ATTORNEY shall attend such meetings in Sierra County and elsewhere as may reasonably be required to perform the duties of the County Counsel. In addition, ATTORNEY shall be allowed to attend regional and statewide meetings and County Counsel conferences and mandatory Continuing Legal Education ("MCLE") programs in a manner consistent with past practice of the Sierra County Counsel under prior agreements. Except for travel to and from the County Seat of Downieville, the costs for

all travel, programs and related expenses shall be paid by the County at the IRS mileage rate or the actual cost of airfare and other forms of transportation and any actual costs for programs, in an aggregate amount not to exceed \$\_\_\_\_\_ per fiscal year. Such cost shall be reimbursed to ATTORNEY upon submission of travel/expense reports on such forms as COUNTY may require, or paid in advance to the conference facility entities upon timely submission of purchase orders for registration fees and hotel accommodations at ATTORNEY'S request.

#### 4.2 INTERNET ACCESS & DOCUMENT DUPLICATION

ATTORNEY shall be provided COUNTY internet access while conducting COUNTY business in compliance with the IT department's guidelines and ATTORNEY shall be permitted to make document copies on COUNTY equipment for conducting COUNTY business.

#### 5. TERM.

The initial or "interim" term of this Agreement shall commence on \_\_\_\_\_, 2016 and shall continue through \_\_\_\_\_, 2017, whereupon, unless either party has provided a 60 day written "Notice of Termination", this Agreement shall automatically renew for a period of four (4) years Pursuant to Government Code §27641.

#### 6. TERMINATION.

The parties hereto may terminate this Agreement by giving not less than sixty (60) days prior written notice of election to terminate. Such termination is subject to accrued monetary obligations and the "Litigation Responsibility" provisions set forth below. Any termination by COUNTY, other than for the initial one year term set forth in paragraph 5 above, shall be for cause in accordance with the requirements of Government Code § 27641 and may not be exercised arbitrarily or in derogation of the responsibilities of the Office of County Counsel.

#### 7. LITIGATION RESPONSIBILITY.

As part of the service provided under this Agreement, ATTORNEY shall represent the Department of Social Service in child dependency proceedings under Welfare and Institution Code Section 300 et seq.. Other than the child dependency proceedings, the parties agree that ATTORNEY shall not be required to represent the COUNTY in litigation, under the terms of this Agreement. In the event that the parties mutually agree that it is appropriate for ATTORNEY to appear and actively represent the COUNTY in any litigation or contested administrative proceeding, ATTORNEY and/or any associated Attorney shall be entitled to additional compensation at the rate of \$\_\_\_\_\_per hour, otherwise, COUNTY shall cooperate by timely providing other counsel to represent COUNTY in the litigation.

#### 8. INDEMNIFICATION AND DEFENSE.

In the event that any suits or claims or proceedings of any nature is brought by third parties (to wit: persons or entities other than the COUNTY) arise out of actions or

forbearance taken by ATTORNEY or any Assistant or Deputy on behalf of the COUNTY, ATTORNEY and such Assistants or Deputies shall be entitled as public officials to have the COUNTY indemnify and defend them in the same manner as required under applicable law for County officers and employees, from any and all cost by way of settlement or judgment, including any and all attorney's fees and costs incurred in defense of such claims or suits, unless such actions or forbearance were contrary to express instructions of the COUNTY.

9. ERRORS AND OMISSIONS INSURANCE.

COUNTY shall provide errors and omissions insurance naming ATTORNEY and any Assistants and/or Deputies (collectively referred to as an insured) covering acts or omissions by ATTORNEY under the terms of this Agreement, and COUNTY and ATTORNEY shall both be entitled to assert any immunities and defenses as a result of ATTORNEY'S service as a public official, under the California Tort Claims Act. The policy limits shall be those provided by Trindel and C.S.A.C. - E.I.A., collectively. The COUNTY shall undertake responsibility to properly notify the carriers, respectively.

10. CONFLICT CASES.

During the course of representing the COUNTY, conflicts or potential conflicts may arise between the interests of the COUNTY and the interests of former or existing clients of ATTORNEY. Should such conflicts or potential conflicts arise, in the event that ATTORNEY is unable to obtain written disclosure and waiver agreements from both the former client and the COUNTY, the COUNTY agrees to utilize the services of other counsel to represent it in connection with the matters pertaining to such client. Except for the representation of other public agencies and affiliates with the approval of the Board of Supervisors, ATTORNEY agrees not to undertake any new litigation or representation arising within the County of Sierra during the terms of this Agreement and agrees to make best efforts to eliminate any representation which may give rise to a potential conflict of interest.

11. SERVICES AND SCHEDULING.

ATTORNEY shall attend such meetings as the Board of Supervisors may request or which may in ATTORNEY'S opinion be reasonably necessary to be adequately informed concerning issues for which County Counsel representation is appropriate. Recognizing that an unbridled utilization of services is not feasible, the COUNTY agrees to work with ATTORNEY through its Government Committee to structure a reasonable prioritization and policy of utilization of legal services if requested by ATTORNEY or the Board of Supervisors. Case load may require the engagement of services of outside counsel or additional support staff as may be recommended by ATTORNEY and subject at all times to approval of the Board of Supervisors, within the County Counsel's "outside counsel budget" as established by the Board of Supervisors, and as more particularly set forth in provision 17 below.

12. INDEPENDENT CONTRACTOR STATUS.

The parties hereto understand and agree that ATTORNEY is an independent contractor and not an employee of the County of Sierra. Other than as set forth in the reimbursement provisions above, ATTORNEY will be responsible for his own operating costs and expenses, property and income taxes, workers' compensation insurance, general liability insurance, and any other costs and expenses in connection with operating a law practice.

13. LICENSES AND PERMITS.

ATTORNEY represents and warrants to the COUNTY that he and the other attorneys providing services have all licenses, permits, qualifications and approvals of whatsoever nature which are legally required to practice law in the State of California. ATTORNEY represents and warrants to the COUNTY that ATTORNEY shall, at his sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, qualifications, and approvals which are legally required for the ATTORNEY to practice law at the time services are performed pursuant to the terms of this Agreement and shall comply with all continuing legal education requirements imposed by the California State Bar Association.

14. DESIGNATED REPRESENTATIVE.

The Board will serve as the representative of the COUNTY and will administer this Agreement for the COUNTY. Changes in designated representatives shall occur only by advance written notice to the other party.

15. OWNERSHIP OF INFORMATION.

All professional and technical information developed under this Agreement and all work sheets, reports, and related data shall become the property of the COUNTY, and ATTORNEY agrees to deliver reproducible copies of such documents to the COUNTY on completion of the services hereunder. The COUNTY agrees to indemnify and hold ATTORNEY harmless from any claim arising out of reuse of the information.

16. TAXATION OF POSSESSORY INTERESTS, REVENUE AND TAXATION CODE SECTION 107.6.

ATTORNEY understands that this Agreement may create a taxable possessory interest and that this paragraph provides ATTORNEY the statement of notification required by Revenue and Taxation Code § 107.6.

17. ADDITIONAL CONDITIONS.

a. OUTSIDE COUNSEL.

With the exception of insurance defense which is to be handled directly through Trindel and their selected outside litigation counsel, ATTORNEY may, with the concurrence of

the Chairman of the Board, associate other attorneys to assist in the legal representation of the COUNTY. The total amount payable shall be \$5,000.00 per engagement without further authorization from the Board of Supervisors. If outside counsel is retained pursuant to this provision, the Board shall be notified at its next regularly scheduled meeting. Any firm associated shall bill the COUNTY in a manner to be determined by the auditor and shall be entitled to compensation for fees as set forth above plus mileage (as payable to COUNTY employees), and out-of-pocket costs, as incurred.

b. PRE-APPROVED LEGAL COUNSEL.

This Agreement confirms the continued approval of those law firms with whom the COUNTY has an agreement for pre-approved legal services.

18. UTILIZATION OF ATTORNEY'S TIME.

The Board of Supervisors may from time to time adopt a policy or policies regarding the priorities of the workload of the County Counsel, and any such policies are incorporated herein by this reference, and shall, to the extent reasonably practical within the exercise of ATTORNEY's best professional judgment, guide ATTORNEY in the prioritization of ATTORNEY's work load.

19. INTERPRETATION AND ENFORCEMENT.

a. WAIVER.

A waiver by any party of any breach of any term, covenant or condition herein contained or a waiver of any right or remedy of such party available hereunder at law or in equity shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained or of any continued or subsequent right to the same right or remedy. No party shall be deemed to have made any such waiver unless it is in writing and signed by the party so waiving.

b. ASSIGNMENT.

This Agreement constitutes a personal contract and no party hereto shall assign or transfer this Agreement, or any part thereof, without the prior written consent of the other(s), unless such transfer is otherwise expressly permitted hereby.

c. COMPLETENESS OF INSTRUMENT.

This Agreement, together with its specific references and attachments, constitutes all of the agreements, understandings, representations, conditions, warranties and covenants made by and between the parties hereto. Unless set forth herein, neither party shall be liable for any representations made express or implied.

d. ATTORNEY'S FEES.

If any action at law or in equity, including an action for declaratory relief,

is brought to enforce or interpret provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fee, which may be set by the Court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such party may be entitled.

e. CAPTIONS.

The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

f. DEFINITIONS.

Unless otherwise provided in this Agreement, or unless the context otherwise requires, the following definitions and rules of construction shall apply herein.

i. NUMBER AND GENDER. In this Agreement, the neuter gender includes the feminine and masculine, and the singular includes the plural, the word "person" includes corporations, partnerships, firms or associations, wherever the context so requires.

ii. MANDATORY AND PERMISSIVE. "Shall" and "will" and "agrees" are mandatory. "May" is permissive.

g. TERM INCLUDES EXTENSIONS.

All references to the term of this Agreement or the Agreement Term shall include any extensions of such term.

h. SUCCESSORS AND ASSIGNS.

All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

i. MODIFICATION.

No modification or waiver of any provisions of this Agreement or its attachments shall be effective unless such waiver or modification shall be in writing, signed by all parties, and then shall be effective only for the period and on the condition, and for the specific instance for which given.

j. COUNTERPARTS.

This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

k. OTHER DOCUMENTS.

The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

l. PARTIAL INVALIDITY.

If any term, covenant, condition or provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provision and/or provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

m. JURISDICTION AND VENUE.

It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a Court of competent jurisdiction in the County of Sierra, State of California.

n. CONTROLLING LAW.

The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

o. INCORPORATION OF EXHIBITS.

All exhibits mentioned herein and attached hereto are specifically incorporated herein by this reference and made a part of this Agreement.

p. TIME IS OF THE ESSENCE.

Time is of the essence of this Agreement and as to each covenant, term and condition herein.

q. AUTHORITY.

All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, estates or firms represented or purported to be represented by such entity(s), person(s), estate(s) or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Further, by entering into this Agreement, neither party hereto shall have breached the terms or conditions of any other contract or agreement to which such party is obligated, which such breach would have a material effect hereon.

r. NOTICES.

All notices and demands of any kind which either party may require or desire to serve on the other in connection with this Agreement must be served in writing either by personal service or by registered or certified mail, return receipt requested, and shall be deposited in the United States Mail, with postage thereon fully prepaid, and addressed to the party so to be served as follows:

If to "COUNTY": County of Sierra  
Post Office Drawer D  
Downieville, California 95936

If to "ATTORNEY": \_\_\_\_\_  
\_\_\_\_\_

s. EFFECTIVE DATE OF THIS AGREEMENT.

Effective Date of this Amended and Restated Contract is July 1, 2016.

"COUNTY"

"ATTORNEY"

By \_\_\_\_\_

Chairperson,  
Board of Supervisors

ATTEST.

APPROVED AS TO FORM

\_\_\_\_\_  
HEATHER FOSTER  
Clerk of the Board

\_\_\_\_\_  
ROBERT J. SHUMAN  
Special Counsel

# REQUEST FOR PROPOSALS

## COUNTY COUNSEL SERVICES

For

## SIERRA COUNTY, CALIFORNIA

**Closing Date: March 31, 2016, 5:00 p.m.**

### **I. Introduction**

The County of Sierra, a political subdivision of the State of California, is requesting proposals from attorneys at law, licensed to practice in California and Federal courts, to provide County Counsel legal services to the Board of Supervisors, and Elected and Appointed Officials, and County Department Heads.

The location of the county seat of Sierra County is Downieville, a picturesque town on State Route 49 at the confluence of the North Yuba River and the Downie River. The time to travel is approximately: 1.5 hours to Truckee; 1 hour to Grass Valley; and 2.0 hours to Sacramento. The attorney serving as County Counsel needs to work both through telecommunications and in person.

The need for legal services is estimated at approximately 140 hours per month, or approximately 35 hours per week, emphasizing certain weekdays such as Monday, Tuesday and Thursday, but subject to mutual understandings to be defined in the contract to be proposed to, and negotiated with, the County.

The County Counsel attends all meetings of the Board of Supervisors, with the regular monthly meetings being the first and third Tuesday of each month. County Counsel attends such other meetings as necessary to public entity representation and defense. In brief, County Counsel assists the County on the civil law side, and the District Attorney handles the criminal law side.

### **II. The Scope of Work**

The County intends to select a qualified attorney to retain by contract for the provision of the needed legal services. The scope of work of County Counsel is set out in Resolution No. 16- \_\_\_\_\_ “First Amended Policy on the Scope of Duties of County Counsel.” which may be viewed on the County’s website under Bids & RFPs <http://www.sierracounty.ca.gov/bids.aspx>. Also found there is *pro forma* contract to be used as a starting point for contract negotiations.

### **III. General Provisions of the Attorney-County Agreement**

The services will be provided on a contractual basis, with negotiation to commence with the candidate attorney who submits a Response to Request for Proposals [“Response”] that shows the most potential for delivering the desired legal services over a period of years. The contract may be amended as experience warrants.

### **IV. Qualifications**

The Response of each candidate should include a professional resume which includes references. Knowledge of public law or municipal law is an essential

qualification. The Response should have an outline of the contractual terms proposed, with each designated as “firm” or “subject to negotiation”. Contact terms will include overall time availability, available times to be in Sierra County, and an hourly rate, flat rate, or other pricing formula. The Response of each candidate should include any other information relevant to the willingness or ability of the candidate to be in public service in a rural county in the Sierra Mountains in Northern California.

Ultimately the selection of County Counsel will be made by the Board of Supervisors. In the selection process, the attorney’s breadth of experience and legal knowledge will be a criterion of high importance. The skills of a generalist are appropriate. The number of years in practice will be a key criterion. If other attorneys will work under the direction of the County Counsel then the Response should provide, information as to them.

#### **V. Submission Requirements**

A complete Response will include a resume, proposed contract terms, and a red-lined version of the *pro forma* contract discussed in Paragraph II above.

Please submit a written Response to Request for Proposals, in hard copy, to the Clerk of the Board of Supervisors at the following address: 100 Courthouse Square, Room 11, P.O. Drawer D, Downieville CA 959936. The closing date is **March 31, 2016**, at 5:00 p.m. and submissions postmarked by that date will be accepted. An emailed Response prior to the deadline is acceptable as long as the hard copy is mailed by the deadline. Email and any questions may be addressed to the Clerk of the Board at [clerk-recorder@sierracounty.ca.gov](mailto:clerk-recorder@sierracounty.ca.gov).

#### **VI. Selection Schedule and Process**

A review of Responses will occur promptly, and the County will then contact each candidate as to the status of the Response. The most highly qualified candidates will be interviewed as soon as arrangements can be made. Based on the interviews, the highest-ranked candidate will be invited to finalize the prospective contract.

#### **VII. Confidentiality**

The submission and selection process is confidential, as are any negotiations for the prospective contract.

#### **VIII. Reservation**

Sierra County reserves the right to waive any formalities in the process for selection and appointment of the County Counsel. The County reserves the right to reject any or all proposals for any reason whatsoever. The County is seeking an attorney-client relationship for a period of years, and that implies reliable adherence to the fundamental principles of the fiduciary relationship.

#### **IX. General Information**

Please contact the Clerk of the Board by email per Paragraph V above. The business hours are Monday – Friday from 9 a.m. to 4 p.m. (closed noon to 1 p.m.).

**Sierra County  
Board of Supervisors'  
Agenda Transmittal &  
Record of Proceedings**

<b>MEETING DATE:</b> February 2, 2016	<b>TYPE OF AGENDA ITEM:</b> <input checked="" type="checkbox"/> Regular <input checked="" type="checkbox"/> Timed <input type="checkbox"/> Consent
--	--

**DEPARTMENT:** Board of Supervisors  
**APPROVING PARTY:** Lee Adams, Chair, District 1  
**PHONE NUMBER:** 530-289-3506

**AGENDA ITEM:** Discussion regarding proposed revisions to Sierra County Ordinance No. 1055 regarding cultivation of medicinal marijuana and adoption of an urgency ordinance amending Sections 8.01.030 and 8.01.040 of the Sierra County Code and adding Section 8.01.045 pertaining to marijuana cultivation and related activities.

**SUPPORTIVE DOCUMENTS ATTACHED:** Memo Resolution Agreement Other

**BACKGROUND INFORMATION:**

**FUNDING SOURCE:**  
**GENERAL FUND IMPACT:** No General Fund Impact  
**OTHER FUND:**  
**AMOUNT:** \$ N/A

**ARE ADDITIONAL PERSONNEL REQUIRED?**  
  
Yes, -- --  
No

**IS THIS ITEM ALLOCATED IN THE BUDGET?** Yes No  
  
**IS A BUDGET TRANSFER REQUIRED?** Yes No

**SPACE BELOW FOR CLERK'S USE**

<p><b>BOARD ACTION:</b></p> <input type="checkbox"/> Approved <input type="checkbox"/> Approved as amended <input type="checkbox"/> Adopted <input type="checkbox"/> Adopted as amended <input type="checkbox"/> Denied <input type="checkbox"/> Other <input type="checkbox"/> No Action Taken	<input type="checkbox"/> Set public hearing For: _____ <input type="checkbox"/> Direction to: _____ <input type="checkbox"/> Referred to: _____ <input type="checkbox"/> Continued to: _____ <input type="checkbox"/> Authorization given to: _____	Resolution 2016- _____ Agreement 2016- _____ Ordinance _____ Vote: Ayes: Noes: Abstain: Absent: <input type="checkbox"/> By Consensus
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**COMMENTS:**

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CLERK TO THE BOARD

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DATE

27 January 2016

To: Sierra County Board of Supervisors

From: Board committee on natural resources, planning, and building inspection

Subject: Review of county ordinance no. 1055 (Cultivation of medicinal marijuana)

As directed by the board, the natural resources, planning, and building inspection committee has been conducting a review of ordinance no. 1055 with respect to the cultivation of marijuana. The committee has conducted three meetings, two at the courthouse in Downieville and one in the social hall in Loyaltan. All meetings were standing room only and the committee received public testimony at each meeting.

What has become clear is that there is no consensus of the countywide community. Opinions range from those wishing absolute bans to those wishing we consider small commercial grows.

Since the beginning of these meetings, two major events have occurred.

The state enacted SB 643, AB 243, and AB 266 that sets up a framework for the cultivation of medicinal marijuana, for both personal and commercial use. The legislation also speaks to the dispensing and mobile delivery of medicinal marijuana. The packages of legislation strongly support local preemption through the land use process.

More recently, our neighboring county with the largest common border to Sierra County, has adopted a fairly restrictive ordinance that restricts the cultivation of marijuana to inside grows only and a limit of 10 plants per site.

While our current ordinance allows up to 18 plants per script and up to four scripts per parcel, there is the potential for up to 72 plants at a Sierra County grow, whether inside or out.

Following our three meetings, this committee is suggesting that this board consider the following revisions to our medicinal marijuana cultivation ordinance:

- Allow the outside cultivation of marijuana only on legal parcels two acres in size or larger
- Allow the statewide maximum for personal grows at 100 sq ft per script
- Allow each grow for no more than 10 plants of any size per script
- Allow for no more than two scripts per parcel
- Scripts must be in the name of the resident of the parcel or someone under their care
- Grows only allowed on parcels with legal dwellings
- Inside grows subject to same limits as above and not in rooms designed for human habitation

County counsel will be providing language to revise the current county ordinance on this subject.

Additional decisions/considerations of this board will be with respect to setbacks, definitions, and permitting, to name a few.

Furthermore, the board will be asked as to whether it wishes to approve any of the following:

- Commercial grows
- Dispensaries
- Mobile deliveries

It is the committee's suggestion that we opt out of all three of the above at the present time. If the board wishes to consider any of the following at a future date, we would further suggest all the above be directed via the county land use process and the county planning commission.

The subject of medicinal marijuana is being debated throughout the state and no doubt this debate will continue for some time. Conventional wisdom is that some sort of initiative on the subject of recreational marijuana will be on the statewide fall ballot. No doubt we too will have future conversations on this topic, but for now the committee views the above as a reasonable approach for Sierra County.

There has also been much debate, concern, and action over a March 1 deadline that was erroneously inserted into one of recent adopted pieces of state legislation. While that deadline is likely to be removed (it has not as of yet, but may be by the time of our board meeting), the committee would suggest that as we promised a review of our current ordinance by the 2016 normal growing season, there is no reason to delay action by this board.

Others will also suggest that some of the state legislation doesn't take effect until January of 2018. The committee would suggest that with the actions taken by Nevada County, the above suggestions are the best compromise we can offer to allow residents of Sierra County to retain the ability to use medicinal marijuana as granted by the voters through Proposition 215 nineteen years ago, quell some of the conflicts between neighbors, and discourage for now the growing of marijuana within the county for commercial purposes.

As have some other jurisdictions, the committee would suggest that the board consider that if we amend our current ordinance in any way, we follow up with an action to put an advisory measure on the November ballot seeking the opinion of the voters as to their opinion of any action we may have taken. Such does not preclude any others from doing likewise on this subject as well.

**BOARD OF SUPERVISORS  
COUNTY OF SIERRA  
STATE OF CALIFORNIA**

ORDINANCE NO. \_\_\_\_\_

**Urgency Ordinance Amending Sections 8.01.030 and 8.01.040 of the Sierra  
County Code and Adding Section 8.01.045 to the Sierra County Code  
Pertaining to Marijuana Cultivation and Related Activities**

**THE BOARD OF SUPERVISORS OF THE COUNTY OF SIERRA ORDAINS as follows:**

**Ordinance Section One:**

**Findings and Purpose:**

**In adopting this Ordinance the Board of Supervisors finds as follows:**

A. In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5 and entitled “The Compassionate Use Act of 1996”). Proposition 215 was intended to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. Proposition 215 further provides that “nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes.” The ballot arguments supporting Proposition 215 expressly acknowledged that “Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere.”

B. In 2004, the Legislature enacted SB 420, codified as California Health and Safety Code section 11362.7 et seq., and referred to as “The Medical Marijuana Program Act” (hereinafter referred to as MMPA). As subsequently amended the MMPA, under California Health & Safety Code section 11362.83 the counties are expressly allowed to adopt and enforce ordinances that are consistent with the MMPA. In addition the courts in California have recognized and upheld the right of counties and cities to ban or to otherwise regulate the cultivation of marijuana – reference is to *Browne v. County of Tehama*, 213 Cal. App. 4th (2013); also see *Maral v. City of Live Oak*, 221 Cal.App.4th 975.

C. On October 9, 2015, the State of California enacted AB 243, AB 266, and SB 643, which bills regulate various activities pertaining to marijuana, including the cultivation and distribution of marijuana. Under these recently enacted State laws, counties are expressly allowed to ban or to regulate cultivation of marijuana within their jurisdiction. As it presently reads, the provisions. AB 243 includes a deadline of March 1, 2016 for local agencies, including cities and counties, to establish local regulations pertaining to cultivation of marijuana and to establish local conditional permitting procedures. Failure to meet this deadline renders the State of California the sole licensing authority.

D. The County’s geographic and climatic conditions, which include dense forested areas

receiving substantial precipitation, along with the sparse population in many areas of the County, provide conditions that are favorable to Marijuana Cultivation. Marijuana growers can achieve a high per-plant yield with high economic value because of the County's favorable growing conditions.

E. The Indoor Cultivation of substantial amounts of Marijuana within a residence presents potential health and safety risks to those living in the residence, especially to children, including but not limited to increased risk of fire from grow light systems and improper electrical wiring, exposure to fertilizers, pesticides, anti-fungus/mold agents, and exposure to potential property crimes targeting the residence.

F. Cities and counties throughout the State have reported adverse impacts from Marijuana Cultivation, including but not limited to increased risks of criminal activity, acts of violence in connection with attempts to protect or steal marijuana grows, degradation of the natural environment, unsanitary conditions, violations of building codes, malodorous and disagreeable odors, and negative effects on physical, mental and community health. The creation of persistent strong odors as Marijuana plants mature and flower is offensive to many people, results in complaints of respiratory problems, and creates an attractive nuisance, alerting persons to the location of valuable Marijuana plants and creating an increased risk of crime. Accordingly the Board of Supervisors finds that the unregulated cultivation of marijuana in the unincorporated area of Sierra County can adversely affect the health, safety, and well-being of the County and its residents.

G. It is the purpose and intent of this Ordinance to implement State law by regulating the Cultivation of Marijuana and related activities in a manner consistent with State law. It is also the intent of this Ordinance to balance the needs of medical patients and their caregivers and to promote the health, safety, and general welfare of the residents and businesses within the unincorporated territory of the County of Sierra. This Ordinance is intended to be consistent with Proposition 215 and Senate Bill 420 as well as the newly enacted State regulations embodied in AB 266, AB 243 and SB 643. The intent and purpose of this Ordinance is to establish reasonable regulations regarding the manner in which Marijuana may be cultivated, including restrictions on the amount and location of marijuana that may be cultivated on any Premises, in order to protect the public health, safety, and welfare in Sierra County, and to address the adverse impacts previous local regulations have failed to curtail.

H. The Board of Supervisors finds that the regulations established by this Ordinance relating to Marijuana Cultivation and related activities is proper and necessary to address the risks and adverse impacts as stated herein, that are especially significant if the amount of marijuana cultivated on a single premises is not regulated and substantial amounts of marijuana are thereby allowed to be concentrated in one place.

I. Nothing in this Ordinance shall be construed to allow the use of Marijuana for non-medical purposes, or allow any activity relating to the Cultivation, distribution, processing, storage, transportation or consumption of Marijuana that is otherwise illegal under State or Federal law. No provision of this Ordinance shall be deemed to be a defense or immunity to any action brought against any person in Sierra County by the Sierra County District Attorney, the Attorney General of the State of California, or the United States of America.

J. In Sierra County, the typical growing season for Marijuana is approximately April through

September of each year. Surrounding counties have adopted restrictions and, in some cases, bans on the Cultivation of Marijuana in their jurisdictions. The Board of Supervisors finds that if the regulations set forth in this Ordinance are not adopted then it is likely that Sierra County will continue to encounter increasing numbers of Marijuana Cultivation sites of increasing sizes, in locations which will result in public nuisances to the surrounding community and their residents.

K. There is an immediate need to provide certainty and guidance to those who might choose to Cultivate Marijuana in Sierra County and to preserve the public peace, health and safety of Sierra County residents by regulating and addressing the public nuisances associated with Marijuana Cultivation. In addition, if Marijuana Cultivation is not immediately further regulated, large quantities of illegal Marijuana Cultivation sites may be introduced into the local market in the near term. Finally, if no action is taken immediately, the State regulations will take effect, precluding the County's ability to retain and/or exercise local control over the Cultivation of Marijuana in our community.

### **Ordinance Section Two:**

**Section 8.01.030 of the Sierra County Code is hereby amended to read:**

#### **8.01.030 Definitions**

As used herein the following definitions shall apply:

- A. "Accessory Structure" means a separate and legally permitted building or structure located on the same Legal Parcel as a Primary Place of Residence.
- B. "Child Care Center" means any licensed child care center, daycare center, childcare home, or any preschool.
- C. "Church" means a structure or leased portion of a structure, which is used primarily for religious worship and related religious activities.
- D. "Cultivation" or "Cultivate" means the grading, planting, growing, harvesting, drying, curing, trimming, processing, testing or storage, or any combination of these activities, of one or more Marijuana plants or any part thereof in any location, Indoor or Outdoor, including from within a fully enclosed and secure building.
- E. "Commercial Cannabis Activity" shall have the same meaning as set forth in Business & Professions Code section 19300.5(k) and shall include all commercial cannabis-related activities contemplated by or for which a license may be required as set forth in AB 266, AB 243, and SB 643 and (codified in the California Business & Professions Code, Government Code, Health and Safety Code, Labor Code and Revenue and Taxation Code).
- F. "Enforcing Officer" means the Sheriff, or his authorized deputies or designees, or any person employed by the County of Sierra and appointed to the position of code enforcement officer, each of whom is independently authorized to enforce this chapter.

G. “Fence” shall mean a wall or barrier connected by boards, masonry, rails, panels or any other materials for the purpose of enclosing space or separating parcels of land. For purposes of this Chapter, the term “Fence” does not include tarpaulins, cloth material, scrap material, bushes or hedgerows but must be such as to obstruct vision through the fence. Bushes or hedgerows may constitute a fence but must be such as to obstruct vision through the bushes or hedgerows if of adequate height to provide effective screening of the marijuana from outside of the Premises.

H. “Hazardous Materials” means any substance that is “flammable, explosive, reactive, corrosive or toxic”, as further defined in California Health and Safety Code sections 25501 and 25503.5, as may be amended.

I. “Hearing Officer” means a person designated by the Board of Supervisors to conduct administrative hearings as provided in this Chapter.

J. “Identification card” shall have the same definition as California Health and Safety Code section 11362.5 et seq., as may be amended.

K. “Indoor” or “Indoors” means within a fully enclosed and secure structure that complies with the California Building Code (Title 24, California Code of Regulations) for that specific occupancy type, as adopted by the County of Sierra. Indoors does not include structures that are exempt from the requirement to obtain a building permit under the Sierra County Code and Cultivation of Marijuana is prohibited in any such structure. Any structure used for Cultivation of Marijuana shall have a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The structure must be secure against unauthorized entry, accessible only through one or more lockable doors, and constructed of solid materials that cannot easily be broken through, such as 2” x 4” or thicker studs overlain with 3/8” or thicker plywood or equivalent materials. Exterior walls must be constructed with non-transparent material. Plastic sheeting, regardless of gauge, or similar products do not satisfy these requirements.

L. “Legal Parcel” means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the California Government Code).

M. “Marijuana” shall have the same meaning as that set forth in Health and Safety Code section 11018, as may be amended. Marijuana, Medical Marijuana, and the Cultivation thereof, as defined in this Chapter shall not be considered an agricultural activity, operation or facility under Civil Code section 3482.5 or an Agricultural Product or an Agricultural Operation.

N. “Marijuana plant” means any mature or immature marijuana plant, including without limitation, any marijuana seedling.

O. “Medical Marijuana” shall mean Marijuana recommended by a licensed physician, in accordance with California Health and Safety Code sections 11362.5 through 11362.83, commonly referred to as the Compassionate Use Act and the Medical Marijuana Program Act.

P. “Medical Marijuana Collective” means Qualified Patients and/or designated Primary Caregivers of Qualified Patients, who associate, or form a cooperative in accordance with Section 12300 of the Corporations Code, within the unincorporated area of the County in order to collectively or cooperatively cultivate Marijuana for medical purposes, as provided in Health and Safety Code section 11362.775, as may be amended. The term collective shall include “cooperative” unless the context clearly indicates otherwise.

Q. “Outdoor” or “Outdoors” means any location that is not “Indoors” within a fully enclosed and secure structure as defined herein.

R. “Outdoor Cultivation” shall be deemed to include cultivation in a properly constructed greenhouse.

S. “Outdoor Living Area” means any patio, deck, barbecue, sitting area, dining area, pool, hot tub, enclosed yard or other outdoor space or amenity which is designed and/or used for outdoor living and entertainment.

T. “Parcel” means a “Legal Parcel” as defined herein.

U. “Premises” means a single, Legal Parcel of property. Where contiguous Legal Parcels are under common ownership or control, such contiguous Legal Parcels shall be counted as a single “Premises” for purposes of this Chapter.

V. “Primary Caregiver” shall have the definition set forth in Health and Safety Code section 11362.7(d), as may be amended and as interpreted by the California Supreme Court in the case of *People v. Mentech* 45 Cal. 4<sup>th</sup> 274.

W. “Primary Place of Residence” shall mean the Residence at which a Qualified Patient or Primary Caregiver resides, uses or otherwise occupies on a full-time, regular basis.

X. “Qualified Patient” shall have the definition as set forth in Health and Safety Code sections 11362.7(c) and (f), as may be amended.

Y. “Residence” shall mean a fully enclosed permanent structure used, designed or intended for human occupancy that, in compliance with applicable building codes and other applicable statutes or ordinance, has been legally established, permitted, or certified as single-family or multi-family dwelling in accordance with the County Code. Recreational Vehicles (RVs), trailers, motorhomes, tents or other vehicles shall not constitute a Residence for purposes of this Chapter, irrespective of whether any such vehicle is otherwise permitted or allowed under the Sierra County Code for temporary occupancy.

Z. “School” means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a vocational or professional institution of higher education, including a community or junior

college, college or university.

AA. “School Bus Stop” means any location designated in accordance with California Code of Regulations, Title 13, section 1238, to receive school buses, as defined in California Vehicle Code section 233, or school pupil activity buses, as defined in Vehicle Code section 546.

BB. “School Evacuation Site” means any location designated by formal action of the governing body, Superintendent, or Principal of any school as a location to which juveniles are to be evacuated to, or are to assemble at, in the event of any emergency or other incident at the school.

CC. “Sheriff” or “Sheriff’s Office” means the Sierra County Sheriff’s Office or the authorized representatives thereof.

DD. “Youth-oriented facility” means any facility that caters to or provides services primarily intended for minors, or the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors.

### **Ordinance Section Two:**

**Section 8.01.040 of the Sierra County Code is hereby amended to read:**

#### **8.01.040 Nuisance Declared; Cultivation Restrictions**

A. The Cultivation of Marijuana, either Indoors or Outdoors, on any Parcel or Premises in an area or in a quantity greater than as provided herein, or in any other way not in conformance with or in violation of the provisions of this Chapter, or otherwise in a manner that violates any other provision of State law or the Sierra County Code, is hereby declared to be a public nuisance that may be abated by any means available by law. No person owning, leasing, occupying, or having charge or possession of any Parcel or Premises within the County shall cause, allow, suffer, or permit such Premises to be used for the Cultivation of Marijuana in violation of the California Health and Safety Code or this Chapter. The provisions of Chapter 15.40 of the Sierra County Code regarding nonconforming uses shall not apply to the Cultivation of Marijuana.

B. Commercial Cannabis Activity of any nature and in any amount or quantity within the unincorporated territory of Sierra County is hereby prohibited.

C. Marijuana Cultivation is prohibited on any Parcel or Premises within the unincorporated territory of Sierra County except as an accessory use to a legally established Residence on a Legal Parcel.

D. Medical Marijuana Cultivation may be undertaken only by:

1. A Qualified Patient who occupies a legal Residence on the Legal Parcel being used for Medical Marijuana Cultivation as his or her primary place of Residence.
2. A Primary Caregiver on behalf of his or her Qualified Patient(s) but only on a Legal

Parcel with a legal Residence which is occupied by the Qualified Patient or by the Primary Caregiver as his or her primary place of Residence.

3. In conformance with all applicable State and local laws, including all regulations and restrictions as set forth in this Chapter.

E. Indoor Medical Marijuana Cultivation is allowed only within a legal structure that meets the definition of Indoor as set forth in this Chapter, 8.01, and complies with all applicable provisions of the Sierra County Code. Cultivation shall not take place in a kitchen, bathroom, bedrooms, common areas or any other space in the structure which is used as, designed or intended for human occupancy. Structures that are exempt from the requirement to obtain a building permit under the Sierra County Code shall not be used for the Cultivation of Marijuana, provided however, that Cultivation in a greenhouse shall, pursuant to subsection (F), below, be allowed as Outdoor Cultivation, subject to the provisions and restrictions as otherwise set out in this Chapter, 8.01 of the Sierra County Code. Lights used indoors shall comply with all applicable laws, including without limitation, restrictions on the use of lights or lighting that interferes with the use of any radio or other communication device.

The following setbacks shall apply to all Indoor Cultivation areas and shall be measured in a straight line from the nearest point of the Cultivation area enclosure to either the nearest exterior wall of a residential structure on a Legal Parcel under separate ownership or the nearest boundary line of any Outdoor Living Area on a Legal Parcel under separate ownership. No lights may be used outdoors as part of the growing of marijuana. .

1. For all single or multi-family home parcels, \_\_\_\_\_ feet from any Legal Residence or Outdoor Living Area located on an adjacent separate Legal Parcel.
2. In a mobile home park as defined in Health and Safety Code section 18214.1, \_\_\_\_\_ feet from a mobile home that is under separate ownership.

F. Outdoor Marijuana Cultivation may, subject to the other provisions and restriction established in this Chapter, 8.01, of the Sierra County Code, only occur on a legal parcel that is not less than 2 acres in size. Cultivation within any detached greenhouse shall be considered Outdoor Cultivation.

- 1 All marijuana grown outside of any building must be fully enclosed by an opaque fence at least six feet in height if the marijuana is visible from any location off of the property which contains the growing marijuana. Bushes and hedgerows, may constitute an adequate fence under this subdivision if sufficient to prevent a view of the marijuana.
2. Any outdoor area in which the marijuana is cultivated shall be set back at least \_\_\_\_\_ feet from all boundaries of the premises. Such setback distance shall be measured in a straight line from the fence required by subdivision (F)(1), to the boundary line of the premises.
3. No lights may be used outdoors as part of the growing of marijuana, which prohibition shall also apply to greenhouses.

G. Notwithstanding any other provision of this Chapter (8.01) to the contrary, the following limitations apply to Cultivation of Marijuana, both as to Indoor and to Outdoor Cultivation on any property located within the unincorporated area of Sierra County. These limitations apply irrespective of the number of Qualified Patients or Primary Caregivers residing at the Premises or participating directly or indirectly in the Marijuana Cultivation activity. These limitations also apply to any person Cultivating Medical Marijuana as a Primary Caregiver(s) for Qualified Patients.

1. Medical Marijuana Cultivation shall be limited to ten (10) Marijuana plants, whether mature, immature or seedlings, which Cultivation shall be in one location on the parcel that consists of a contiguous area with a square footprint not to exceed 100 square feet. These limits apply as to each Qualified Patient residing on the property or to each Qualified Caregiver.
2. Cultivation on any parcel shall be for no more than two (2) individuals, whether as Qualified Patients and/or Qualified Caregivers, such that no more than 20 Marijuana plants within a square footprint not to exceed 200 square feet shall be allowed on any parcel.
3. No marijuana plant shall exceed a height limit of ten (10) feet and cultivation of marijuana on tiers or any basis for stacking plants within the allowed footprint is prohibited.

H. Cultivation of Marijuana is prohibited on any Parcel or Premises located within the following areas:

1. Upon any Premises located within 100 feet of any School, School Evacuation Site, Church, Park, Child Care Center, or Youth-Oriented Facility. Such distance shall be measured in a straight line from the Fence or other enclosure required by this Chapter to the nearest boundary line of the Premises upon which the School, School Bus Stop, School Evacuation Site, Church, Park, Child Care Center, or Youth-Oriented Facility is located.
2. In any location where the Marijuana would be visible from the public right-of-way or publicly traveled private roads at any stage of growth

I. All Cultivation areas shall comply with the following requirements:

1. All Marijuana Cultivated shall be shielded from public view at all stages of growth. All Cultivation areas shall be adequately secure to prevent unauthorized entry, including a secure locking mechanism that shall remain locked at all times when a Qualified Patient or Primary Caregiver is not present within the Cultivation area.
2. There shall be no exterior evidence of Cultivation from a public right-of-way or publicly traveled private road.
3. Marijuana Cultivation shall not adversely affect the health, safety, or general welfare of persons at the Cultivation site or at any nearby residence by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, or vibration, by the use

or storage of hazardous materials, processes, products or wastes, or by any other way. The Cultivation of Marijuana shall not subject residents of neighboring parcels who are of normal sensitivity to reasonably objectionable odors.

4. All new structures used or intended for Indoor Cultivation shall submit complete construction plans for review to the Building Department, obtain building permits, and obtain required building inspections and a final certificate of occupancy prior to the start of any Indoor Cultivation activities.
5. All electrical, mechanical, and plumbing used for ~~Indoor~~ Cultivation of Marijuana shall be installed with valid electrical, mechanical, and plumbing permits issued and inspected by the Sierra County Building Department, which building permits shall only be issued to the legal owner of the Premises.
6. All structures used for Cultivation of Marijuana shall contain adequate ventilation, air filtration and odor control filters to prevent odor, mold and mildew in any area used for Cultivation or which is used as, designed or intended for human occupancy, or on adjacent Premises.
7. Indoor grow lights shall not exceed one thousand two hundred watts (1200W) and shall comply with the California Building, Electrical and any applicable Fire Codes. Gas products (including, without limitation, CO<sub>2</sub>, butane, propane and natural gas), or generators shall not be used within any structure used for Indoor Cultivation. Grow light systems associated with Cultivation shall be shielded to confine light and glare to the interior of the structure and shall conform to all applicable building and electrical codes.
8. All lights used for the Cultivation of Marijuana shall be shielded and downcast or otherwise positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the Parcel upon which they are placed, and shall comply with the requirements of the Sierra County Code and provisions of State law.
9. The Cultivation of Marijuana shall not exceed the noise level standards as set forth in the County General Plan.
10. Wherever Medical Marijuana is grown, a copy of a current and valid, State-issued Medical Marijuana identification card, physician recommendation or Affidavit as set forth in this Section must be displayed at or immediately adjacent to the Cultivation area, in such a manner as to allow law enforcement officers to easily see the recommendation or Affidavit. If a Qualified Patient has a verbal medical recommendation, then the Qualified Patient shall provide an Affidavit setting forth the name and contact information of the physician making the recommendation, the date of the recommendation and amount(s) of Marijuana recommended by the physician. The Affidavit shall be signed under penalty of perjury under the laws of the State of California.
11. If the person(s) Cultivating Marijuana on any Legal Parcel is/are not the legal owner(s) of the parcel, the person(s) who is/are Cultivating Marijuana on such Parcel shall, (a) give written notice to the legal owner(s) of the Parcel prior to

commencing Cultivation of Marijuana on such Parcel, and (b) shall obtain a signed and notarized letter from the legal owner(s) consenting to the Cultivation of Marijuana on the Parcel. The person(s) Cultivating Marijuana shall obtain this written letter of consent from the legal owner prior to Cultivating Marijuana on the Premises and at least annually thereafter. A copy of the most current letter of consent shall be displayed in the same immediate area as the recommendations set forth in section 8.01.040 (G)(10) in such a manner as to allow law enforcement officers to easily see the letter of consent without having to enter any building of any type. The person(s) Cultivating Marijuana shall maintain the original letter of consent on the Premises at which Marijuana is being Cultivated and shall provide the original letter to the Enforcing Officer for review and copying upon request. The Sheriff may prescribe forms for such letters.

12. The use of Hazardous Materials for and/or in association with the Cultivation of Marijuana, except for limited quantities of Hazardous Materials that are below State of California threshold, is prohibited. Any Hazardous Materials stored shall maintain a minimum setback distance of 100 feet from any private drinking water well, spring, water canal, creek or other surface water body, and 200 feet from any public water supply well *or source*. The production of any Hazardous Waste as part of the Cultivation process shall be prohibited.
- 13 All Premises used for the Cultivation of Marijuana shall have a legal and permitted water source on the Parcel and shall not engage in unlawful or unpermitted diversion *or* drawing of surface water or permit illegal discharges of water from the Parcel.

J. Accessory Structures used for the Cultivation of Marijuana shall meet all of the following criteria:

1. The accessory structure, regardless of size, shall be legally constructed in accordance with all applicable development permits and entitlements including, but not limited to, grading, building, structural, electrical, mechanical and plumbing permits approved by applicable federal, state and local authorities prior to the commencement of any Cultivation activity. The conversion of any existing accessory structure, or portion thereof, for Cultivation shall be subject to these same permit requirements and must be inspected for compliance by the applicable federal, state and local authorities prior to commencement of any Cultivation activity.
2. The accessory structure shall not be built or placed within any setback as required by the Sierra County Code or approved development permit or entitlement.
3. The accessory structure shall be equipped with permanently installed and permitted electricity, and shall not be served by temporary extension cords. Electrical wiring conductors shall be sized based on the current California Electrical Code with anticipated loads identified.
4. The accessory structure shall be equipped with a permanently installed and permitted odor control filtration and ventilation system adequate to prevent any

odor, humidity, or mold problem within the structure, on the Parcel, or on adjacent Parcels.

5. If the accessory structure is a greenhouse, the panels shall be of glass or polycarbonate and should be opaque for security and visual screening purposes. Where the greenhouse panels are not obscure, the greenhouse shall be screened from view by a solid Fence.

K. Where the provisions of this Chapter are more restrictive than other provisions of the Sierra Code, the provisions of this Chapter shall govern.

L. Nothing herein shall limit the ability of the Chief Building Official or designee, Fire Marshall or designee, or any other state or local employees or agents from entering the property to conduct the inspections authorized by or necessary to ensure compliance with this Chapter, or the ability of the Sheriff to make initial inspections or independent compliance checks. The Sheriff is authorized to determine the number and timing of inspections that may be required.

### **Ordinance Section Three:**

**Section 8.01.045 is hereby added to the Sierra County Code, as follows:**

#### **8.01.045 Registration**

No person shall cultivate marijuana, in any quantity, without first registering with the County as follows:

A. Registration shall be with County Sheriff's Office, on forms to be provided by and obtained from the Sheriff's Office, and shall provide all of the following current information and documentation to the agency:

1. The name of each person, owning, leasing, occupying, or having charge or possession of the premises;
2. The name of each qualified patient or primary caregiver who participates in the cultivation, either directly or by providing reimbursement for marijuana or the services provided in conjunction with the provision of that marijuana;
3. A copy of the current valid medical recommendation or state-issued medical marijuana card for each qualified patient identified as required above, and for each qualified patient for whom any person identified as required above is the primary caregiver;
4. The number of marijuana plants cultivated on the premises; and
5. Such other information and documentation as the agency determines is necessary to ensure compliance with state law and this chapter.

B. The registration shall contain a statement, under penalty of perjury, that the

information is true and accurate.

C. Where the registration application is deemed complete, and no violations or conditions are identified to prohibit marijuana cultivation, a registration number shall be provided to the applicants. The registration number shall be kept with the cultivation and shall be presented to the inspecting officer upon request.

D. This information and documentation shall be received in confidence, and shall be used or disclosed only for purposes of administration or enforcement of this Chapter or State law, or as otherwise required by law.

E. The Board of Supervisors shall, by Resolution, establish a fee for such annual registration in accordance with all applicable legal requirements.

F. Every registration under this Chapter shall be valid for no more than one (1) calendar year and shall expire on December 31st of that year. An expired registration shall be renewed in the same manner as an initial registration hereunder. In the event that the registration of any premises for any calendar year is submitted after March 1st of that year, the registrant shall pay a late registration penalty equal to fifty percent (50%) of the applicable registration fee.

G. If the person(s) cultivating marijuana on any legal parcel is/are not the legal owner(s) of the parcel, such person(s) shall submit an Affidavit from the legal owner(s) consenting to the cultivation of marijuana on the parcel. Notwithstanding the foregoing, the owner of a Parcel where the cultivator shall, in all cases, be responsible for any nuisance that has been determined to exist upon their property. The Department shall prescribe forms for Affidavits. (Ord. \_\_\_\_\_ eff. \_\_\_\_\_)

#### **Ordinance Section Four:**

**Section 8.01.080 of the Sierra County Code is hereby amended to read:**

#### **8.01.080 Administrative Review**

(a) Any person upon whom an notice to abate unlawful marijuana cultivation has been served may appeal the determination of the enforcing officer that the conditions set forth in the notice constitute a public nuisance to the Board of Supervisors, or may show cause before the Board of Supervisors or a Hearing Officer appointed by the Board, why those conditions should not be abated in accordance with the provisions of this chapter. Any such administrative review shall be commenced by filing a written request for a hearing with the Clerk of the Board of Supervisors within ten calendar days after the date that said notice was served. The written request shall include a statement of all facts supporting the appeal. The time requirement for filing such a written request shall be deemed jurisdictional and may not be waived. In the absence of a timely filed written request that complies fully with the requirements of this section, the findings of the enforcing officer contained in the notice shall become final and conclusive on the eleventh day following service of the notice.

(b) Upon timely receipt of a written request for hearing which complies with the requirements of this section, the Clerk of the Board of Supervisors shall set a hearing date not less than seven days nor more than thirty days from the date the request was filed. Alternatively the Board may appoint a Hearing Officer to conduct an appeal hearing and to render a decision on same. The Clerk shall send written notice of the hearing date to the requesting party, to any other parties upon whom the notice was served, and to the enforcing officer.

(c) Any hearing conducted pursuant to this chapter need not be conducted according to technical rules relating to evidence, witnesses and hearsay. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. The Board of Supervisors or Hearing Officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

(d) The Board of Supervisors or Hearing Officer may continue the administrative hearing from time to time.

(e) The Board of Supervisors or Hearing Officer shall consider the matter de novo, and may affirm, reverse, or modify the determinations contained in the notice to abate unlawful marijuana cultivation. The Board of Supervisors or Hearing Officer shall issue a written decision which shall be mailed to, or personally served upon, the party requesting the hearing, any other parties upon whom the notice was served, and the enforcing officer.

(f) The decision of the Board of Supervisors or Hearing Officer shall be final and conclusive.

**Ordinance Section Five:**

**Section 8.01.250 of the Sierra County Code, re Misdemeanor Penalty, is hereby deleted.**

**Ordinance Section Six:**

Pursuant to Government Code section 25123(d), this Ordinance shall take effect and be in force immediately upon the passage hereof. Before the expiration of fifteen (15) days after its passage it shall be published once, with the names of the Supervisors voting for and against same in the Mountain Messenger, a newspaper of general circulation published in the County of Sierra, State of California.

Passed and adopted by no less than a four-fifths (4/5) vote the Board of Supervisors of the County of Sierra, State of California, on the \_\_\_\_\_ day of February, 2016, by the following roll call vote, to-wit:

AYES: Supervisor  
NOES: Supervisor  
ABSTAIN:  
ABSENT:

COUNTY OF SIERRA

---

LEE ADAMS  
CHAIRMAN, BOARD OF SUPERVISORS

ATTEST:

APPROVED AS TO FORM:

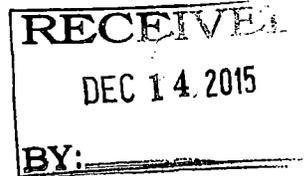
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HEATHER FOSTER  
CLERK OF THE BOARD

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JAMES A. CURTIS  
COUNTY COUNSEL

December 12, 2015



To: Sierra County Board of Supervisors  
Re: Commercial Marijuana Grows

I am not against the use of medical marijuana. But I am concerned about having a commercial grow in my "back yard." I think Sierra County is moving too fast into an area that could end up being a detriment to the people and environment of Sierra County.

A great deal of water, pesticides and fertilizers are needed for this crop. If a grow is on a mountain hillside where is the residue going to flow. And how about the streams below, and the headwaters of the Feather? With water being such a critical component in California, so much so that the state is getting involved in our usage, has anyone done a study to ensure the safety of the water supply? From what I have read, counties need to have constant inspection of grows to make sure the rules are being followed. How many inspectors will a county this large need? Where will you find people with the appropriate training? How long will it take to find these people? And how are you going to pay for them?

On the same note, I have heard we could use more officers on the sheriff's force right now. I have talked to friends about problems they have encountered in Grass Valley and in my hometown in Sutter County where they have large medical grows. Both of these families are locals to the areas for generations. They told me they are moving because of the smell, and because they have had grows hit by thieves with bullets flying, even right in town. Some of the thieves were from as far away as Los Angeles and here we have Reno right over the hill with a known criminal element. The county will definitely have to hire more law enforcement and how will that be paid for? I am sure the answer will be by taxing the crops, but that surely will not bring in enough revenue to cover the needed number of new personnel.

I am a 70-year-old widow who lives alone on 26 acres above Sattley. My nearest neighbor is about a mile away. I am an easy target for thieves. At least I don't have small children to worry about, but the neighbor up the road has 3.

I have a well, am I on the same aquifer as my neighbor's grow? Will the residue seep into my water supply and will my water table diminish?

I hate the thought of changing the air my visitors and I breathe from cedar and pine to pot. My property is a part of my retirement fund. What will happen to my property value?

There have been two illegal grows confiscated right near me already, possibly grown by the Mexican Cartels. If you allow commercial grows do you not think that the illegals will not increase their presence? They are already here and will know the areas to put their grows, and do you have the man power to find and stop them? Can you put an officer at my place so no one will come in and steal me blind when I go grocery shopping?

I really don't understand why these people who are so adamant about commercial grows don't move to Humboldt County. Humboldt County has been dealing with grows for decades and it would actually be safer and probably more productive for the growers because Humboldt County knows how to deal with the people and product and will have the safeguards in place because they have been dealing with it for so long.

Having worked several years in the Sierra County State Fair Booth I know most people think of Sierra County as a clean, beautiful, safe place to visit. Keep Sierra County the pristine place it is for the locals and tourists to continue to enjoy. If Marijuana is going to be grown commercially it should be handled like a commercial crop by farmers, not by the people who think --"Get me the money and to hell with the people and environment around me." I just don't think Sierra County is ready for the problems that Okaying the commercial grows would entail.

Thank You.



Sandi Kendall

Sandi Kendall

December 14, 2015

Chairman of the Board of Supervisors

Dear Jim,

We are writing this letter concerning growing marijuana in Sierra County. We are trying to make Loyalton a good place to raise their children and we do not feel growing drugs is a positive for this purpose.

Please take this into consideration when making your decision.

Thank You,

*Brooks Mitchell*  
*Jackie Mitchell*

Brooks and Jackie Mitchell

December 14, 2015

Dear Sierra County Board of Supervisors,

I am writing in regards to the marijuana ordinance the board is in the process of rewriting. As a longtime resident of Sierra County, I am concerned about the direction our county will be moving in without reasonable restrictions in reference to marijuana grows. I urge the board to limit personal growth in our county to a reasonable and necessary amount. Also, I am against large grows in residential areas. One benefit of our small county is the opportunity for our children to play outdoors and explore nature. Our children do not need to be exposed to large residential grows and the potential dangers that accompany them.

I am also writing to express my concerns about the possibility of commercial growth. Not only does this once again expose our children to unnecessary dangers, but it also puts a strain on our already limited resources. I am concerned about resources in two areas. First, does our county really have the funds and/or the police/county manpower to monitor and manage these grows? With illegal marijuana grows already spreading our county law enforcement thin, is it wise to add more to their plates? It seems like a safety risk that is unwarranted without a firm plan in place to manage the industry. My second concern has to do with the amount of water it takes to grow this crop. With our county facing significant drought conditions for many years, is there a plan in place to monitor the water usage of these grows? Again, as a concerned citizen, I feel as though all of these concerns need to be thoroughly addressed before commercial growth is considered in our county.

Sierra County can take pride in being a family-oriented and tight-knit community. Looking into my young son's future, I hope that he can enjoy the wholesome and safe upbringing that I was able to enjoy as a child in Sierra County. Thank you for your time and consideration.

Sincerely,

**Annie & Joe Tipton**

Annie & Joe Tipton

December 14, 2015

Sierra County Board of Supervisors,

I am writing this letter to express my concern and opposition regarding the county ordinance #1055 (marijuana ordinance). I am a parent and business owner of a licensed daycare/preschool. I have lived and operated my business in Sierra Brooks for over 16 years. My husband and I chose Sierra Valley and Sierra Brooks to raise our family. We felt and still feel that it's a safe rural area. With this county ordinance I am concern that safety will be compromised. Not only for my family, but for the children in my care.

I understand that medical use of marijuana is helpful to people suffering certain illnesses. What I don't understand is the amount that Sierra County is allowing them to grow. Having the ability to grow 72 plants seems excessive. With this amount of marijuana growing it compromises the safety of other residence including children. What kind of unsavory characters and crime will this type of production bring into the safe and peaceful community? There is no definite answer and I am not willing to put the lives and safety of my family and clients at risk.

In summation, this type of marijuana production will endanger the safety of fellow residence and children in the community. Please listen to the community and keep our safety in mind. If unable to ban the growing of marijuana then at least significantly decrease the amount a household can produce. Also, I feel that licensed daycares should be encompassed within the definition of "schools."

Sincerely yours,

Christa Ketchum

December 14, 2015

Dear Lee Adams and Paul Roen,

I am writing about the marijuana ordinance that is being rewritten. I have many concerns as a parent and community member. I love this small town and I moved here from the Sacramento area to raise my family in a safe, clean environment with less exposure to drugs than where we were living. I have come to love it here over the span of 9 years. I also work at the local school and have gotten to know many students and community members over the years. This is a town I hope to live the rest of my life and raise my children here.

I am also a realtor in the area. I will let you know that bringing commercial growth and lenient guidelines to this county is detrimental to house prices and economy. I have already been asked numerous times by prospective buyers what the guidelines are for marijuana growth. People that are moving here with families don't want to live in a community over taken with marijuana growers. Many families are leaving their hometowns to get away from the marijuana growth that has occurred in their neighborhoods. They have commented that they don't feel as safe, their kids are exposed to the marijuana growth and many homes have large pit bull type dogs that are dangerous.

This makes me very sad and nervous about the future of our community. My husband and I have many concerns about this and have wondered if this community will remain quiet and safe with the idea that commercial growth could happen in this area.

I have spoken to people who work in the Herlong area and they have told me they can smell marijuana in the neighborhood, since there are so many growers in that town. That is not something I would want to have happen in this beautiful valley. I live here for a reason and that is for clean air and a safe environment. I feel that the marijuana growth guidelines need to be stricter and enforced to protect my children and the future of this valley.

Sincerely,

Amber Donnelly  
PO Box 271  
Loyalton CA 96118  
Cell: 530-410-9397

Sierra County Board of Supervisors, Mr Lee Adams & Mr. Paul Roen,

I am writing today with concern in regards to the large marijuana grows in Sierra Brooks subdivision. I am alarmed by the large quantity of marijuana being cultivated. It is my understanding that a private residence is allowed a limit of 72 plants per household by law if backed up by the proper prescriptions. This seems excessive for medical purposes.

I am completely supportive of marijuana cultivation for medical purposes. I believe it is an excellent, natural alternative for pain, anxiety and nausea relief. For this purpose, I defend marijuana cultivation. However, I do not support large grows that are in excess of the necessary amount needed for relief of the above medical conditions. I am concerned that there may be an ulterior motive, such as profit, in such large grows. I define a large grow as more than the amount of marijuana necessary for the individual holding the prescription to use in one grow cycle. I understand this amount varies among individuals, however the average number would be far less than fourteen plants per person, as the law currently states.

My personal main interest in the large marijuana grows currently in Sierra Brooks is the potential for increasing automobile traffic from potential purchasers of the excess marijuana, thus negatively affecting the safety of the neighborhood streets. Additionally, I am concerned about the unsightly appearance of the large fences and hoop houses used to grow such large gardens. I feel properties that look like this in a neighborhood in which houses are built on average one acre parcels will decrease property value to home owners.

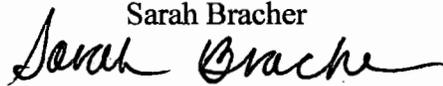
As I mentioned, I am supportive of the need for medical marijuana and feel this is a right that should not be taken away. If, I am proven incorrect as far as the amount necessary for one prescription holding individual to attain relief from medical symptoms from marijuana, perhaps

an ordinance stating that large grows, requiring large amounts of outdoor property to cultivate needs to be achieved on a parcel of land that is at least ten acres. I feel this would eliminate the concern of these grows affecting residential areas. Please consider the reasons for my apprehension regarding marijuana growth in residential areas.

Thank you for taking the time to read and contemplate my concerns and suggestions.

Sincerely,

Sarah Bracher



Sierra Brooks Property Owner

December, 2015

To whom it may concern,

We have been residents in the Sierra Brooks area in Sierra County since 2005. We have enjoyed the rural living that is made very enjoyable because of the mix of working families and retired persons. The many children of all ages who live in our subdivision add to the quality of our neighborhood, but something is happening that disturbs us greatly: the allowing the cultivating of marijuana in large quantities in our county.

In doing some research, we find that permission to grow these large amounts of marijuana is given in our county. Neighboring counties have reduced the accepted size of what can be grown by each household. With the rise of drug use and subsequent health-related occurrences we feel the urgency for the policy makers in our county to take a very careful look at the regulations governing Sierra County marijuana growth.

This is a serious situation and needs your immediate attention. Our children are the future of our world and they should not be exposed to conditions that could harm their mental and physical health.

Thank you for your time.

Sincerely,

  
  
Nancy and George Thompson

December 14, 2015

Dear Lee Adams and Paul Roen,

My name is Miranda Shelton-Prakash. The Sierra Valley is my home and the place I want to raise my family. I moved away to Chico, CA for college and met my husband. We got married this last summer and decided to move back to the beautiful Sierra Valley. My husband did not grow up here but fell in love with the valley instantly. Moving back here was solely based on being around our family and raising our children in a place that I call home. My childhood was amazing and I want the same for my children and nephews. We need to cherish this valley and keep it a place where people feel safe and comfortable. Please consider the amount of medical marijuana allowed to grow in our neighborhoods. I live in an area that has a house that grows enough for the community to smell it throughout the neighborhood. I feel that is an unnecessary allowance for a little community. We need to keep our community a place where families feel safe and comfortable moving back to, such as my husband and I have done. We need the families to move back here to keep our county and communities thriving; not the business of marijuana.

Thank you for your time,

Jason Prakash & Miranda Prakash

Jason and Miranda Prakash

From: Sarah Jean <[honeylovebutterfly@gmail.com](mailto:honeylovebutterfly@gmail.com)<mailto:honeylovebutterfly@gmail.com>>  
Date: January 26, 2016 at 3:53:07 PM PST  
To: <[supervisor1@sierracounty.ca.gov](mailto:supervisor1@sierracounty.ca.gov)<mailto:supervisor1@sierracounty.ca.gov>>  
Subject: my address today

Greetings Lee,

Here is the complete statement I had prepared for today. I only read about 1/5th of the entire address.

Please feel free to be in touch if you have any questions. I try my best to research and be well informed in my statements and opinions. Please correct me if I am wrong.

I will be missing the meeting next week as I'll be on my way to Denver for the national Women Grow summit. I will be attending "6 intense hours of 10-minute talks from 30 experts. Every speaker has distilled their years of experience into insightful lessons for new cannabis professionals dedicated to the latest research, best practices, and newest ideas in cannabis." I'll also be diving deep on the topics that matter most to me with 24 workshops offered in 4 tracks.

I'm afraid when people hear the word "commercial" cultivation they think big, corporate business but MMRSA is designed to keep gardens small and promote small, sustainable practices. The largest possible grow allowed under the state is one acre and there are 2 tiers below that. We are not asking for Sierra County to be the provider of medicine to millions of people, but to some, yes. If there are not enough counties allowing small gardens (which have been legal for the last 19 years) to continue there will not be enough supply to meet patients needs and big business and wall-street money will push right on through and take over the whole industry.

Being able to grow a plant that can be processed into a medicine that saves peoples lives excites me more than you could know. Especially knowing the suffering and disappoints people have gone through trying conventional pharmaceutical medicine. And to be able to do this from my home in Pike rather than commuting to Sacramento is what makes it even possible to be a part of this medical revolution. Because with family in our future we're not about to move and chase the favorable laws around the state from one year to the next. We can be patient to work to develop sensible policy but we will also be persistent.

Feel free to forward this to your colleagues.

Thanks for your time,  
Sarah

**From:** Sarah Jean [<mailto:honeylovebutterfly@gmail.com>]

**Sent:** Tuesday, January 26, 2016 1:55 PM

**To:** Heather Foster <[hfooster@sierracounty.ca.gov](mailto:hfooster@sierracounty.ca.gov)>

**Subject:** Address to Bos

Anyone who says that any sort of ban or drastic restriction on the cultivation of cannabis will remove marijuana and its impacts on the quality of life and the economy from our community isn't being honest. No matter what rules are put in place, there are going to be those who will not comply. That has been the case before and after California voters passed Proposition 215. And it will likely be the case no matter what laws are on the books — at the local, state or federal level — that regulate the cultivation of marijuana. The community needs to take a considerate and rational approach — one that could bring neighborhood associations, business owners, residents, growers and government officials to the table in an effort to find middle ground and understand, and attempt to mitigate, the impacts of local regulation of cannabis cultivation on our quality of life, economy and patients' access. But such an approach takes proactive, rather than reactive, leadership, something that's long been lacking with cannabis. The question is: how are we going to make it fit within our own community's standards? It's not a matter of right or wrong. It's not a moral issue. And, no matter what action is taken, it's not going away.

We're all aware dozens of cities and counties from across California are racing to enact new bans on marijuana-growing but many of those will also prohibit personal pot gardens that have been legal for 19 years. I urge you, do not feel the pressure to follow the heard. Many, if not most personal pot gardens have been legal for 19 years.

It's time for counties and cities to develop and implement regulations and not hide behind hastily enacted bans and restrictions. Leaders in the state legislature like Jim Wood, Rob Bonta, and Mike McGuire worked tirelessly to pass and enact the bi-partisan Regulatory and Safety Act (MMRSA). The MMRSA protects patients, provides solutions to the environmental and public safety impacts of criminal cultivation, and provides a pathway for unregulated farmers and business owners. In order for the MMRSA to be implemented, cities and counties must issue permits to local farmers. Local governments have the control they need to shape the future of their communities.

MMRSA empowers local governments to form powerful partnerships with the community and the state that will bring more funding for law enforcement and watershed restoration. A well-regulated marketplace will produce resilient local economies and protect our heritage as mom & pop artisan growers leading the way in quality and values. A well-regulated marketplace will eliminate shameful trespass grows and focus resources on eradicating violent and environmental criminals.

The state does not want to take power away from local control but in fact foster it. The State has designated 12 different agencies to participate in developing the regulations before it will issue permits. That does not prevent a local jurisdiction from moving forward with developing its own permitting system and fee schedule as the necessary first-step in the process. There is enough time to draft, debate and refine your own cultivation rules in concert with honoring the values of Sierra County residents. The crackdown of recent bans based on fear and misinformation around the state has been a source of frustration for veteran cannabis farmers who

hoped the new state regulations would bring clarity to their gray corner of medical marijuana and instead are now finding themselves "recriminalized."

I'd like to address the many concerns people have around allowing the cultivation of cannabis and how working with the State's newly passed bills will be beneficial to local governments and communities. In cooperating with the State's regulation of the cultivation of marijuana to be managed by 12 state agencies you will lessen the burden on our local law enforcement allowing them to focus on other important and pressing concerns like the methamphetamine and prescription opiate epidemic, drunk driving and domestic violence.

Like any industry, including government, agriculture, retail, automotive, mining, timber, etc, there are always bad apples taking advantage and cutting corners. And it would be silly of us not to admit that cannabis is an industry, the fastest growing one in the nation at the moment, with the highest concentration of women entrepreneurs at that. However through good legislation complimented with good enforcement we can create regulations that hold people accountable to guidelines being established by experienced agencies. By allowing the responsible growers to continue they will also aid in helping self-regulate. No conscious organic gardener of medicine wants to see criminals come in and take advantage of and damage our environment & community. Farmers are concerned for the land all around them and are likely to report suspicious activity and bad practices to preserve their own right to continue doing what they love. & their wholesome way of life.

So lets talk about environmental damage. I'd like to address an even greater industry causing far more impact to the environment: timber. I understand the concerns for clear-cutting, erosion & sediment run-off, chemical run-off, grading, excavating and earth moving. We see these side effects from the logging all around us in Sierra County. I can hear the logging trucks rolling down ridge road from my bedroom - through 600' of forested land. A neighbor has had the land on 2 side of their property clear-cut. We see the loggers come, alter the natural environment and take the resources out of the area for processing and sales. This is a regulated and permitted practice. Also, there is a benefit to people moving to the county, to occupy empty and abandoned properties, as they will now aid in keeping brush clear and trees trimmed in a sustainable manner, a benefit to all.

With the State of California Water Board currently granting permits to inspected sites and Fish & Wildlife and the department of Agriculture establishing regulations by which cannabis cultivators must adhere, the burden of environmental protection will be taken off the shoulders of our law enforcement. I have 2 brochures printed & distributed by the Water Board for proper cannabis cultivation site practices. They are going to properties and inspecting them for environmental responsibility. The first application they received after enacting the new regulatory legislation was from a resident of Pike. The Department of Food and Agriculture will declare regulations governing the licensing of indoor and outdoor cultivation sites. The Department may develop a system of appellation controls. The Department will be involved in the implementation of track and trace solutions, pesticide regulation, and environmental protections. The conscious cultivators that align with the ideals

of fellow Sierra County residents want to respect the forest and environment. Those that don't will not qualify for the state's permits.

Another serious and valid concern is the exposure to youth. We already deal with this with alcohol, tobacco, prescription drugs and more. The department of public health and of consumer affairs is just as concerned about this as the residents of Sierra County. They are working to establish guidelines and regulations to manage the cultivation, transportation and handling of medical marijuana responsibly. I'd also like you to know that any sensible cultivator is also concerned about this. Many have families and children themselves. We all can agree that youth should not have access to marijuana unless it is a part of their medical treatment program.

Another community concern is the nuisance of the smell of ripening cannabis. Now, let me remind you the smell of any ranch travels much further than its property lines and the sierra valley is full of cattle ranches. Personally, I haven't eaten red meat for over 15 years and have great distaste for the smell and environmental impact of cattle ranching. But we need to live and let live as long as we're not causing harm to others or ourselves. The smell of cannabis lasts for about 2 months and when cultivated in larger quantities it should be done on larger parcels and or in more rural areas. And let me remind you, while it can be pungent at times this is a plant-based smell, not one emanating from animal or human waste.

Next, I'll address consumer safety. Cannabis is truly an amazing plant full of beneficial compounds that are restoring health to so many people suffering from such a wide range of mild to catastrophic ailments and diseases. It is crucial that people are getting medical-grade products and the departments of consumer affairs and of public health are tasked with the job to regulate this. Come 2018 cultivators growing for more than just themselves will need to bring their crop to a distributor who is tasked with testing the product and checking for appropriate packaging and labeling. The cultivator then has the option to provide to his or her own contracts for distribution or to allow the distributor to send it into the market. This process will eliminate marijuana treated with spray chemicals harmful for consumption or contaminated in other ways from entering the market. For a number of years we have had laboratory facilities as close as Sacramento with the capabilities of testing cannabis for purity and potency. With required testing only unpermitted, illegal growers will be able to continue using malicious growing practices.

Along the lines with consumer safety is the concern of cannabis being funneled in to the black market, as has been the case for the 70+ years of prohibition of the plant. As the state moves to allowing for the regulated cultivation of cannabis the Board of Equalization is responsible for collecting sales taxes. Additionally, the BoE, Department of Consumer Affairs and the Department of Public Health will play a role in developing and implementing track and traces solutions.

I realize that Sierra County does not want to be the next Nevada County. I agree. That's why I chose to live here 6 years ago. And my neighbors in Pike agree. It is possible to establish a "no new blood" clause to prevent people from moving here for the sole purpose of cultivating. It would seem reasonable to allow for a

'grandfather clause' allowing current residents who during the last 19 years since Prop 215 was passed who have come to grow their own medicine, be care givers for a handful of patients or are members of collectives supplying cannabis to those who are not able to grow for any number of reasons, to continue to do so in a responsible and regulated manner. Humboldt County has established such a clause so as to prevent any more timberland from being converted to cultivation land, while allowing those who have already laid down roots and established their gardens to continue to do so. This kind of legislation would prevent any further migration or development for the sole purpose of cultivation. I'd also like to recognize the divide between the different districts of Sierra County over this issue and offer the solution of permitting cultivation sites of varying sizes in different districts as to where it is more or less appropriate to be grown.

I'd like to take moment to remind you that while many patients prefer to smoke the flowers for their mild ailments recent studies are showing the phenomenal effects of highly concentrated cannabis and CBD oils in treating and curing children suffering from hundreds of seizures daily, people with stage 4 cancer are surviving for years instead of months, in others their cancer is complexly dissipating. We are really just beginning to scratch the surface of how profound of an aid the chemical compounds found in cannabis truly are. If we align with the state's new guidelines we can be a part of the permitted research and development of ground breaking and literally life-saving drugs that are being derived from high-volumes of cannabis. These concentrates take large amounts of flowers and extract the small amounts of oils and compounds. I cannot begin to express to you in words how truly wonderful it makes one feel to know they have been able to add to someone's length and quality of life through the plants they grew with their own hands, without the use of machinery, combined with the water from the earth, the sun in the sky and the soil they have spent years to cultivate.

I'd also like the board to keep in mind that many patients do not have the ability to grow their own medicine. Weather their limitations be physical ability, geographic location, lack of knowledge or time it is just as much their right to have access to cannabis as food, clean water and medicine. They depend on others without those limitations to produce cannabis. I don't brew my own beer, ferment my own wine, milk my own cow, have chickens to produce the eggs I eat or change the oil in my car. Like most people I depend on others with the time and ability to provide these things for me so that I can concentrate on what I am able to do for others and myself.

A lot of attention has been placed on the counties that are enacting bans. I'd like to bring some light to the counties that are taking time to enact considerate and rational legislation in line with the State guidelines.

Lets look to Placer county where the ordinance language states that the county's goal is to be consistent in the regulation of medicinal marijuana cultivation with state law but also "balance the needs of medical patients and their caregivers while promoting the health, safety and welfare of the residents and businesses in unincorporated Placer County." Until those new rules can be hammered out, the

county will be operating under what is being described by staff as interim regulations based on the state's California Medical Marijuana Regulation and Safety Act. Supervisors voted unanimously during Tuesday's session to OK an ordinance that recognizes the new state law regulating medicinal marijuana under the 1996's Prop. 215 but also provides the ability in the future for the county to tailor its own regulations to local conditions. Regulation will cut black market possibilities, like any other industry needing to be regulated to prevent abuse, from liquor to fashion. Potential policy goals being considered by the county in development of a regulatory framework include promoting health and safety, reducing the size of the illicit market for cultivation and retail sale, preventing non-medical access and use by youth, and reducing environmental harm to water, habitat and wildlife.

The City of Santa Cruz already has an ordinance recognizing growing certificates. The county of Santa Cruz has a new cultivation ordinance passed by Supervisors in March 2015 allowing personal grows up to 100 square feet however after in August of 2015 the board then voted 4 to 1 to repeal ordinance, and approved appointments of grows to a thirteen member Cannabis Cultivation Choices Committee. That was the result of the successful referendum, which overturned the cannabis cultivation ban. This process consumed a great deal of legal time and money from the County and grower's associations. The new thirteen member panel of the Cannabis Cultivation Choices Committee worked together to create a policy framework for regulating medical cannabis in Santa Cruz County. On Thursday, December 3, the Cannabis Cultivation Choices Committee voted unanimously to recommend an interim ordinance that would establish, for the first time, a local licensing system for commercial medical marijuana cultivation. Under the proposal adopted by the County BoS on December 15 cultivators may apply for one of two types of licenses, be subject to annual renewal, be required to identify the location of their operations and undergo backgrounds checks, among other requirements. I'd also like to point out that the county is requiring certain zoning for licenses. No level one cultivator license may be issued to cultivate medical cannabis on a parcel unless that parcel is located in a zone district designated as SU (Special Use), TP (Timber Production), CA (Commercial Agriculture), A (Agriculture), AP (Agriculture Preserve) or RA (Residential Agriculture) by the Santa Cruz County Zoning Ordinance. The proposed regulations do not impact existing limits allowing cultivation by qualified patients for their personal use. This ordinance is available at <http://www.codepublishing.com/CA/SantaCruzCounty/>

Also, back in 2014, voters of Santa Cruz County passed the Cannabis Business Tax measure, which imposes a tax of no more than 10% (7% when enacted) on gross receipts of cannabis businesses in the unincorporated county. All of the proceeds from the Cannabis Business Tax are placed in the County's general fund and used for the usual current expenses of the County.

I believe its important to acknowledge the immeasurable amount of time the state took to craft this new legislation and trust they did the research and due diligence to set the foundation for fair regulation. I'd like you to take note of the different plot sizes they defined for different levels and that no longer are there and plant

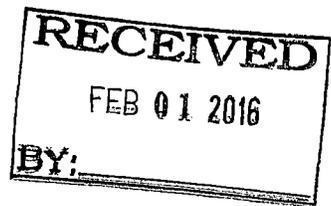
numbers being used. That is an old way of thinking. As we have all come to learn over the last 19 years what one grower can get from 1 plant can be quite different from another grower as there are many factors that effect the final yield. The largest area of cultivation the state allows for is no more than one acre on a property with 2 license tiers below that.

When my husband and I moved to Pike 6 years ago the county allowed for 6 plants per recommendation and for caregivers up to four recommendations per parcel making for a maximum grow of 24 plants. A few years later it was raised to 36 and then 72. It would be hasty to make a decision that would pull the rug out from under the feet of a community of people who have put forth their time and resources to develop their land responsibly under the laws of years past.

I think there are a lot of stereotypes and judgments of they “types” of people that are grow cannabis. Its not just for “hippies” anymore. The community consists of families, grandparents, soccer coaches, teachers, librarians, chefs, inventors, botanists, law enforcement, retired federal agents, engineers, carpenters, musicians, professors and more. These are educated, active members of the community that want to participate openly cultivating a medicinal plant. Myself, I grew up a small dairy farm in Minnesota. By the late 80’s my parents couldn’t compete with industrial agriculture’s influence and had to sell the cows. 2 years later they sold the farm. Our county had one stoplight. I understand rural, small-town life. I am grateful to be a part of this community for that & many more reasons. I went to college and finished my degree in graphic design and marketing in Australia. On our homestead in Pike we have put in roots here. On raw, over grown land we have built a home and a life from the ground up doing what we could when we could. We also grow over 30 varieties of vegetables, fruits & herbs. I save seeds from my garden and have cultivated certain varieties that are resilient in our area. I canned over 40 quarts of tomatoes and 30 quarts of pickles last season. I store dried herbs, fruit and vegetables and more. My family has been farmers for as many generations as we know of. As I’ve said before, it is an honor and pleasure to be a steward of this land. I can only hope we can continue to do so for years to come, one day soon raising children among all this beauty.

In conclusion, I ask you to implore reasonable regulations for Sierra County in line with MMRSA and to craft laws that manage and continue to allow the current cannabis cultivation in our community and mitigate the impact of unintended consequences. For all the concerns and fears there are solutions that respect the values of Sierra County residents, patients and caregivers.

The final thought I’d like to leave you with today is the reminder that the constitution of the United States is printed on paper made from cannabis fiber, know as hemp. Our founding fathers knew the great potential of this plant and it’s high time we continue to observe and embrace that.



meditor@sierracountyprospect.com **Laurenc L. DeVita** POB74 Calpine 96124 530 448 9092

Sierra County Board of Supervisors  
100 Courthouse Square  
Room 11  
P.O. Drawer D  
Downieville, CA 95936

RE: Reject Recommendations for de facto Cannabis Ban.

1 February, 2016

Esteemed Board Members,

I apologize for writing so near the meeting; the ordinance came out only two days ago.

I am writing to ask that the Board disregard the recommendations from the Planning and Building Committee, and ignore the ordinance they have forwarded. I ask for the following reasons:

First. Mr. Roen, the chair of the committee and presumably the author of the introduction provided in the board packet, is incorrect on several points.

The introduction claims it is "clear is that there is no consensus of the countywide community. He then suggests that the public comment was split, or badly scattered. This is simply not the case. Of course there is no "consensus", because that would require every person in the county to agree, and that is unlikely.

Instead, what we saw at the meetings, (I attended two and had reports on the third) is that the majority of people there felt the current ordinance is working. Dramatic attempts to make it seem like it isn't working failed.

The committee had three meetings. Why, when the first two yielded similar results? At the end of the second meeting Mr. Adams said it should go to the Board; why did the committee have yet another meeting?

The committee was not conducted in a way to actually plum the citizens' intention. Instead, as the record shows, Mr. Adams argued with everyone who asked to keep the ordinances the same. The point of the meetings was not so Mr. Adams would have three opportunities to tell people his view, but to hear the public.

Finally, the recommendation of the committee lacks any validity, either from the input of the public, or from common sense. Changing the law as suggested will amount to a defacto ban. The ordinance itself is badly written, and intends to thwart efforts of local patients to get their medicine. The only outcome is obvious and well understood: you'll make criminals of people who want to be law abiding.

Please declare the badly distorted results of the committee null, and return responsibility to the Board, who can hear the citizens and respond to them. The committee's certainty that we must leap from a cliff because Nevada County did smacks of peer pressure; just say "no". Supervisors Adams and Roen clearly heard only Lee Adams at the meetings.

There is no need to change anything, the current ordinance is good until 2018. Other counties are doing much better. We need real leadership, and we need the citizens to be heard.

Thank you, with respect,

Laurenc L. DeVita

**Sierra County  
Board of Supervisors'  
Agenda Transmittal &  
Record of Proceedings**

<b>MEETING DATE:</b> February 2, 2016	<b>TYPE OF AGENDA ITEM:</b> <input checked="" type="checkbox"/> Regular <input checked="" type="checkbox"/> Timed <input type="checkbox"/> Consent
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**DEPARTMENT:** Board of Supervisors  
**APPROVING PARTY:** Heather Foster, Clerk of the Board  
**PHONE NUMBER:** 289-3295

**AGENDA ITEM:** Appeal of Solid Waste Assessment Fees filed by Mr. Wayne DeLisle for APN 006-130-024-0 Pike City Road and 006-130-025-0 Pike Short Cut Road.

**SUPPORTIVE DOCUMENTS ATTACHED:** Memo Resolution Agreement Other  
Clerk of the Board's letter to Mr. DeLisle dated May 18, 2015 and Mr. DeLisle's Appeals of the Solid Waste Assessment Fees for 2014/2015.

**BACKGROUND INFORMATION:**

**FUNDING SOURCE:**  
**GENERAL FUND IMPACT:** No General Fund Impact  
**OTHER FUND:**  
**AMOUNT:** \$ N/A

<b>ARE ADDITIONAL PERSONNEL REQUIRED?</b>  <input type="checkbox"/> Yes, -- -- <input type="checkbox"/> No	<b>IS THIS ITEM ALLOCATED IN THE BUDGET?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No  <b>IS A BUDGET TRANSFER REQUIRED?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No
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**SPACE BELOW FOR CLERK'S USE**

<b>BOARD ACTION:</b> <input type="checkbox"/> Approved <input type="checkbox"/> Approved as amended <input type="checkbox"/> Adopted <input type="checkbox"/> Adopted as amended <input type="checkbox"/> Denied <input type="checkbox"/> Other <input type="checkbox"/> No Action Taken	<input type="checkbox"/> Set public hearing For: _____ <input type="checkbox"/> Direction to: _____ <input type="checkbox"/> Referred to: _____ <input type="checkbox"/> Continued to: _____ <input type="checkbox"/> Authorization given to: _____	Resolution 2016- ____ _____ Agreement 2016- __ ____ Ordinance _____ Vote: Ayes: Noes: Abstain: Absent: <input type="checkbox"/> By Consensus
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**COMMENTS:**  
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\_\_\_\_\_  
CLERK TO THE BOARD

\_\_\_\_\_  
DATE

# SIERRA COUNTY

Clerk-Recorder  
P.O. Drawer D  
Downieville, California 95936  
Telephone (530) 289-3295  
Fax (530) 289-2830



Heather Foster  
Clerk-Recorder

May 18, 2015

Mr. Wayne DeLisle  
500 Pike City Rd.  
Pike, CA 95960

RE: Appeal of Solid Waste Fee Assessment 2014-15 – APN's 006-130-024-0 & 006-130-025-0

Dear Mr. DeLisle,

Your appeal of the Solid Waste Fee Assessment for 2014-2015 will be held on Tuesday, June 2, 2015 at 10:00 a.m. The hearing will take place in the Board Chambers at the Courthouse in Downieville.

During the hearing you will be allowed no more than thirty (30) minutes to present your evidence concerning the waste generation occurring on the subject real property. The Solid Waste Fee Administrator shall have a representative present to provide a statement of the reasons for the Solid Waste Fee Administrator's decision regarding the adjustment request.

Based upon information submitted with the appeal application and received at the hearing, the Board of Supervisors shall determine the reasonable refuse generation there from in order to impose the appropriate solid waste fees in accordance with the provisions of the Sierra County Code and the latest adopted resolution imposing solid waste fees for the present fiscal year. The Board shall announce its decision at the conclusion of the hearing or within twenty-one (21) days thereafter.

Your application and any additional information attached will be provided as background information for the Board of Supervisors. If you have anything further you wish to provide to the Board please either e-mail the information to my office at [clerk-recorder@sierracounty.ca.gov](mailto:clerk-recorder@sierracounty.ca.gov) no later than 4:00 p.m. on June 1, 2015 or bring eight (8) copies and an original to the meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Foster".

Heather Foster  
County Clerk-Recorder

Cc: Solid Waste Fee Administrator

APPEAL OF SOLID WASTE FEE ASSESSMENT  
2014-2015

SIERRA COUNTY CLERK

MAR 18 2015

A separate appeal must be filed for each Parcel and/or unsecured property tax bill.

NAME: Wayne De Lisle ; PARCEL/ACCOUNT NUMBER: APN 006-130-024-0 hereby appeals the decision of the solid waste fee administrator denying my/our application for an adjustment to the solid waste fees that have been imposed for the 2014-2015 Fiscal Year. I/we further certify that I/we or the entity that I/we represent is/are the owner, or tenant or other party *not* responsible for the waste disposal fee imposed on the above-identified property because this exaction fails to comport with California Constitution, Article XIII D, pursuant to Section 8.05.010 of the Sierra County Code.

HEATHER FOSTER  
BY: [Signature] DEPUTY

I/we further certify that the basis for the adjustment of solid waste fees is as follows: (Check all applicable boxes)

RESIDENTIAL FEE PROPERTIES:

The property qualifies as a single-family residence. I do not, however, use this particular parcel as a "single-family residence". "Qualifying" is just that, "qualifying" and nothing more -- "Qualifying" as such in no way makes it the "residence" of a "single-family". To actually be the "residence" of a "single-family" a real, live, tangible "single-family" must actually reside in the residence to avoid being mere conjecture or conclusion formed on the basis of incomplete or incompetent information -- Such as Supervisor Adam's mythical phantom 'or' that Supervisor Adams keeps alluding exists between California Constitution Article XIII D, §6 (b)(3) and (4) when in reality Supervisor Adams' particular 'or' is nowhere to be found there by anyone, and, particularly someone with extensive training in construing statute such as Supervisor Adams. I, solely, a single person in contradistinction to a family, occupy this parcel -- Whereas, the term, "single-family residence", implies multiple person occupancy, which, simply is not the case with either of my parcels. It is merely a deceitfully manufactured disguise to mask a constitutionally prohibited exaction based on potential or future use of a service without compliance with Article XIII D, §4. I provide more details fleshing this issue out further into this Application For Adjustment.

The property qualifies as a multi-family residential property and the maximum total number of units that are available for occupancy during the year has been miscalculated as     units, and the actual number of units that are or may at any time be located on the property during the year is    .

Solid Waste System is not immediately available for use by the subject property. County's own draconic limitations on Public Access to County's Landfill and Transfer Stations well demonstrate noncompliance with County's specifically adopted authority, the Paland Court's conclusion as to what the term "immediately available" actually means as used within California Constitution Article XIII D, §6(b)(4). Whereas, there is nothing to be found with in the Sierra County's illicit redefinition of the term "immediately available" found at County Code 8.05.010, other than the term "immediately available", itself that is cognizable within the Paland Court's conclusion, pure and simple, nada, zilch, zip, nothing. However to ferret out the true consequences of Sierra County's illicit redefinition of the term "immediately available", one need look no further than Sierra County Code 8.04.065 disposal sites and authorizing solid waste facilities public access hours for solid waste disposal. Therein, County proclaims "immediately available" actually means (for County purposes) as little as 0.10714285714286% of the time. This issue is also fleshed out in greater detail further on in this Application For Adjustment.

NON-RESIDENTIAL FEE PROPERTIES:

The amount of refuse that has been generated from the property during the period set by ordinance (April 1, 2013 thru March 31, 2014) has been erroneously calculated as     cubic yard of waste and should be     cubic yards. The basis for the above waste generation estimate is as follows: (Use separate page if necessary.) The above referenced exaction was not calculated -- It an illicit exaction based solely upon the assumption that amount waste generation calculated and produced on limited select parcels other that the parcel described above might, or, could be generated by the above parcel sometime in the future, or, in the alternative, an illicit standby exaction. This issue, as well as other substantive and procedural issues are also fleshed out in greater detail further on in this Application For Adjustment.

*The appeal must include a written statement of facts fully and fairly describing the basis for the appeal (demonstrating the misapplication of the solid waste fee to the property) together with copies of all relevant documents in support of the appeal.*

**FAILURE TO PROVIDE ALL INFORMATION REQUIRED BY THIS APPLICATION MAY RESULT IN THE DENIAL OF THE APPLICATION FOR ADJUSTMENT TO SOLID WASTE ASSESSMENT. APPEALS MUST BE FILED WITHIN 60 DAYS OF THE DATE OF THE SOLID WASTE FEE ADMINISTRATOR'S DENIAL OF THE APPLICATION FOR ADJUSTMENT.**

In submitting this application for adjustment in solid waste assessment, I declare under penalty of perjury that the foregoing information is true and correct.

Executed on this 18 day of March, 2015

[Signature]  
SIGNATURE  
Wayne De Lisle  
PRINT OR TYPE NAME

RETURN THIS FORM TO:  
Sierra County Clerk - Recorder  
P.O. Box D  
Downieville, CA 95936

PRINT OR TYPE NAME OF PROPERTY OWNER  
IF DIFFERENT FROM APPLICANT

# SIERRA COUNTY CODE

## CHAPTER 8.05 - SOLID WASTE SYSTEM FEES AND CHARGES

### 8.05.010 Solid Waste System Charges

- (a) Pursuant to the provisions of Section 6 of Article XIII D of the California Constitution, Government Code Section 25830 and/or Health and Safety Code Section 5470 et. seq., the Board of Supervisors is authorized to establish a schedule of fees for solid waste services provided by the County to the residents, businesses, property owners and any others that may benefit from the use of the County solid waste disposal system or the immediate availability of such system for use by their properties. Revenue from the fees may be used only for the acquisition, operation, and maintenance of county waste disposal sites and disposal services. The Board is hereby authorized to establish such schedule of fees annually and may do so by enactment of either a resolution or an ordinance. It is the intent of this ordinance to authorize the continued use of the solid waste fees, and to authorize and direct that the actual schedule of fees for each year be established annually by the Board of Supervisors by the adoption of a resolution of the Board, based on the most recent waste generation information obtained by the County that fairly reflects the anticipated waste generation arising from each parcel, enterprise or activity.
- (b) Annually, on or before the first day of July of each calendar year, the Board of Supervisors may elect to continue or to adjust the fees for solid waste disposal based upon the refuse generation factors as established in a resolution to be adopted by the Board of Supervisors. Solid waste fees shall be imposed on the owners of property for the estimated use of the solid waste system by the property or the immediate availability of the solid waste system for use by the property. As used herein "immediate availability" or "immediately available" shall mean that the property is developed with a structure or otherwise used, the customary nature of which is that the use of the structure or the customary use of the property would normally generate solid waste or create a need to dispose of solid waste from the property and as to which, the County solid waste system is available to the property owner for his or her use. The election of a property owner not to use his or her real property for any period of time does not negate the fact that the County solid waste system being available for the property owner's use. (Immediate availability such be interpreted consisted with the court ruling in Paland v. Brooktrails Township Community Services Dist. Bd. of Directors, 176 Cal.App.4th 158.) In the event that the Board does not adjust the solid waste fees from the preceding year, the fees shall be deemed to remain at the level (amount) set forth in the preceding year.
- (c) In each fiscal year as the Board may elect, all real property, enterprises, entities or persons within the County that use the County solid waste system and all real property, which the County reasonably determines is developed or otherwise used in a manner, the nature of which development, structure or use would typically be expected to generate solid waste from the property and as to which the solid waste system is immediately available to the property to accept any waste or refuse generated therefrom, shall pay a solid waste fee based upon the volume of refuse generation from the property or estimated to or reasonably occur from the property based on the nature of the permitted use of the property, which generation factors shall be established in the most recently adopted resolution of the Board of Supervisors.
- (d) The fees may be established, billed, and collected on a monthly or yearly basis. Alternatively, the Board may direct by resolution, that the fees billed and collected by the County Tax Collector as part of the regular county tax billing system at the same time and in the same manner as provided for real property taxes and shall incur the same penalties and interest thereon as provided for property taxes, and delinquencies may be enforced and collected in the same manner as for property taxes. (Ord. 1022, eff. 7/15/10, prior 934, 918, 908)

### 8.05.025 Adjustments to Solid Waste Fees

- (a) Any solid waste fee shall be adjusted where, upon application filed by the property owner or upon discovery by the Solid Waste Fee Administrator it is established that:
  1. As to single family residences, the property was erroneously classified (i. e., shown as some other type of use), or the solid waste system is not immediately available for use by the subject property.
  2. As to mobile home parks and multi-family residential properties, the total number of units that are available for occupancy during the year (or any portion of the year) has been erroneously calculated.
  3. As to all other uses or classes of property, the estimate, based on the information available as of April 1 st of the preceding year, of the amount of refuse that is reasonably expected to be generated therefrom during the entire fiscal year (July 1 to June 30), has been erroneously calculated.
- (b) The following procedures shall apply with regard to any request for adjustment:
  1. Any property owner, business owner or other person or entity responsible for paying for the cost of solid waste disposal, may seek an adjustment of solid waste fee as to his or her property, enterprise or activity, on or before December 1 st of the fiscal year in which the solid waste fee was imposed, by filing an application for adjustment (which shall constitute an appeal) with the Solid Waste Fee Administrator on the form to be provided by the County for that purpose. The application shall be executed under penalty of perjury but shall not require any filing fee, unless a filing fee is otherwise enacted by resolution of the Board of Supervisors. The application shall include information sufficient to identify the

property, the type(s) and number of structures, the enterprise or activity and the nature of the use or uses occurring on the property. If the property contains multiple residential units, the applicant shall state the number of units that are or may be located on the property during the year. In addition, for all non-residential properties for which an application for adjustment is filed, the application shall state the amount of refuse that the property (or business) owner or other person or entity responsible for the solid waste generation and/or disposal, reasonably anticipated, based on the information available as of April 1 st of the preceding year, to be generated during the ensuing fiscal year, together with a detailed explanation of the method and basis for calculating the projected refuse generation for the property, enterprise or activity and shall include all supporting documentation.

2. Upon receipt of any such application, the Solid Waste Fee Administrator shall promptly review same to determine whether the appropriate solid waste fee was imposed in accordance with the provisions of this Chapter and any implementing resolutions. The Solid Waste Fee Administrator shall be authorized to approve any adjustment upon a determination that the adjustment is in keeping with the provisions of this Chapter.
3. The Solid Waste Fee Administrator shall also be directed to make adjustments to solid waste fees billed to any property owner, enterprise or person conducting an activity thereon, where it is determined that the such owner, enterprise, person or entity has been undercharged for its actual or reasonably estimated use of the County Solid Waste System upon discovery of facts warranting an adjustment. Any correction of the solid waste fee to increase the solid waste fee shall be made on or before June 30, of the current fiscal year.
4. If the Solid Waste Fee Administrator adjusts the solid waste fee for any property, enterprise, or person or entity conducting an activity, which generates solid waste, so as to lower or raise the solid waste fee, he/she shall authorize a refund of the amount, which the Solid Waste Fee Administrator determines represents the overcharge. Any such refund shall be paid out by the Auditor only (1) upon certification by the Solid Waste Fee Administrator that he/she has verified that the full amount of the solid waste fee has previously been paid, or (2) if the solid waste fee has not been paid in full, then upon written request by the property owner or other responsible person, the Auditor shall issue a warrant representing the amount of the refund which shall be made payable to the Tax Collector and which shall be tendered by the Auditor to the Tax Collector only at the time the property owner or other responsible person tenders payment in full of the solid waste fees. Any such certification by the Solid Waste Fee Administrator shall identify the property (by Assessor's parcel number), or other location generating the solid waste, together with the property owner, enterprise or activity (and responsible person), the solid waste fee as imposed, the corrected amount and the amount to be refunded.
5. If the Solid Waste Fee Administrator adjusts the solid waste fee so as to raise the solid waste fee, a supplemental bill shall be issued by the Solid Waste Fee Administrator for any increase in the solid waste fee.
6. If an application for adjustment is denied by the Solid Waste Fee Administrator, the property or business owner or other person or entity responsible for payment of the solid waste fee may, within sixty (60) days of the mailing of written notification of the Solid Waste Fee Administrator's decision, file an appeal with the Board of Supervisors for further review on the application for adjustment. The application for review by the Board of Supervisors shall be on a form to be provided by the County Clerk, as the Clerk of the Board of Supervisors. The appeal shall be accompanied by a written statement of facts fully and fairly describing the basis for the appeal (demonstrating the misapplication of the solid waste fee to the property) and by copies of all relevant documents in support of the appeal. There shall be no charge for the filing of the appeal. The Board of Supervisors shall hear all such appeals, or the Board may establish such other hearing body or officer, as it deems appropriate to hear and decide appeals filed under the provisions of this Section. All references herein to the Board of Supervisors as the appeal body shall be deemed to mean such other hearing body or officer as the Board may subsequently establish.
7. Upon receipt of an application for review by the Board of Supervisors, the Clerk of the Board shall endeavor to schedule an appeal hearing within one hundred and twenty (120) days from the receipt of the application. The Clerk shall provide the applicant mailed notice no later than ten (10) calendar days in advance of the hearing date. A copy of the notice shall be promptly transmitted to the Solid Waste Fee Administrator. (Ord. 958, eff. 6/17/04, prior 937, 934)
8. At the appeal hearing the applicant may be allowed no more than thirty (30) minutes to present his or her evidence concerning the waste generation occurring on the subject real property of from the subject enterprise or activity. The Solid Waste Fee Administrator shall have a representative present to provide a statement of the reasons for the Solid Waste Fee Administrator's decision regarding the adjustment request. Based upon the information submitted with the appeal application and received at the hearing, the Board shall determine the reasonable estimate of the refuse generation therefrom in order to impose the appropriate solid waste fees in accordance with the provisions of this Chapter and the latest adopted resolution imposing solid waste fees (solid waste fees) for the present fiscal year.
9. The Board shall announce its decision at the conclusion of the hearing or within twenty- one (21) days thereafter. If the Board does not orally announce its decision at the conclusion of the hearing, upon its subsequent announcement it shall direct the County Clerk to promptly mail written notice of the Board's decision to the applicant. If the Board orally announces its decision at the conclusion of the hearing, the Clerk will not be required to provide the applicant with written notification of the Board's decision. If the Board adjusts the solid waste fee for any property, enterprise, or person or entity conducting an activity, which generates solid waste, so as to lower or raise the solid waste fee, the Board shall authorize a change in the amount of the solid waste fee. If the Board adjusts the solid waste fee so as to lower the fee, the

Board shall authorize a refund of the amount that the Board determines represents the overcharge. No refund shall be made until the solid waste fee is paid in full. Any such refund shall be paid out by the Auditor only upon certification by the Solid Waste Fee Administrator that the full amount of the solid waste fee has been paid. The certification shall also identify the property (by Assessor's Parcel Number) or the location generating the solid waste, together with the property owner, enterprise or activity (and responsible person), the solid waste fee as imposed, the correct amount of the fee and the amount to be refunded. Upon certification, the Auditor shall issue a warrant representing the amount of the refund. If the Board adjusts the solid waste fee so as to raise the solid waste fee, a separate bill shall be issued by the Solid Waste Fee Administrator for any increase in the solid waste fee. (This shall be a separate bill and shall not be a supplemental property tax bill.) (Ord 958, eff. 6/17/04, prior 937, 934)

10. Any suit to attack, set aside, void or annul any decision of the Board of Supervisors regarding the classification, use, size of buildings or actual refuse generation of property for the purpose of solid waste fees shall be filed in the Sierra County Superior Court within thirty (30) days of the Board's oral pronouncement of its decision or, if no oral decision is rendered at the hearing, within thirty (30) days of the date of the mailing of the notification of the Board's decision. Any such suit shall be brought pursuant to the provisions of California Code of Civil Procedure Section 1094.5. (Ord. 1022, eff. 7/15/10; prior 958, 934)

### **Prop. 218 violations currently occurring in Sierra County:**

Sierra County Resolution No. 2014-052 states as its authority California Government Code §25830. California Government Code §25831, §(d), states that the exaction authorized in §25830: ". . . shall constitute special assessments against the respective parcels of land . . ." While Sierra County Property Tax Bills formally call this exaction a "Solid Waste Benefit Assessment", that difference makes little difference here as both are subject to Article XIII D, §4 strictures rather than to §6 strictures as misstated in Sierra County Resolution No. 2014-052. Sierra County enacts this illicit exaction under the guise of §6 and then collects this exaction under the guise of §4, benefiting from both §4 and §6 while comporting with none of the strictures of §4 and only select strictures of §6. While this has been typical of Sierra County's general modus operandi throughout Sierra County's history regarding California Government Code §25830 exactions, to be constitutional, it may only be camouflaged in one of 'the Emperor's new cloths' throughout any given imposition's life cycle. But, sadly that has not been a reality in Sierra County. Which of 'the Emperor's new cloths' these exactions will display depends not upon the actual nature of this exaction as it should, but, rather, upon the particular circumstances in which this exaction is an issue, a true unauthorized wobbler through and through.

Article XIII D, §6(b) prohibits any agency from extending, imposing or increasing a fee or charge unless the agency meets all five of §6(b)'s following requirements. While Sierra County's Residential Solid Waste Generation survey of selected residential parcels spreadsheet may demonstrate meeting §6(b)'s first requirement that revenues derived from the fee or charge shall not exceed the funds required to provide the property-related service, that spreadsheet, nevertheless, acutely demonstrates that Sierra County's disproportionate one-size-fits-all fixed flat-rate-fee miserably fails to comport with §6(b)(3)'s requirement that the amount of a fee or charge imposed on any parcel or person as an incident of property ownership shall not exceed the proportional cost of this service attributable to the parcel, which, as applied to a major portion of residential parcels, this exaction does in deed exceed the proportional cost of this service attributable to those particular parcels. Sierra County's Residential Solid Waste Generation survey of selected residential parcels spreadsheet demonstrates that the gross sum of the funds exacted from residential parcel owners is the sole source for funding disposal of residential solid waste. Sierra County's Residential Solid Waste Generation survey of selected residential parcels spreadsheet also demonstrates differentials in waste generation ranging as high as one to five with all residential parcel owners paying an identical disproportionate one-size-fits-all fixed-flat-rate-fee regardless of the actual volume of waste generated by a particular parcel. That results in the property owners whose parcels generate miserly volumes of waste being forced to subsidize those property owners whose parcels are producing robust volumes of waste. That is the precise inequity that Prop. 218 as well as Public Resources Code §40051 were to eliminate.

Sierra County fails to meet its burden under Article XIII D, section 6 (b)(3), to demonstrate that the amounts of the exaction do not exceed the proportional cost attributable to the parcels in question. Sierra County's exaction scheme suffers from the infirmity that results in exactions exceeding the proportional cost of providing the service to the parcel. The public agency bears the burden of demonstrating that any contested exaction does not exceed the proportional cost of providing the service to the parcel. Sierra County's waste generation survey of selected residential parcels demonstrates just the opposite is fact. Sierra County's waste generation survey of selected residential parcels demonstrates that this exaction is not based on service to the parcel, but, rather, on the overall cost of providing services to all parcels classified as residential. Instead, this exaction should reflect the costs allocated according to relative tangible service received by the parcel. Services provided other parcels cannot be attributed to parcels not receiving those services. Proportional costs of service to particular parcels must be attributed on a nondiscriminatory equitable basis upon parcels receiving those services. The reasonable cost of the proportional service may not exceed the property's proportional share of the total costs as measured by relative tangible service to the parcel. As a consequence of this cost-based apportionment scheme by Sierra County, properties that pay identical exactions receive vastly different levels of service. As the numbers in the Sierra County's waste generation surveys of selected residential parcels well demonstrate some parcels currently receive as much as five times the service as other parcels paying the exact same exaction and has recently been acknowledged by Sierra County as being as high as six times the service to some parcels for the same exact fee. Sierra County lamely passes that off as being "equitable and nondiscriminatory". It is not! It is, in fact, both inequitable and discriminatory. Sierra County openly acknowledges that fact.

"5) We begin our task by reviewing the entirety of section 6. In doing so, we are mindful that we ""must enforce the provisions of our Constitution and `may not lightly disregard or blink at ... a clear constitutional mandate."" (State Personnel Bd. v. Department of Personnel Admin. (2005) 37 Cal.4th 512, 523 [36 Cal.Rptr.3d 142, 123 P.3d 169].) "In so doing, we are obligated to construe constitutional amendments in a manner that effectuates the voters' purpose in adopting the law." (Silicon Valley, supra, 44 Cal.4th at p. 448.) As our Supreme Court explicitly noted, "Proposition 218 specifically states that `[t]he provisions of this act shall be liberally construed to effectuate its purposes of limiting [the] local government revenue and enhancing taxpayer consent.' [Citation.]" (Silicon Valley, supra, at p. 448.) Thus, we interpret Proposition 218, specifically section 6, with these purposes in mind.

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(9) Although the procedural requirements of section 6 do not definitively answer the question before us, that section's substantive requirements shed further light on an appropriate protest procedure. Section 6 provides that revenues derived from the fee cannot exceed the funds required to provide the property-related service. (§ 6, subd. (b)(1).) The funds arising from the fees may not be used for any purpose other than that for which the fee was imposed. (§ 6, subd. (b)(2).) The amount of the fee imposed on any parcel or person as an incident of property ownership cannot exceed the proportional cost of the service attributable to the parcel. (§6, subd. (b)(3).) No fee may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. (§6, subd. (b)(4).) A fee may not be imposed for general government services where the service is available to the public at large in substantially the same manner as it is to property owners. (§6, subd. (b)(5).)

Of these substantive requirements, two stand out as the most pertinent to our discussion of the permitted protest procedure: the total cap in funds raised and the proportionality requirement. **These two conditions work together to ensure the agency collects only enough to cover its costs, and within that overall cost structure, only charges each customer his or her "fair share" on a proportional basis. These requirements are a constitutional mandate that an agency apply a general cost of service principle in setting any potential rate or rate increase.**

(10) **Within this framework, it is clear that section 6 contemplates customers paying different amounts. The cap requirement limits the total amount that an agency may collect. However, within that total amount, section 6 requires that each customer only pay his or her proportional share. Put differently, the proportionality requirement ensures that the aggregate fee collected on all parcels is distributed among those parcels in proportion to the cost of service for each parcel.** (Cf. Beutz v. County of Riverside (2010) 184 Cal.App.4th 1516, 1522 [109 Cal.Rptr.3d 851] (Beutz) [discussing § 4].) There is nothing in section 6 that prohibits an agency from charging different rates to its customers as long as the fees paid by customers are proportional

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\*909 and the total amount the agency collects does not surpass the cost of providing the service. These substantive requirements help section 6 achieve the voters' objective of limiting the local government revenue. (See Silicon Valley, supra, 44 Cal.4th at p. 448.)

We also are mindful that section 6 is intended to enhance taxpayer consent. (Silicon Valley, supra, 44 Cal.4th at p. 448.) The protest procedure offered in section 6, subdivision (a)(2) achieves this goal by allowing owners of the identified parcels to vote against the rate increase. Government Code section 53755 mirrors the language of section 6, subdivision (a)(2): "One written protest per parcel, filed by an owner or tenant of the parcel, shall be counted in calculating a majority protest to a proposed new or increased fee or charge subject to the requirements of Section 6...." (Gov. Code, §53755, subd. (b).) Although the substantive requirements of section 6 limit the fees paid by each owner of a parcel to his or her proportion of the cost of service, we see nothing in either section 6 or Government Code section 53755 indicating that the owners paying more have a larger say in any fee increase."(Bold mine.)

Sierra County's Solid Waste Enterprise is subject to Public Resources Code §§40051 -40052, 40057 and40196which state:

ARTICLE 2. General Provisions [40050. - 40063.] (Article 2 added by Stats. 1989, Ch. 1095, Sec. 22.)  
This division shall be known and may be cited as the California Integrated Waste Management Act of 1989.

(Added by Stats. 1989, Ch. 1095, Sec. 22.)

#### 40051.

In implementing this division, the board and local agencies shall do both of the following:

- (a) Promote the following waste management practices in order of priority:
  - (1)Source reduction.
  - (2)Recycling and composting.
  - (3)Environmentally safe transformation and environmentally safe land disposal, at the discretion of the city or county.
- (b) Maximize the use of all feasible source reduction, recycling, and composting options in order to reduce the amount of solid waste that must be disposed of by transformation and land disposal. For wastes that cannot feasibly be reduced at their source, recycled, or composted, the local agency may use environmentally safe transformation or environmentally safe land disposal, or both of those practices.

Added by Stats. 1989, Ch. 1095, Sec. 22.)

**40052.**

The purpose of this division is to reduce, recycle, and reuse solid waste generated in the state to the maximum extent feasible in an efficient and cost-effective manner to conserve water, energy and other natural resources, to protect the environment, to improve regulation of existing solid waste landfills, to ensure that new solid waste landfills are environmentally sound, to improve permitting procedures for solid waste management facilities, and to specify the responsibilities of local governments to develop and implement integrated waste management programs.

(Amended by Stats. 1993, Ch. 656, Sec. 1. Effective October 1, 1993.)

**40057.**

Each county, city, district, or other local governmental agency which provides solid waste handling services shall provide for those services, including, but not limited to, source reduction, recycling, composting activities, and the collection, transfer, and disposal of solid waste within or without the territory subject to its solid waste handling jurisdiction.

(Added by Stats. 1989, Ch. 1095, Sec. 22.)

**40196.**

"Source reduction" means any action which causes a net reduction in the generation of solid waste. "Source reduction" includes, but is not limited to, reducing the use of nonrecyclable materials, replacing disposable materials and products with reusable materials and products, reducing packaging, reducing the amount of yard wastes generated, establishing garbage rate structures with incentives to reduce the amount of wastes that generators produce, and increasing the efficiency of the use of paper, cardboard, glass, metal, plastic, and other materials. "Source reduction" does not include steps taken after the material becomes solid waste or actions which would impact air or water resources in lieu of land, including, but not limited to, transformation.

(Amended by Stats. 1990, Ch. 145, Sec. 5. Effective June 19, 1990.)

Sierra County is mandated to promote source reduction, recycling and composting. Our Legislature defines source reduction to mean any action, which causes a net reduction in the generation of solid waste. "Source reduction" includes, but is not limited to, establishing garbage rate structures with incentives to reduce the amount of wastes that generators produce. Sierra County's disproportionate one-size-fits-all fixed flat-rate-fee provides no incentive to reduce the amount of wastes generated on most residential parcels. The only incentive Sierra County's disproportionate one-size-fits-all fixed flat-rate-fee provides is getting the most bang for the dollars spent. Sierra County's disproportionate one-size-fits-all fixed flat-rate-fee flies directly in the face of mandated "source reduction" as well as Article XIII D, §6(b)(3)'s proportionality requirements. Whereas, unlike Sierra County's disproportionate one-size-fits-all fixed flat-rate-fee, actual incentive driven 'source reduction' as required by PRC §40051, fits in very well with Article XIII D, §6(b)(3)'s proportionality requirements.

Sierra County adopts the court's ruling in *Paland v. Brooktrails Township Community Services Dist. Bd. of Directors*, 176 Cal.App.4th 158, subsequent to rewriting that ruling to suit Sierra County whims.

Section **8.05.010 of the Sierra County Code** is hereby amended to read as follows:

**8.05.010 Solid Waste System Charges**

(a) Pursuant to the provisions of Section 6 of Article XIII D of the California Constitution, Government Code Section **25830** and/or Health and Safety Code Section 5470 et. seq., the Board of Supervisors is authorized to establish a schedule of fees for solid waste services provided by the County to the residents, businesses, property owners and any others that may benefit from the use of the County solid waste disposal system or the immediate availability of such system for use by their properties. Revenue from the fees may be used only for the acquisition, operation, and maintenance of county waste disposal sites and disposal services. The Board is hereby authorized to establish such schedule of fees annually and may do so by enactment of either a resolution or an ordinance. It is the intent of this ordinance to authorize the continued use of the solid waste fees, and to authorize and direct that the actual schedule of fees for each year be established annually by the Board of Supervisors by the adoption of a resolution of the Board, based on the most recent waste generation information obtained by the County that fairly reflects the anticipated waste generation arising from each parcel, enterprise or activity.

(b) Annually, on or before the first day of July of each calendar year, the Board of Supervisors may elect to continue or to adjust the fees for solid waste disposal based upon the refuse generation factors as established in a resolution to be adopted by the Board of Supervisors. Solid waste fees shall be imposed on the owners of property for the estimated use of the solid waste system by the property or the immediate availability of the solid waste system for use by the property. As used herein "immediate availability" or "immediately available" shall mean that the property is developed with a structure or otherwise used, the customary nature of which is that the use of the structure or the customary use of the property would normally generate solid waste or create a need to dispose of solid waste from the property and as to which, the County solid waste system is available to the property owner for his or her use. The election of a property owner not to use his or her real property for any period of time does not negate the fact that the County solid waste system being available for the property owner's use. (Immediate availability such be interpreted consisted with the court ruling in *Paland v. Brooktrails Township Community Services Dist. Bd. of Directors*, 176 Cal.App.4th 158.) In the event that the Board does not adjust the solid waste fees from the preceding year, the fees shall be deemed to remain at the level (amount) set forth in the preceding year.

This illicit exaction is admittedly based solely upon one of two factors; the estimated waste generation for the classification into which the County has placed a particular parcel, or, in the alternative, on the County Waste Disposal System being "immediately available" for use by the particular parcel. Pajaro Valley Water Management v. Amrhen, 46 Cal. Rptr. 3d 476 addresses estimated fees.

In PAJARO VALLEY WATER MANAGEMENT v. AMRHEN, 46 Cal. Rptr. 3d 476 - Cal/ Court of Appeal, 6th Dist. 2006 the Court states:

"Here the augmentation fee is clearly based on consumption. The only difficulty arises from the fact that the consumption of smaller users is estimated rather than metered, and this makes it resemble, in the case of residential users, a flat charge. This is because rural residential extractors are charged based on an "estimated use rate per dwelling" of 0.6 acre-feet per year. Smaller non-residential extractors may also pay an estimated charge based on factors such as acreage and crop type. **Critically, however, these charges are not flat rates but estimates necessitated by the economic impracticability of metering small users.**[20] This is borne out by the crucial fact that all estimated charges are subject to adjustment if an extractor can

503 persuade the Agency that he actually extracted less than the estimated amount. The Agency had in fact made adjustments for unmetered agricultural extractors, including those who told the Agency they were not irrigating but "dry farming," and those who had surface water sources such as a spring. The Agency's manager was unable to cite an instance where a purely residential extractor had sought such an adjustment, but this may not be surprising in view of the relatively low charge incurred by such users, few of whom might find it worthwhile to prove that they drew less than the estimated 0.6 acre-feet. Prior to the increase here under review the augmentation charge was fixed at \$80 per acre-foot, which meant that the residential estimate was \$48. Earlier rates were even lower, providing even less incentive to contest the Agency's estimate." (Bold mine.)

According to the Court in Pajaro, that estimated fee is not a flat rate because of the crucial fact that all estimated charges are subject to adjustment upon claims of actual use less than the estimated amount. In Pajaro, the Agency had in fact made adjustments for those who told the Agency they were not irrigating but "dry farming" and those who had surface water sources such as a spring. Such is not the case in Sierra County. Unlike in Pajaro where the Agency had no means of ascertaining actual use, nevertheless, in fact, made adjustments for those who told the Agency they were not irrigating but "dry farming" and those who had surface water sources such as a spring. Here in Sierra County, however, that crucial fact found in Pajaro is totally absent without leave. Estimated exactions are not adjusted according to actual use. That fact is clearly demonstrated by Sierra counties own self-generated waste generation studies of selected residential parcels showing variations in volume of waste generation per individual residentially classified parcels as large as one - to - six. Yet, Sierra County makes no exception to their flat-rate estimated fees except for ownership of the parcel and for clerical errors. Those crucial facts present in Pajaro are totally absent in Sierra County's scheme of doing their business on residential parcel owners subject to this exaction despite the fact that Sierra County's own current residential parcel waste generation survey clearly depict deviations up to and including five - to - one along with not one single parcel producing the estimated amount of waste that any particular parcel is billed for.

Hence, Sierra County's flat rate fees on residentially classified parcels are in fact flat rate fees without relationship to the actual use of any given individual parcel's actual use. Therefore, residentially classified Sierra County parcels paying exactions representing more volume of waste generation than is actually produced by those individual parcels are subsequently actually paying Sierra County a prohibited disproportionate one-size-fits-all fixed flat-rate-stand-by-fee which is actually covered not by Article XIII D, §6, but, cannot be imposed without compliance with §4 which Sierra County has never attempted to comport with as required.

Furthermore, the Sierra County Board of Supervisors dictatorially and unilaterally rewrites the meaning of the term "immediate availability" to suit their own ends on behalf of the Paland Court:

**8.05.010** Solid Waste System Charges in pertinent part of (b)

"...As used herein "immediate availability " or "immediately available " shall mean that the property is developed with a structure or otherwise used, the customary nature of which is that the use of the structure or the customary use of the property would normally generate solid waste or create a need to dispose of solid waste from the property and as to which, the County solid waste system is available to the property owner for his or her use. The election of a property owner not to use his or her real property for any period of time does not negate the fact that the County solid waste system being available for the property owner's use. (Immediate availability such be interpreted consisted with the court ruling in Paland v. Brooktrails Township Community Services Dist. Bd. of Directors, 176 Cal.App.4th 158.)"

Whereas, the Paland Court said the term "immediately available", as used within California Constitution Article XIII D, §6, means:

**"We conclude the "immediately available" requirement is logically focused on the agency's conduct, not the property owner's. As long as the agency has provided the necessary service connections at the charged parcel and it is only the unilateral act of the property owner (either in requesting termination of service or failing to pay for service) that causes the service not to be actually used, the service is "immediately available" and a charge for the service is a fee rather than an assessment (assuming the other substantive requirements of a fee are satisfied)." (Bold added.)**

and:

**"We conclude that this difference is also reflected in the additional substantive constraint on fees contained within article XIII D, section 6, subdivision (b), which bars agencies from using fees to extract revenue that is not immediately translated into tangible service to the property owner. fn. 13" (Bold added.)**

There is nothing to be found within the Sierra County's illicit redefinition of the term "immediately available" found at County Code 8.05.010, other than the term, "immediately available", itself that is cognizable within the Paland Court's conclusions, pure and simple, nada, zilch, nothing. However, to ferret out the true effect of Sierra County's illicit redefinition of the term "immediately available", one need look no further than Sierra County Code 8.04.065 Disposal Sites and Authorized Solid Waste Facilities(PUBLIC ACCESS HOURS FOR SOLID WASTE DISPOSAL):

- (a) The County may, but shall not be required to provide disposal site(s) for the disposal of solid waste. The Board may, by resolution or ordinance, establish regulations governing the use of any disposal site and the schedule of fees to be paid by persons using the disposal site.
- (b) The operation of an authorized solid waste facility shall be governed by the provisions of the Act, the corresponding regulations adopted in Title 14 California Code of Regulations, the provisions of this Chapter, **and all other applicable provisions of law.**
- (c) Nothing in this Section shall be construed to preempt, limit or affect in any way the authority of the Board to regulate solid waste facilities **consistent with all other applicable provisions of law.**
- (d) The hours of operation of the County's Solid Waste Facilities, shall be as established by the Board of Supervisors. Upon the adoption of this ordinance the hours shall be as set forth below, provided however, that the Board may change the hours of operation for any of the facilities through the adoption of a resolution.

#### PUBLIC ACCESS HOURS FOR SOLID WASTE DISPOSAL

**County Solid Waste Transfer Stations, located in Alleghany Ramshorn, Sattley and Sierra City, shall be open to receive solid wastes eighteen (18) hours per week on Saturday, Sunday and Monday - 10:00 A. M. to 4:00 P. M.**  
**The Landfill Site, located on Garbage Pit Road, Loyalton, shall be open to receive solid wastes twenty-four (24) hours per week on Friday, Saturday, Sunday and Monday - 10:00 A. M. to 4:00 P. M. (Bold mine.)**

So, that means the Landfill Site is only "**immediately available**" to the public for a whopping twenty-four (24) hours per week on Saturday, Sunday and Monday - 10:00 A. M. to 4:00 P. M., just 24 out of 168 hours a week, a niggardly 0.14285714285714% of the time, and, by no stretch of anyone's imagination "**immediately available**" in light of the Paland Court's conclusion on the meaning of "**immediately available**", save County Official's.

And, that means for Alleghany Ramshorn, Sattley and Sierra City, County Solid Waste Transfer Stations are only "**immediately available**" for eighteen (18) hours per week on Saturday, Sunday and Monday - 10:00 A. M. to 4:00 P. M."18 out of 168 hours, an even more niggardly 0.10714285714286% of the time, and, by no stretch of anyone's imagination "**immediately available**" in light of the Paland Court's conclusion on the meaning of "**immediately available**", save County Official's.

All anyone need do is imagine what the Paland Court Decision would have been given their conclusions on the meaning of "**immediately available**" if the Brooktrails Township Community Services Dist. was only making water available to Paland's water meter a niggardly.10714285714286% of the time. Or, to bring it a wee bit closer to home, recon back to the time that the water supply to the Downieville Court House went down and imagine if that were the case a whopping 99.89285714285714% of the time. The odds are 99.89285714285714% that Paland would have prevailed the first time around.

Of special note above in 8.04.065 Disposal Sites and Authorized Solid Waste Facilities(PUBLIC ACCESS HOURS FOR SOLID WASTE DISPOSAL) regarding PRC §§40051 - 40052, 40057 and 40196:

- (b) The operation of an authorized solid waste facility shall be governed by the provisions of the Act, the corresponding regulations adopted in Title 14 California Code of Regulations, the provisions of this Chapter, **and all other applicable provisions of law.**
- (c) Nothing in this Section shall be construed to preempt, limit or affect in any way the authority of the Board to regulate solid waste facilities **consistent with all other applicable provisions of law. (Bold mine)**

County acknowledges, without bluntly admitting/articulating the particulars, that operation of County's landfill also subjects County to perform certain other duties, among which some are found within the following: PRC §§40051 - 40052, 40057 and 40196.

Article XIII D, §6, (c) reads:

- (c) Voter Approval for New or Increased Fees and Charges. Except for fees or charges for sewer, water, and refuse collection services, no property - related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of property owners of the property subject to the fee or charge or, at the option of the agency, by a two-third's vote of the electorate residing in the affected area. The election shall be conducted not less than 45 days after the public hearing. An agency may adopt procedures similar to those for increases in assessments in the conduct of elections under this subdivision.

In spite of residential waste disposal not being an exception to Sierra County comporting with Article XIII D, §6, (c), Sierra County has never seen fit to comport with §6(c).

Based upon the constitutional infirmities addressed above, both in total and individually, these exactions are prohibited by California Constitution, Article XIII D as applied to both of my parcels as well as those parcels similarly situated.

APPEAL OF SOLID WASTE FEE ASSESSMENT  
2014-2015

SIERRA COUNTY CLERK

MAR 18 2015

*A separate appeal must be filed for each Parcel and/or unsecured property tax bill.*

NAME: Wayne De Lisle ; PARCEL/ACCOUNT NUMBER: APN 006-130-025-0 hereby appeals the decision of the HEATHER FOSTER DEPUTY solid waste fee administrator denying my/our application for an adjustment to the solid waste fees that have been imposed for the 2014-2015 Fiscal Year. I/we further certify that I/we or the entity that I/we represent is/are the owner, or tenant or other party *not* responsible for the waste disposal fee imposed on the above-identified property because this exaction fails to comport with California Constitution, Article XIII D, pursuant to Section 8.05.010 of the Sierra County Code.

I/we further certify that the basis for the adjustment of solid waste fees is as follows: *(Check all applicable boxes)*

RESIDENTIAL FEE PROPERTIES:

The property qualifies as a single-family residence. I do not, however, use this particular parcel as a "single-family residence". "Qualifying" is just that, "qualifying" and nothing more -- "Qualifying" as such in no way makes it the "residence" of a "single-family". To actually be the "residence" of a "single-family" a real, live, tangible "single-family" must actually reside in the residence to avoid being mere conjecture or conclusion formed on the basis of incomplete or incompetent information -- Such as Supervisor Adam's mythical phantom 'or' that Supervisor Adams keeps alluding exists between California Constitution Article XIII D, §6 (b)(3) and (4) when in reality Supervisor Adams' particular 'or' is nowhere to be found there by anyone, and, particularly someone with extensive training in construing statute such as Supervisor Adams. I, solely, a single person in contradistinction to a family, occupy this parcel -- Whereas, the term, "single-family residence", implies multiple person occupancy, which, simply is not the case with either of my parcels. It is merely a deceitfully manufactured disguise to mask a constitutionally prohibited exaction based on potential or future use of a service without compliance with Article XIII D, §4. I provide more details fleshing this issue out further into this Application For Adjustment.

The property qualifies as a multi-family residential property and the maximum total number of units that are available for occupancy during the year has been miscalculated as     units, and the actual number of units that are or may at any time be located on the property during the year is    .

Solid Waste System is not immediately available for use by the subject property. County's own draconic limitations on Public Access to County's Landfill and Transfer Stations well demonstrate noncompliance with County's specifically adopted authority, the Paland Court's conclusion as to what the term "immediately available" actually means as used within California Constitution Article XIII D, §6(b)(4). Whereas, there is nothing to be found with in the Sierra County's illicit redefinition of the term "immediately available" found at County Code 8.05.010, other than the term "immediately available", itself that is cognizable within the Paland Court's conclusion, pure and simple, nada, zilch, zip, nothing. However to ferret out the true consequences of Sierra County's illicit redefinition of the term "immediately available", one need look no further than Sierra County Code 8.04.065 disposal sites and authorizing solid waste facilities public access hours for solid waste disposal. Therein, County proclaims "immediately available" actually means (for County purposes) as little as 0.10714285714286% of the time. This issue is also fleshed out in greater detail further on in this Application For Adjustment.

NON-RESIDENTIAL FEE PROPERTIES:

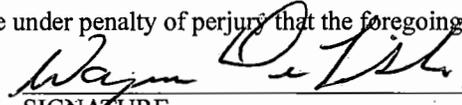
The amount of refuse that has been generated from the property during the period set by ordinance (April 1, 2013 thru March 31, 2014) has been erroneously calculated as     cubic yard of waste and should be     cubic yards. The basis for the above waste generation estimate is as follows: (Use separate page if necessary.) The above referenced exaction was not calculated -- It an illicit exaction based solely upon the assumption that amount waste generation calculated and produced on limited select parcels other that the parcel described above might, or, could be generated by the above parcel sometime in the future, or, in the alternative, an illicit standby exaction. This issue, as well as other substantive and procedural issues are also fleshed out in greater detail further on in this Application For Adjustment.

*The appeal must include a written statement of facts fully and fairly describing the basis for the appeal (demonstrating the misapplication of the solid waste fee to the property) together with copies of all relevant documents in support of the appeal.*

**FAILURE TO PROVIDE ALL INFORMATION REQUIRED BY THIS APPLICATION MAY RESULT IN THE DENIAL OF THE APPLICATION FOR ADJUSTMENT TO SOLID WASTE ASSESSMENT. APPEALS MUST BE FILED WITHIN 60 DAYS OF THE DATE OF THE SOLID WASTE FEE ADMINISTRATOR'S DENIAL OF THE APPLICATION FOR ADJUSTMENT.**

In submitting this application for adjustment in solid waste assessment, I declare under penalty of perjury that the foregoing information is true and correct.

Executed on this 18 day of March, 2015

  
\_\_\_\_\_  
SIGNATURE  
Wayne De Lisle  
\_\_\_\_\_  
PRINT OR TYPE NAME

**RETURN THIS FORM TO:**  
Sierra County Clerk - Recorder  
P.O. Box D  
Downieville, CA 95936

\_\_\_\_\_  
PRINT OR TYPE NAME OF PROPERTY OWNER  
IF DIFFERENT FROM APPLICANT

## SIERRA COUNTY CODE

### CHAPTER 8.05 - SOLID WASTE SYSTEM FEES AND CHARGES

#### 8.05.010 Solid Waste System Charges

- (a) Pursuant to the provisions of Section 6 of Article XIII D of the California Constitution, Government Code Section 25830 and/or Health and Safety Code Section 5470 et. seq., the Board of Supervisors is authorized to establish a schedule of fees for solid waste services provided by the County to the residents, businesses, property owners and any others that may benefit from the use of the County solid waste disposal system or the immediate availability of such system for use by their properties. Revenue from the fees may be used only for the acquisition, operation, and maintenance of county waste disposal sites and disposal services. The Board is hereby authorized to establish such schedule of fees annually and may do so by enactment of either a resolution or an ordinance. It is the intent of this ordinance to authorize the continued use of the solid waste fees, and to authorize and direct that the actual schedule of fees for each year be established annually by the Board of Supervisors by the adoption of a resolution of the Board, based on the most recent waste generation information obtained by the County that fairly reflects the anticipated waste generation arising from each parcel, enterprise or activity.
- (b) Annually, on or before the first day of July of each calendar year, the Board of Supervisors may elect to continue or to adjust the fees for solid waste disposal based upon the refuse generation factors as established in a resolution to be adopted by the Board of Supervisors. Solid waste fees shall be imposed on the owners of property for the estimated use of the solid waste system by the property or the immediate availability of the solid waste system for use by the property. As used herein "immediate availability" or "immediately available" shall mean that the property is developed with a structure or otherwise used, the customary nature of which is that the use of the structure or the customary use of the property would normally generate solid waste or create a need to dispose of solid waste from the property and as to which, the County solid waste system is available to the property owner for his or her use. The election of a property owner not to use his or her real property for any period of time does not negate the fact that the County solid waste system being available for the property owner's use. (Immediate availability such be interpreted consisted with the court ruling in Paland v. Brooktrails Township Community Services Dist. Bd. of Directors, 176 Cal.App.4th 158.) In the event that the Board does not adjust the solid waste fees from the preceding year, the fees shall be deemed to remain at the level (amount) set forth in the preceding year.
- (c) In each fiscal year as the Board may elect, all real property, enterprises, entities or persons within the County that use the County solid waste system and all real property, which the County reasonably determines is developed or otherwise used in a manner, the nature of which development, structure or use would typically be expected to generate solid waste from the property and as to which the solid waste system is immediately available to the property to accept any waste or refuse generated therefrom, shall pay a solid waste fee based upon the volume of refuse generation from the property or estimated to or reasonably occur from the property based on the nature of the permitted use of the property, which generation factors shall be established in the most recently adopted resolution of the Board of Supervisors.
- (d) The fees may be established, billed, and collected on a monthly or yearly basis. Alternatively, the Board may direct by resolution, that the fees billed and collected by the County Tax Collector as part of the regular county tax billing system at the same time and in the same manner as provided for real property taxes and shall incur the same penalties and interest thereon as provided for property taxes, and delinquencies may be enforced and collected in the same manner as for property taxes. (Ord. 1022, eff. 7/15/10, prior 934, 918, 908)

#### 8.05.025 Adjustments to Solid Waste Fees

- (a) Any solid waste fee shall be adjusted where, upon application filed by the property owner or upon discovery by the Solid Waste Fee Administrator it is established that:
1. As to single family residences, the property was erroneously classified (i. e., shown as some other type of use), or the solid waste system is not immediately available for use by the subject property.
  2. As to mobile home parks and multi-family residential properties, the total number of units that are available for occupancy during the year (or any portion of the year) has been erroneously calculated.
  3. As to all other uses or classes of property, the estimate, based on the information available as of April 1 st of the preceding year, of the amount of refuse that is reasonably expected to be generated therefrom during the entire fiscal year (July 1 to June 30), has been erroneously calculated.
- (b) The following procedures shall apply with regard to any request for adjustment:
1. Any property owner, business owner or other person or entity responsible for paying for the cost of solid waste disposal, may seek an adjustment of solid waste fee as to his or her property, enterprise or activity, on or before December 1 st of the fiscal year in which the solid waste fee was imposed, by filing an application for adjustment (which shall constitute an appeal) with the Solid Waste Fee Administrator on the form to be provided by the County for that purpose. The application shall be executed under penalty of perjury but shall not require any filing fee, unless a filing fee is otherwise enacted by resolution of the Board of Supervisors. The application shall include information sufficient to identify the

property, the type(s) and number of structures, the enterprise or activity and the nature of the use or uses occurring on the property. If the property contains multiple residential units, the applicant shall state the number of units that are or may be located on the property during the year. In addition, for all non-residential properties for which an application for adjustment is filed, the application shall state the amount of refuse that the property (or business) owner or other person or entity responsible for the solid waste generation and/or disposal, reasonably anticipated, based on the information available as of April 1 st of the preceding year, to be generated during the ensuing fiscal year, together with a detailed explanation of the method and basis for calculating the projected refuse generation for the property, enterprise or activity and shall include all supporting documentation.

2. Upon receipt of any such application, the Solid Waste Fee Administrator shall promptly review same to determine whether the appropriate solid waste fee was imposed in accordance with the provisions of this Chapter and any implementing resolutions. The Solid Waste Fee Administrator shall be authorized to approve any adjustment upon a determination that the adjustment is in keeping with the provisions of this Chapter.
3. The Solid Waste Fee Administrator shall also be directed to make adjustments to solid waste fees billed to any property owner, enterprise or person conducting an activity thereon, where it is determined that the such owner, enterprise, person or entity has been undercharged for its actual or reasonably estimated use of the County Solid Waste System upon discovery of facts warranting an adjustment. Any correction of the solid waste fee to increase the solid waste fee shall be made on or before June 30, of the current fiscal year.
4. If the Solid Waste Fee Administrator adjusts the solid waste fee for any property, enterprise, or person or entity conducting an activity, which generates solid waste, so as to lower or raise the solid waste fee, he/she shall authorize a refund of the amount, which the Solid Waste Fee Administrator determines represents the overcharge. Any such refund shall be paid out by the Auditor only (1) upon certification by the Solid Waste Fee Administrator that he/she has verified that the full amount of the solid waste fee has previously been paid, or (2) if the solid waste fee has not been paid in full, then upon written request by the property owner or other responsible person, the Auditor shall issue a warrant representing the amount of the refund which shall be made payable to the Tax Collector and which shall be tendered by the Auditor to the Tax Collector only at the time the property owner or other responsible person tenders payment in full of the solid waste fees. Any such certification by the Solid Waste Fee Administrator shall identify the property (by Assessor's parcel number), or other location generating the solid waste, together with the property owner, enterprise or activity (and responsible person), the solid waste fee as imposed, the corrected amount and the amount to be refunded.
5. If the Solid Waste Fee Administrator adjusts the solid waste fee so as to raise the solid waste fee, a supplemental bill shall be issued by the Solid Waste Fee Administrator for any increase in the solid waste fee.
6. If an application for adjustment is denied by the Solid Waste Fee Administrator, the property or business owner or other person or entity responsible for payment of the solid waste fee may, within sixty (60) days of the mailing of written notification of the Solid Waste Fee Administrator's decision, file an appeal with the Board of Supervisors for further review on the application for adjustment. The application for review by the Board of Supervisors shall be on a form to be provided by the County Clerk, as the Clerk of the Board of Supervisors. The appeal shall be accompanied by a written statement of facts fully and fairly describing the basis for the appeal (demonstrating the misapplication of the solid waste fee to the property) and by copies of all relevant documents in support of the appeal. There shall be no charge for the filing of the appeal. The Board of Supervisors shall hear all such appeals, or the Board may establish such other hearing body or officer, as it deems appropriate to hear and decide appeals filed under the provisions of this Section. All references herein to the Board of Supervisors as the appeal body shall be deemed to mean such other hearing body or officer as the Board may subsequently establish.
7. Upon receipt of an application for review by the Board of Supervisors, the Clerk of the Board shall endeavor to schedule an appeal hearing within one hundred and twenty (120) days from the receipt of the application. The Clerk shall provide the applicant mailed notice no later than ten (10) calendar days in advance of the hearing date. A copy of the notice shall be promptly transmitted to the Solid Waste Fee Administrator. (Ord. 958, eff. 6/17/04, prior 937, 934)
8. At the appeal hearing the applicant may be allowed no more than thirty (30) minutes to present his or her evidence concerning the waste generation occurring on the subject real property of from the subject enterprise or activity. The Solid Waste Fee Administrator shall have a representative present to provide a statement of the reasons for the Solid Waste Fee Administrator's decision regarding the adjustment request. Based upon the information submitted with the appeal application and received at the hearing, the Board shall determine the reasonable estimate of the refuse generation therefrom in order to impose the appropriate solid waste fees in accordance with the provisions of this Chapter and the latest adopted resolution imposing solid waste fees (solid waste fees) for the present fiscal year.
9. The Board shall announce its decision at the conclusion of the hearing or within twenty- one (21) days thereafter. If the Board does not orally announce its decision at the conclusion of the hearing, upon its subsequent announcement it shall direct the County Clerk to promptly mail written notice of the Board's decision to the applicant. If the Board orally announces its decision at the conclusion of the hearing, the Clerk will not be required to provide the applicant with written notification of the Board's decision. If the Board adjusts the solid waste fee for any property, enterprise, or person or entity conducting an activity, which generates solid waste, so as to lower or raise the solid waste fee, the Board shall authorize a change in the amount of the solid waste fee. If the Board adjusts the solid waste fee so as to lower the fee, the

Board shall authorize a refund of the amount that the Board determines represents the overcharge. No refund shall be made until the solid waste fee is paid in full. Any such refund shall be paid out by the Auditor only upon certification by the Solid Waste Fee Administrator that the full amount of the solid waste fee has been paid. The certification shall also identify the property (by Assessor's Parcel Number) or the location generating the solid waste, together with the property owner, enterprise or activity (and responsible person), the solid waste fee as imposed, the correct amount of the fee and the amount to be refunded. Upon certification, the Auditor shall issue a warrant representing the amount of the refund. If the Board adjusts the solid waste fee so as to raise the solid waste fee, a separate bill shall be issued by the Solid Waste Fee Administrator for any increase in the solid waste fee. (This shall be a separate bill and shall not be a supplemental property tax bill.) (Ord 958, eff. 6/17/04, prior 937, 934)

10. Any suit to attack, set aside, void or annul any decision of the Board of Supervisors regarding the classification, use, size of buildings or actual refuse generation of property for the purpose of solid waste fees shall be filed in the Sierra County Superior Court within thirty (30) days of the Board's oral pronouncement of its decision or, if no oral decision is rendered at the hearing, within thirty (30) days of the date of the mailing of the notification of the Board's decision. Any such suit shall be brought pursuant to the provisions of California Code of Civil Procedure Section 1094.5. (Ord. 1022, eff. 7/15/10; prior 958, 934)

### **Prop. 218 violations currently occurring in Sierra County:**

Sierra County Resolution No. 2014-052 states as its authority California Government Code §25830. California Government Code §25831, §(d), states that the exaction authorized in §25830: "... shall constitute special assessments against the respective parcels of land..." While Sierra County Property Tax Bills formally call this exaction a "Solid Waste Benefit Assessment", that difference makes little difference here as both are subject to Article XIII D, §4 strictures rather than to §6 strictures as misstated in Sierra County Resolution No. 2014-052. Sierra County enacts this illicit exaction under the guise of §6 and then collects this exaction under the guise of §4, benefiting from both §4 and §6 while comporting with none of the strictures of §4 and only select strictures of §6. While this has been typical of Sierra County's general modus operandi throughout Sierra County's history regarding California Government Code §25830 exactions, to be constitutional, it may only be camouflaged in one of 'the Emperor's new cloths' throughout any given imposition's life cycle. But, sadly that has not been a reality in Sierra County. Which of 'the Emperor's new cloths' these exactions will display depends not upon the actual nature of this exaction as it should, but, rather, upon the particular circumstances in which this exaction is an issue, a true unauthorized wobbler through and through.

Article XIII D, §6(b) prohibits any agency from extending, imposing or increasing a fee or charge unless the agency meets all five of §6(b)'s following requirements. While Sierra County's Residential Solid Waste Generation survey of selected residential parcels spreadsheet may demonstrate meeting §6(b)'s first requirement that revenues derived from the fee or charge shall not exceed the funds required to provide the property-related service, that spreadsheet, nevertheless, acutely demonstrates that Sierra County's disproportionate one-size-fits-all fixed flat-rate-fee miserably fails to comport with §6(b)(3)'s requirement that the amount of a fee or charge imposed on any parcel or person as an incident of property ownership shall not exceed the proportional cost of this service attributable to the parcel, which, as applied to a major portion of residential parcels, this exaction does in deed exceed the proportional cost of this service attributable to those particular parcels. Sierra County's Residential Solid Waste Generation survey of selected residential parcels spreadsheet demonstrates that the gross sum of the funds exacted from residential parcel owners is the sole source for funding disposal of residential solid waste. Sierra County's Residential Solid Waste Generation survey of selected residential parcels spreadsheet also demonstrates differentials in waste generation ranging as high as one to five with all residential parcel owners paying an identical disproportionate one-size-fits-all fixed-flat-rate-fee regardless of the actual volume of waste generated by a particular parcel. That results in the property owners whose parcels generate miserly volumes of waste being forced to subsidize those property owners whose parcels are producing robust volumes of waste. That is the precise inequity that Prop. 218 as well as Public Resources Code §40051 were to eliminate.

Sierra County fails to meet its burden under Article XIII D, section 6 (b)(3), to demonstrate that the amounts of the exaction do not exceed the proportional cost attributable to the parcels in question. Sierra County's exaction scheme suffers from the infirmity that results in exactions exceeding the proportional cost of providing the service to the parcel. The public agency bears the burden of demonstrating that any contested exaction does not exceed the proportional cost of providing the service to the parcel. Sierra County's waste generation survey of selected residential parcels demonstrates just the opposite is fact. Sierra County's waste generation survey of selected residential parcels demonstrates that this exaction is not based on service to the parcel, but, rather, on the overall cost of providing services to all parcels classified as residential. Instead, this exaction should reflect the costs allocated according to relative tangible service received by the parcel. Services provided other parcels cannot be attributed to parcels not receiving those services. Proportional costs of service to particular parcels must be attributed on a nondiscriminatory equitable basis upon parcels receiving those services. The reasonable cost of the proportional service may not exceed the property's proportional share of the total costs as measured by relative tangible service to the parcel. As a consequence of this cost-based apportionment scheme by Sierra County, properties that pay identical exactions receive vastly different levels of service. As the numbers in the Sierra County's waste generation surveys of selected residential parcels well demonstrate some parcels currently receive as much as five times the service as other parcels paying the exact same exaction and has recently been acknowledged by Sierra County as being as high as six times the service to some parcels for the same exact fee. Sierra County lamely passes that off as being "equitable and nondiscriminatory". It is not! It is, in fact, both inequitable and discriminatory. Sierra County openly acknowledges that fact.

"(5) We begin our task by reviewing the entirety of section 6. In doing so, we are mindful that we ""must enforce the provisions of our Constitution and `may not lightly disregard or blink at ... a clear constitutional mandate.'"" (State Personnel Bd. v. Department of Personnel Admin. (2005) 37 Cal.4th 512, 523 [36 Cal.Rptr.3d 142, 123 P.3d 169].) "In so doing, we are obligated to construe constitutional amendments in a manner that effectuates the voters' purpose in adopting the law." (Silicon Valley, supra, 44 Cal.4th at p. 448.) As our Supreme Court explicitly noted, "Proposition 218 specifically states that `[t]he provisions of this act shall be liberally construed to effectuate its purposes of limiting [the] local government revenue and enhancing taxpayer consent.' [Citation.]" (Silicon Valley, supra, at p. 448.) Thus, we interpret Proposition 218, specifically section 6, with these purposes in mind.

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(9) Although the procedural requirements of section 6 do not definitively answer the question before us, that section's substantive requirements shed further light on an appropriate protest procedure. Section 6 provides that revenues derived from the fee cannot exceed the funds required to provide the property-related service. (§ 6, subd. (b)(1).) The funds arising from the fees may not be used for any purpose other than that for which the fee was imposed. (§ 6, subd. (b)(2).) The amount of the fee imposed on any parcel or person as an incident of property ownership cannot exceed the proportional cost of the service attributable to the parcel. (§6, subd. (b)(3).) No fee may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. (§6, subd. (b)(4).) A fee may not be imposed for general government services where the service is available to the public at large in substantially the same manner as it is to property owners. (§6, subd. (b)(5).)

Of these substantive requirements, two stand out as the most pertinent to our discussion of the permitted protest procedure: the total cap in funds raised and the proportionality requirement. **These two conditions work together to ensure the agency collects only enough to cover its costs, and within that overall cost structure, only charges each customer his or her "fair share" on a proportional basis. These requirements are a constitutional mandate that an agency apply a general cost of service principle in setting any potential rate or rate increase.**

(10) Within this framework, it is clear that section 6 contemplates customers paying different amounts. The cap requirement limits the total amount that an agency may collect. However, within that total amount, section 6 requires that each customer only pay his or her proportional share. Put differently, the proportionality requirement ensures that the aggregate fee collected on all parcels is distributed among those parcels in proportion to the cost of service for each parcel. (Cf. Beutz v. County of Riverside (2010) 184 Cal.App.4th 1516, 1522 [109 Cal.Rptr.3d 851] (Beutz) [discussing § 4].) There is nothing in section 6 that prohibits an agency from charging different rates to its customers as long as the fees paid by customers are proportional

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\*909 and the total amount the agency collects does not surpass the cost of providing the service. These substantive requirements help section 6 achieve the voters' objective of limiting the local government revenue. (See Silicon Valley, supra, 44 Cal.4th at p. 448.)

We also are mindful that section 6 is intended to enhance taxpayer consent. (Silicon Valley, supra, 44 Cal.4th at p. 448.) The protest procedure offered in section 6, subdivision (a)(2) achieves this goal by allowing owners of the identified parcels to vote against the rate increase. Government Code section 53755 mirrors the language of section 6, subdivision (a)(2): "One written protest per parcel, filed by an owner or tenant of the parcel, shall be counted in calculating a majority protest to a proposed new or increased fee or charge subject to the requirements of Section 6...." (Gov. Code, §53755, subd. (b).) Although the substantive requirements of section 6 limit the fees paid by each owner of a parcel to his or her proportion of the cost of service, we see nothing in either section 6 or Government Code section 53755 indicating that the owners paying more have a larger say in any fee increase."(Bold mine.)

Sierra County's Solid Waste Enterprise is subject to Public Resources Code §§40051 -40052, 40057 and40196which state:

ARTICLE 2. General Provisions [40050. - 40063.] (Article 2 added by Stats. 1989, Ch. 1095, Sec. 22. )

This division shall be known and may be cited as the California Integrated Waste Management Act of 1989.

(Added by Stats. 1989, Ch. 1095, Sec. 22.)

#### 40051.

In implementing this division, the board and local agencies shall do both of the following:

- (a) Promote the following waste management practices in order of priority:
  - (1)Source reduction.
  - (2)Recycling and composting.
  - (3)Environmentally safe transformation and environmentally safe land disposal, at the discretion of the city or county.
- (b) Maximize the use of all feasible source reduction, recycling, and composting options in order to reduce the amount of solid waste that must be disposed of by transformation and land disposal. For wastes that cannot feasibly be reduced at their source, recycled, or composted, the local agency may use environmentally safe transformation or environmentally safe land disposal, or both of those practices.

Added by Stats. 1989, Ch. 1095, Sec. 22.)

**40052.**

The purpose of this division is to reduce, recycle, and reuse solid waste generated in the state to the maximum extent feasible in an efficient and cost-effective manner to conserve water, energy and other natural resources, to protect the environment, to improve regulation of existing solid waste landfills, to ensure that new solid waste landfills are environmentally sound, to improve permitting procedures for solid waste management facilities, and to specify the responsibilities of local governments to develop and implement integrated waste management programs.

(Amended by Stats. 1993, Ch. 656, Sec. 1. Effective October 1, 1993.)

**40057.**

Each county, city, district, or other local governmental agency which provides solid waste handling services shall provide for those services, including, but not limited to, source reduction, recycling, composting activities, and the collection, transfer, and disposal of solid waste within or without the territory subject to its solid waste handling jurisdiction.

(Added by Stats. 1989, Ch. 1095, Sec. 22.)

**40196.**

"Source reduction" means any action which causes a net reduction in the generation of solid waste. "Source reduction" includes, but is not limited to, reducing the use of nonrecyclable materials, replacing disposable materials and products with reusable materials and products, reducing packaging, reducing the amount of yard wastes generated, establishing garbage rate structures with incentives to reduce the amount of wastes that generators produce, and increasing the efficiency of the use of paper, cardboard, glass, metal, plastic, and other materials. "Source reduction" does not include steps taken after the material becomes solid waste or actions which would impact air or water resources in lieu of land, including, but not limited to, transformation.

(Amended by Stats. 1990, Ch. 145, Sec. 5. Effective June 19, 1990.)

Sierra County is mandated to promote source reduction, recycling and composting. Our Legislature defines source reduction to mean any action, which causes a net reduction in the generation of solid waste. "Source reduction" includes, but is not limited to, establishing garbage rate structures with incentives to reduce the amount of wastes that generators produce. Sierra County's disproportionate one-size-fits-all fixed flat-rate-fee provides no incentive to reduce the amount of wastes generated on most residential parcels. The only incentive Sierra County's disproportionate one-size-fits-all fixed flat-rate-fee provides is getting the most bang for the dollars spent. Sierra County's disproportionate one-size-fits-all fixed flat-rate-fee flies directly in the face of mandated "source reduction" as well as Article XIII D, §6(b)(3)'s proportionality requirements. Whereas, unlike Sierra County's disproportionate one-size-fits-all fixed flat-rate-fee, actual incentive driven 'source reduction' as required by PRC §40051, fits in very well with Article XIII D, §6(b)(3)'s proportionality requirements.

Sierra County adopts the court's ruling in Paland v. Brooktrails Township Community Services Dist. Bd. of Directors, 176 Cal.App.4th 158, subsequent to rewriting that ruling to suit Sierra County whims.

Section 8.05.010 of the Sierra County Code is hereby amended to read as follows:

**8.05.010 Solid Waste System Charges**

(a) Pursuant to the provisions of Section 6 of Article XIII D of the California Constitution, Government Code Section 25830 and/or Health and Safety Code Section 5470 et. seq., the Board of Supervisors is authorized to establish a schedule of fees for solid waste services provided by the County to the residents, businesses, property owners and any others that may benefit from the use of the County solid waste disposal system or the immediate availability of such system for use by their properties. Revenue from the fees may be used only for the acquisition, operation, and maintenance of county waste disposal sites and disposal services. The Board is hereby authorized to establish such schedule of fees annually and may do so by enactment of either a resolution or an ordinance. It is the intent of this ordinance to authorize the continued use of the solid waste fees, and to authorize and direct that the actual schedule of fees for each year be established annually by the Board of Supervisors by the adoption of a resolution of the Board, based on the most recent waste generation information obtained by the County that fairly reflects the anticipated waste generation arising from each parcel, enterprise or activity.

(b) Annually, on or before the first day of July of each calendar year, the Board of Supervisors may elect to continue or to adjust the fees for solid waste disposal based upon the refuse generation factors as established in a resolution to be adopted by the Board of Supervisors. Solid waste fees shall be imposed on the owners of property for the estimated use of the solid waste system by the property or the immediate availability of the solid waste system for use by the property. As used herein "immediate availability" or "immediately available" shall mean that the property is developed with a structure or otherwise used, the customary nature of which is that the use of the structure or the customary use of the property would normally generate solid waste or create a need to dispose of solid waste from the property and as to which, the County solid waste system is available to the property owner for his or her use. The election of a property owner not to use his or her real property for any period of time does not negate the fact that the County solid waste system being available for the property owner's use. (Immediate availability such be interpreted consisted with the court ruling in Paland v. Brooktrails Township Community Services Dist. Bd. of Directors, 176 Cal.App.4th 158.) In the event that the Board does not adjust the solid waste fees from the preceding year, the fees shall be deemed to remain at the level (amount) set forth in the preceding year.

This illicit exaction is admittedly based solely upon one of two factors; the estimated waste generation for the classification into which the County has placed a particular parcel, or, in the alternative, on the County Waste Disposal System being "immediately available" for use by the particular parcel. Pajaro Valley Water Management v. Amrhen, 46 Cal. Rptr. 3d 476 addresses estimated fees.

In PAJARO VALLEY WATER MANAGEMENT v. AMRHEN, 46 Cal. Rptr. 3d 476 - Cal/ Court of Appeal, 6th Dist. 2006 the Court states:

"Here the augmentation fee is clearly based on consumption. The only difficulty arises from the fact that the consumption of smaller users is estimated rather than metered, and this makes it resemble, in the case of residential users, a flat charge. This is because rural residential extractors are charged based on an "estimated use rate per dwelling" of 0.6 acre-feet per year. Smaller non-residential extractors may also pay an estimated charge based on factors such as acreage and crop type. **Critically, however, these charges are not flat rates but estimates necessitated by the economic impracticability of metering small users.**[20] This is borne out by the crucial fact that all estimated charges are subject to adjustment if an extractor can

503 persuade the Agency that he actually extracted less than the estimated amount. The Agency had in fact made adjustments for unmetered agricultural extractors, including those who told the Agency they were not irrigating but "dry farming," and those who had surface water sources such as a spring. The Agency's manager was unable to cite an instance where a purely residential extractor had sought such an adjustment, but this may not be surprising in view of the relatively low charge incurred by such users, few of whom might find it worthwhile to prove that they drew less than the estimated 0.6 acre-feet. Prior to the increase here under review the augmentation charge was fixed at \$80 per acre-foot, which meant that the residential estimate was \$48. Earlier rates were even lower, providing even less incentive to contest the Agency's estimate." (Bold mine.)

According to the Court in Pajaro, that estimated fee is not a flat rate because of the crucial fact that all estimated charges are subject to adjustment upon claims of actual use less than the estimated amount. In Pajaro, the Agency had in fact made adjustments for those who told the Agency they were not irrigating but "dry farming" and those who had surface water sources such as a spring. Such is not the case in Sierra County. Unlike in Pajaro where the Agency had no means of ascertaining actual use, nevertheless, in fact, made adjustments for those who told the Agency they were not irrigating but "dry farming" and those who had surface water sources such as a spring. Here in Sierra County, however, that crucial fact found in Pajaro is totally absent without leave. Estimated exactions are not adjusted according to actual use. That fact is clearly demonstrated by Sierra counties own self-generated waste generation studies of selected residential parcels showing variations in volume of waste generation per individual residentially classified parcels as large as one - to - six. Yet, Sierra County makes no exception to their flat-rate estimated fees except for ownership of the parcel and for clerical errors. Those crucial facts present in Pajaro are totally absent in Sierra County's scheme of doing their business on residential parcel owners subject to this exaction despite the fact that Sierra County's own current residential parcel waste generation survey clearly depict deviations up to and including five - to - one along with not one single parcel producing the estimated amount of waste that any particular parcel is billed for.

Hence, Sierra County's flat rate fees on residentially classified parcels are in fact flat rate fees without relationship to the actual use of any given individual parcel's actual use. Therefore, residentially classified Sierra County parcels paying exactions representing more volume of waste generation than is actually produced by those individual parcels are subsequently actually paying Sierra County a prohibited disproportionate one-size-fits-all fixed flat-rate-stand-by-fee which is actually covered not by Article XIII D, §6, but, cannot be imposed without compliance with §4 which Sierra County has never attempted to comport with as required.

Furthermore, the Sierra County Board of Supervisors dictatorially and unilaterally rewrites the meaning of the term "immediate availability" to suit their own ends on behalf of the Paland Court:

#### **8.05.010** Solid Waste System Charges in pertinent part of (b)

"...As used herein "immediate availability" or "immediately available" shall mean that the property is developed with a structure or otherwise used, the customary nature of which is that the use of the structure or the customary use of the property would normally generate solid waste or create a need to dispose of solid waste from the property and as to which, the County solid waste system is available to the property owner for his or her use. The election of a property owner not to use his or her real property for any period of time does not negate the fact that the County solid waste system being available for the property owner's use. (Immediate availability such be interpreted consisted with the court ruling in Paland v. Brooktrails Township Community Services Dist. Bd. of Directors, 176 Cal.App.4th 158.)"

Whereas, the Paland Court said the term "immediately available", as used within California Constitution Article XIII D, §6, means:

"We conclude the "immediately available" requirement is logically focused on the agency's conduct, not the property owner's. As long as the agency has provided the necessary service connections at the charged parcel and it is only the unilateral act of the property owner (either in requesting termination of service or failing to pay for service) that causes the service not to be actually used, the service is "immediately available" and a charge for the service is a fee rather than an assessment (assuming the other substantive requirements of a fee are satisfied)." (Bold added.)

and:

**“We conclude that this difference is also reflected in the additional substantive constraint on fees contained within article XIII D, section 6, subdivision (b), which bars agencies from using fees to extract revenue that is not immediately translated into tangible service to the property owner. fn. 13” (Bold added.)**

There is nothing to be found within the Sierra County's illicit redefinition of the term "immediately available" found at County Code 8.05.010, other than the term, "immediately available", itself that is cognizable within the Paland Court's conclusions, pure and simple, nada, zilch, nothing. However, to ferret out the true effect of Sierra County's illicit redefinition of the term "immediately available", one need look no further than Sierra County Code 8.04.065 Disposal Sites and Authorized Solid Waste Facilities(PUBLIC ACCESS HOURS FOR SOLID WASTE DISPOSAL):

- (a) The County may, but shall not be required to provide disposal site(s) for the disposal of solid waste. The Board may, by resolution or ordinance, establish regulations governing the use of any disposal site and the schedule of fees to be paid by persons using the disposal site.
- (b) The operation of an authorized solid waste facility shall be governed by the provisions of the Act, the corresponding regulations adopted in Title 14 California Code of Regulations, the provisions of this Chapter, **and all other applicable provisions of law.**
- (c) Nothing in this Section shall be construed to preempt, limit or affect in any way the authority of the Board to regulate solid waste facilities **consistent with all other applicable provisions of law.**
- (d) The hours of operation of the County's Solid Waste Facilities, shall be as established by the Board of Supervisors. Upon the adoption of this ordinance the hours shall be as set forth below, provided however, that the Board may change the hours of operation for any of the facilities through the adoption of a resolution.

#### PUBLIC ACCESS HOURS FOR SOLID WASTE DISPOSAL

**County Solid Waste Transfer Stations, located in Alleghany Ramshorn, Sattley and Sierra City, shall be open to receive solid wastes eighteen (18) hours per week on Saturday, Sunday and Monday - 10:00 A. M. to 4:00 P. M.  
The Landfill Site, located on Garbage Pit Road, Loyalton, shall be open to receive solid wastes twenty-four (24) hours per week on Friday, Saturday, Sunday and Monday - 10:00 A. M. to 4:00 P. M. (Bold mine.)**

So, that means the Landfill Site is only "immediately available" to the public for a whopping twenty-four (24) hours per week on Saturday, Sunday and Monday - 10:00 A. M. to 4:00 P. M., just 24 out of 168 hours a week, a niggardly 0.14285714285714% of the time, and, by no stretch of anyone's imagination "immediately available" in light of the Paland Court's conclusion on the meaning of "immediately available", save County Official's.

And, that means for Alleghany Ramshorn, Sattley and Sierra City, County Solid Waste Transfer Stations are only "immediately available" for eighteen (18) hours per week on Saturday, Sunday and Monday - 10:00 A. M. to 4:00 P. M."18 out of 168 hours, an even more niggardly 0.10714285714286% of the time, and, by no stretch of anyone's imagination "immediately available" in light of the Paland Court's conclusion on the meaning of "immediately available", save County Official's.

All anyone need do is imagine what the Paland Court Decision would have been given their conclusions on the meaning of "immediately available" if the Brooktrails Township Community Services Dist. was only making water available to Paland's water meter a niggardly.10714285714286% of the time. Or, to bring it a wee bit closer to home, recon back to the time that the water supply to the Downieville Court House went down and imagine if that were the case a whopping 99.89285714285714% of the time. The odds are 99.89285714285714% that Paland would have prevailed the first time around.

Of special note above in 8.04.065 Disposal Sites and Authorized Solid Waste Facilities(PUBLIC ACCESS HOURS FOR SOLID WASTE DISPOSAL) regarding PRC §§40051 - 40052, 40057 and 40196:

- (b) The operation of an authorized solid waste facility shall be governed by the provisions of the Act, the corresponding regulations adopted in Title 14 California Code of Regulations, the provisions of this Chapter, **and all other applicable provisions of law.**
- (c) Nothing in this Section shall be construed to preempt, limit or affect in any way the authority of the Board to regulate solid waste facilities **consistent with all other applicable provisions of law. (Bold mine)**

County acknowledges, without bluntly admitting/articulating the particulars, that operation of County's landfill also subjects County to perform certain other duties, among which some are found within the following: PRC §§40051 - 40052, 40057 and 40196.

Article XIII D, §6, (c) reads:

- (c) Voter Approval for New or Increased Fees and Charges. Except for fees or charges for sewer, water, and refuse collection services, no property – related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of property owners of the property subject to the fee or charge or, at the option of the agency, by a two-third's vote of the electorate residing in the affected area. The election shall be conducted not less than 45 days after the public hearing. An agency may adopt procedures similar to those for increases in assessments in the conduct of elections under this subdivision.

In spite of residential waste disposal not being an exception to Sierra County comporting with Article XIII D, §6, (c), Sierra County has never seen fit to comport with §6(c).

Based upon the constitutional infirmities addressed above, both in total and individually, these exactions are prohibited by California Constitution, Article XIII D as applied to both of my parcels as well as those parcels similarly situated.

**Sierra County  
Board of Supervisors'  
Agenda Transmittal &  
Record of Proceedings**

<b>MEETING DATE:</b> February 2, 2016	<b>TYPE OF AGENDA ITEM:</b> <input checked="" type="checkbox"/> Regular <input type="checkbox"/> Timed <input type="checkbox"/> Consent
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<b>DEPARTMENT:</b> County Counsel <b>APPROVING PARTY:</b> James A. Curtis <b>PHONE NUMBER:</b> 289-3212
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**AGENDA ITEM:** Closed session pursuant to Govt. Code 54956.9(d)(2), to review a threat of litigation by Don Russell regarding Sheriffs' office failure to provide records in response to his request

**SUPPORTIVE DOCUMENTS ATTACHED:**  Memo  Resolution  Agreement  Other

**BACKGROUND INFORMATION:**

**FUNDING SOURCE:**  
**GENERAL FUND IMPACT:** No General Fund Impact  
**OTHER FUND:**  
**AMOUNT:** \$ N/A

**ARE ADDITIONAL PERSONNEL REQUIRED?**  
  
 Yes, -- --  
 No

**IS THIS ITEM ALLOCATED IN THE BUDGET?**  Yes  No  
  
**IS A BUDGET TRANSFER REQUIRED?**  Yes  No

**SPACE BELOW FOR CLERK'S USE**

<p><b>BOARD ACTION:</b></p> <input type="checkbox"/> Approved <input type="checkbox"/> Approved as amended <input type="checkbox"/> Adopted <input type="checkbox"/> Adopted as amended <input type="checkbox"/> Denied <input type="checkbox"/> Other <input type="checkbox"/> No Action Taken	<input type="checkbox"/> Set public hearing For: _____ <input type="checkbox"/> Direction to: _____ <input type="checkbox"/> Referred to: _____ <input type="checkbox"/> Continued to: _____ <input type="checkbox"/> Authorization given to: _____	Resolution 2016- _____ Agreement 2016- _____ Ordinance _____ Vote: Ayes: Noes: Abstain: Absent: <input type="checkbox"/> By Consensus
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**COMMENTS:**

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CLERK TO THE BOARD

\_\_\_\_\_  
DATE

The fundamental precept of the CPRA is that governmental records shall be disclosed to the public, upon request, unless there is a specific reason not to do so. (AG summary)

To whom it may concern,

We, the undersigned, seek the Sheriff's adherence to, and compliance with, the disclosure requirements codified in Section 6254, the relevant sections of which we attach.

The Sheriff's Department has, to date, refused to comply with these requirements. The Sheriff's claim is simply that the law's requirements are too troublesome, too time consuming to obey. (See email provided the board at their recent Loyaltan meeting). Instead, he has chosen to parcel out information at his whim.

This duty of the Sheriff's is simply the "cost of doing business" as a California employee and employer. How he budgets time and money to accomplish these chores is, as an elected official, uniquely his problem.

His perception of what other policing departments' policies is of little interest to us, and of no concern to the issue at hand here in Sierra County.

The Sheriff's Office's claim of "concern for the privacy of victims" does not impress us, as that concern is already addressed by California disclosure laws. In fact, we have seen a pattern in the Sheriff's Office's refusal to obey disclosure laws.

The officer who has become Sgt. Anderson, newly hired by Sheriff Evans, promptly began blacking out information due us. Upon our complaint, this practice was stopped. (County Counsel Curtis can testify to his involvement.)

Nevertheless, Anderson soon thereafter began refusing to give this public information to our secretary, insisting these public documents were "eyes only" for the editor. (Ms Molaris can testify to this.)

As Sergeant, Anderson should know by virtue of her training, rank and from instruction provided by Curtis and/or Evans, her duty to provide information requested by the public.

Nevertheless, she recently reverted to that prohibited practice of censoring public information, the results of which we have saved as evidence.

Recently Sheriff Standley warned Ms Fisher, of the *Sierra County Prospect*, he could force her to file public records act requests for information he is required to promptly provide the public. This process, he noted, would be cumbersome at best. (Ms Fisher will testify to this.)

From this pattern, we believe there is a concerted attempt to deny us our civil rights under color of law, that there is a conscious attempt to restrain our trade, and shows an abiding contempt for the people of Sierra County and the State legislature.

While we have traditionally been lax and accepted abbreviated versions of the referenced public information, we now demand a strict compliance with the letter of this law, including written justification for any information deleted.

Beginning immediately, we expect weekly copies of the Sheriff's daily activities log, including case numbers, complainant/reporter/caller names, the nature of the call, crimes alleged or assistance sought, witnesses names if available, the action taken (disposition), names of officers involved, the names, occupation, age and addresses of those arrested, where they are being held, the bail amount if applicable and underlying charges. We expect a written explanation of omissions with justifying code cited, and the explanation of how that code applies to the particular incident, as required by citations throughout the Public Records Act.

Further, given our diminishing time on the planet, we want to approve a written policy to be taught every employee of the Sheriff's Office for conspicuous posting in the dispatch area. Our Sheriff's Office will be a better, more professional agency when its relatively recent culture of secrecy is shattered once and for all.

Should we be forced to litigate, we shall, as a matter of course, seek to recover the costs of bringing this action, including court costs and attorneys' fees, as provided by law. We seek the assistance of the supervisors to prevent the need for such litigation, but have already incurred legal costs as we prepare for court action we may be forced to initiate in the near future.

We thank you for your attention

Don Russell, editor, The Mountain Messenger  
Liz Fisher, editor, Sierra County Prospect  
Larry Devita, editor, the Resilient Sierra

NB: italicized notes are ours, not the code's

The relevant sections of CA Gov't Code 6254.

6254. Except as provided in Sections 6254.7 (*air quality*) and 6254.13 (*test questions*), nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda...provided the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party...until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which...unwarranted invasion of personal privacy.

(f) ...However, state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951, unless the disclosure would endanger the safety of a person or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflect analysis or conclusions of the investigating officer.

Customer lists provided to a state or local police agency by an alarm or security company at the request of the agency shall be construed to be records subject to this subdivision.

Notwithstanding any other provision of this subdivision, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the facts and circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 (*kids' names*) of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 264.2, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 (*rape, child abuse, civil rights, hate crimes, threats of violence*) of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 264.2, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 (*see above*) of the Penal Code may be deleted at the request of the victim or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

**Sierra County  
Board of Supervisors'  
Agenda Transmittal &  
Record of Proceedings**

<b>MEETING DATE:</b> February 2, 2016	<b>TYPE OF AGENDA ITEM:</b> <input type="checkbox"/> Regular <input type="checkbox"/> Timed <input checked="" type="checkbox"/> Consent
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**DEPARTMENT:** Sheriff-Coroner  
**APPROVING PARTY:** Sheriff Tim Standley  
**PHONE NUMBER:** 530-289-3700

**AGENDA ITEM:** Approval/Authorization to purchase 12 bulletproof vests and 8 outer carriers; the current vests were purchased in 2011 and will expire this year.

**SUPPORTIVE DOCUMENTS ATTACHED:**  Memo  Resolution  Agreement  Other

**BACKGROUND INFORMATION:** The Sheriff's Office applied and received partial funding for the replacement of bulletproof vests. See attached memo for further information.

**FUNDING SOURCE: REIMBURSEMENT GRANT FUNDING AND CCP FUNDING**  
**GENERAL FUND IMPACT:** No General Fund Impact  
**OTHER FUND:**  
**AMOUNT:** \$Approximately \$12,931.75 One Time Expense

**ARE ADDITIONAL PERSONNEL REQUIRED?**  
 Yes, -- --  
 No

**IS THIS ITEM ALLOCATED IN THE BUDGET?**  Yes  No  
**IS A BUDGET TRANSFER REQUIRED?**  Yes  No

**SPACE BELOW FOR CLERK'S USE**

<p><b>BOARD ACTION:</b> <input type="checkbox"/> Approved <input type="checkbox"/> Approved as amended <input type="checkbox"/> Adopted <input type="checkbox"/> Adopted as amended <input type="checkbox"/> Denied <input type="checkbox"/> Other <input type="checkbox"/> No Action Taken</p>	<p><input type="checkbox"/> Set public hearing For: _____ <input type="checkbox"/> Direction to: _____ <input type="checkbox"/> Referred to: _____ <input type="checkbox"/> Continued to: _____ <input type="checkbox"/> Authorization given to: _____</p>	<p>Resolution 2016- _____ Agreement 2016- _____ Ordinance _____ Vote: Ayes: Noes: Abstain: Absent: <input type="checkbox"/> By Consensus</p>
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**COMMENTS:**  
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CLERK TO THE BOARD \_\_\_\_\_  
DATE



**Tim Standley**

*Sheriff-Coroner  
County of Sierra  
State of California*

100 Courthouse Square/PO Box 66  
Downieville CA 95936  
(530)289-3700 Fax (530) 289-3318

## MEMO

**TO:** Sierra County Board of Supervisors

**FROM:** Sheriff Tim Standley

**DATE:** 01/22/2016

**RE:** Bulletproof Vest Grant and Replacement

In April 2011 Sierra County purchased its current set of bulletproof vests and this year they are set to expire. The vests become less safe over time, as heat and moisture break down the synthetic fiber. The company we purchased the last set of vests advised the vests should be replaced when their five-year warranty expires. The vests carriers in current use are falling apart and need to be replaced.

In July of 2014 the Sierra County Sheriff's Office was awarded a reimbursement grant for the purchase of new bulletproof vests. The grant is run through the US Department of Justice (DOJ) and is a 50% grant, in that they supply 50% of the costs for the vest. We requested the funding for 11 vests and received the DOJ half funding in the amount of \$6,031.24. Since the initial grant application the sheriff's office has hired a reserve deputy sheriff. This left the sheriff's office short one vest. I have added an additional vest and 8 outer carriers for the vests. The wearing of the outer vest carrier has helped with back problem for some deputies. Eight (8) deputies have indicated they wished to use the outer carrier. Unfortunately, because the extra vest and carriers were not requested at the time of the initial grant application they were not considered in the award amount. The Community Corrections Partnership (CCP) has funding available to cover the costs for the purchase of the vests & carriers minus the grant award. The CCP Committee has approved and budgeted for the cost of the vests the grant does not cover. The amount the CCP will cover is \$6,900.51. There will be no general fund expenditure for these vests.

In essence, the sheriff's office initially would pay the entire amount for the vests. Once proof of the purchase of the vests has been submitted to DOJ, we will then submit for reimbursement of the awarded grant amount of \$6,031.24. The CCP would then cover the remaining cost of \$6,900.51 for a total cost of \$12,931.75 for the vest purchase. There would be no General Fund expenditure.

Please authorize the purchase of the above equipment and direct the Auditor to pay.

Respectfully,

Tim Standley Sheriff-Coroner

**Sierra County  
Board of Supervisors'  
Agenda Transmittal &  
Record of Proceedings**

<b>MEETING DATE:</b> January 19, 2016	<b>TYPE OF AGENDA ITEM:</b> <input type="checkbox"/> Regular <input type="checkbox"/> Timed <input checked="" type="checkbox"/> Consent
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<b>DEPARTMENT:</b> Department of Public Works and Transportation
<b>APPROVING PARTY:</b> Tim H. Beals
<b>PHONE NUMBER:</b> 530-289-3201

**AGENDA ITEM:** Amendment to Professional Services Agreement 97-068 with Bastian Engineering to increase compensation for Fiscal Year 2016.

**SUPPORTIVE DOCUMENTS ATTACHED:**  Memo  Resolution  Agreement  Other

**BACKGROUND INFORMATION:** This contract renews annual in the amount of \$15,000, however final expenditures are project driven. Work this fiscal year leaves the remaining contract balance at \$283.10. Projecting costs based on current projects and some projected submittals, we are recommending a contract amendment in the amount of \$4,000 to complete the fiscal year.

**FUNDING SOURCE:** GENERAL FUND 0015290 COUNTY ENGINEER  
**GENERAL FUND IMPACT:** General Fund Impact  
**OTHER FUND:**  
**AMOUNT:** \$4,000 N/A

**ARE ADDITIONAL PERSONNEL REQUIRED?**  
  
 Yes, -- --  
 No

**IS THIS ITEM ALLOCATED IN THE BUDGET?**  Yes  No  
  
**IS A BUDGET TRANSFER REQUIRED?**  Yes  No

**SPACE BELOW FOR CLERK'S USE**

<p><b>BOARD ACTION:</b></p> <input type="checkbox"/> Approved <input type="checkbox"/> Approved as amended <input type="checkbox"/> Adopted <input type="checkbox"/> Adopted as amended <input type="checkbox"/> Denied <input type="checkbox"/> Other <input type="checkbox"/> No Action Taken	<input type="checkbox"/> Set public hearing For: _____ <input type="checkbox"/> Direction to: _____ <input type="checkbox"/> Referred to: _____ <input type="checkbox"/> Continued to: _____ <input type="checkbox"/> Authorization given to: _____	Resolution 2016- _____ Agreement 2016- _____ Ordinance _____ Vote: Ayes: Noes: Abstain: Absent: <input type="checkbox"/> By Consensus
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**COMMENTS:**

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CLERK TO THE BOARD

\_\_\_\_\_  
DATE

AGREEMENT NO:  
(An Amendment to Agreement No. 97-068)

**AMENDMENT TO  
AGREEMENT FOR  
PROFESSIONAL SERVICES – County Engineer**

The following is an Amendment to that certain Agreement No. 97-068 (“Agreement”) with an Effective Date of April 15, 1997, by and between the County of Sierra, a political subdivision of the State of California (“the County”) and Bastian Engineering, (“Contractor”).

1. Provision 3 of the Agreement, pertaining to the Payment refers to Attachment B. Attachment B of the Agreement pertaining to “Payment” is hereby amended as follows:

**AMENDMENT TO ATTACHMENT B**

The maximum contract amount, as set out in Paragraph B.1, is amended to increase same to the sum of \$19,000.00 (a contract increase of \$4,000) for fiscal year 2015-2016. All other provisions of Paragraph B.1 shall remain in effect.

All other terms and conditions of the Agreement to remain the same.

2. This Amendment shall have an Effective Date of January 1, 2016.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of February 2, 2016.

COUNTY OF SIERRA

“CONTRACTOR”

\_\_\_\_\_  
LEE ADAMS  
Chairman, Board of Supervisors

\_\_\_\_\_  
DAN BASTIAN  
BASTIAN ENGINEERING

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
HEATHER FOSTER  
Clerk of the Board

\_\_\_\_\_  
JAMES A CURTIS  
County Counsel



# Memo

To: Board of Supervisors  
From: Heather Foster, Clerk-Recorder/Registrar of Voters  
Date: "Lcpwct {"43."4238  
Re: Democracy Live Software License Agreement for accessible sample ballots and voter guide and UOCAVA electronic ballot delivery

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**Background:** This is a request to enter into a software license agreement with Democracy Live in order to provide an online accessible sample ballot and voter guide and electronic ballot delivery to Sierra County's UOCAVA (Uniformed and Overseas Citizens Absentee Voting Act) voters. As you are aware, Sierra County currently conducts elections entirely by mail, this software will provide better access to those voters with disabilities in the County as it is compatible with all accessibility tools (screen readers, sip and puffs, tactile paddles, etc.) and allows these voters to access their sample ballot and voter guide from any device.

This software will also allow Sierra County's UOCAVA voters to receive a separate link that has two options, one for the sample ballot and voter guide, and one for their UOCAVA ballot along with instructions on how to return their ballot. The ballot will be a PDF version as it has been in the past. The UOCAVA link would be sent through emails and not posted on the County website to ensure only UOCAVA voters have access to an electronically delivered ballot as this option is currently not permissible for other voters. A second link would be provided for the sample ballot and voter guide that all voters can click to from the County's website.

The following California counties will also be utilizing this service for the June 7, 2016 Presidential Primary Election: Amador, Calaveras, San Mateo, Contra Costa, El Dorado, San Bernardino, Lake, Sutter, Imperial, San Luis Obispo, Fresno, San Joaquin, Sacramento, Butte, Nevada, Lassen, Marin and Solano.

**Fiscal Impact:** The one-time payment of \$9,500 is an allowable expenditure under the Help America Vote Act (HAVA) Section 261 grant funding, Sierra County Agreement 2015-042. The ongoing cost of \$1,900

annually (during election years used), \$1.00 per UOCAVA ballot download and \$1.00 per sample ballot and voter guide download for the first 2,000 downloads is a general fund expense. This would require a \$4,000 increase in the 2017/2018 Fiscal Year Elections budget.

**Recommendation:** Approve the Software License Agreement between Democracy Live and the County of Sierra to allow the Sierra County Elections office to provide accessible sample ballots and voter guide and UOCAVA electronic ballot delivery.

# Sierra County, CA



*Proposal to Provide Electronic Ballots and Election Information to ALL Voters, Including UOCAVA and Disabled Voters*

## LIVEBALLOT

HumboldtCounty California's Redwood Coast Font Size: A A

[Home](#) [Contact](#)

### Sample Ballot

After you have marked your selections, you may click the **Download Reference Sheet** to download and print a list of your preferred selections. You may also click **Send to Mobile** to electronically send a list of your preferred selections to any smart device.

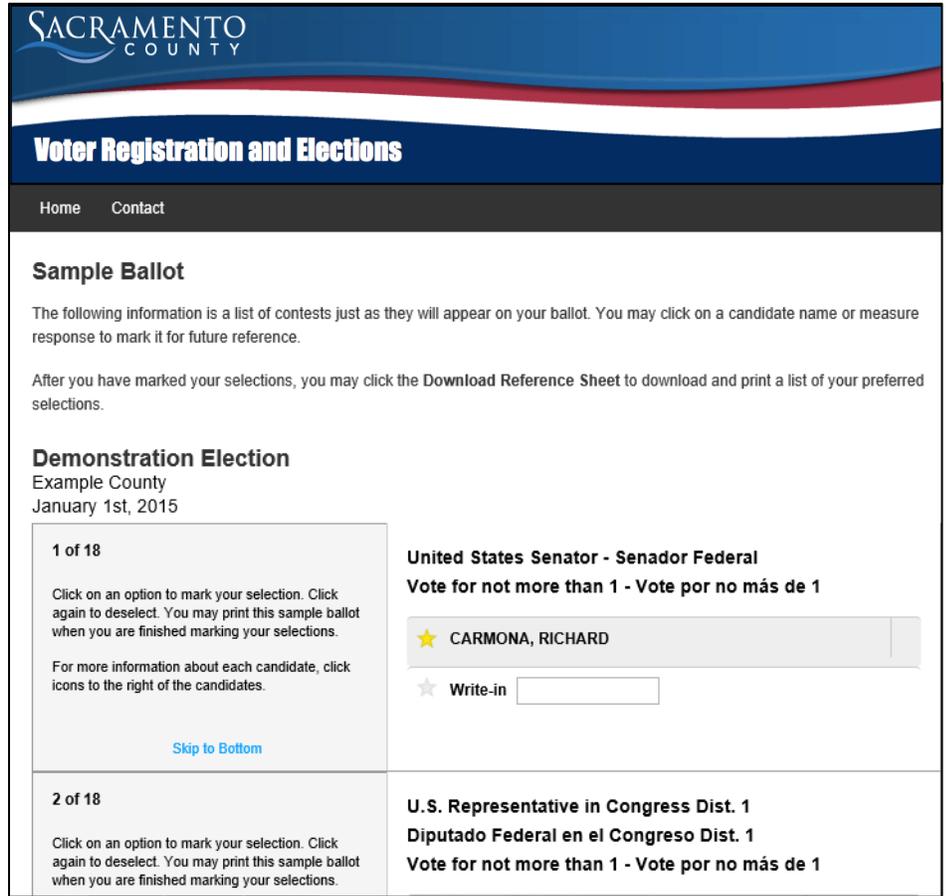
### Demonstration Election

Example County  
January 1st, 2015 [SEND TO MOBILE](#)

<p>1 of 14</p> <p>Click on an option to mark your selection. Click again to deselect. You may print this sample ballot when you are finished marking your selections.</p> <p><a href="#">Skip to Bottom</a></p>	<p><b>United States Senator - Senador Federal</b> <b>Vote for not more than 1 - Vote por no más de 1</b></p> <p>★ CARMONA, RICHARD</p> <p>★ Write-in <input type="text"/></p>
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## Background

Democracy Live and Microsoft have developed and deployed a Web-based accessible sample ballot and electronic ballot delivery system that can be a great value to all voters. The accessible, voter-specific LiveBallot™ system has already been approved by both the United States Department of Health and Human Services (HHS) and Department of Defense (DOD) for use as a tool to increase voter participation. The tool has been deployed in numerous states through HHS Section 261 funding and DOD FVAP funding.



The screenshot shows the Sacramento County Voter Registration and Elections website. The header includes the Sacramento County logo and navigation links for Home and Contact. The main content area is titled "Sample Ballot" and provides instructions on how to use the ballot. Below this, there is a "Demonstration Election" section for Example County, dated January 1st, 2015. The ballot is divided into two sections: "1 of 18" and "2 of 18". Each section contains instructions on how to mark selections and a "Skip to Bottom" link. The "1 of 18" section shows a candidate selection for "United States Senator - Senador Federal" with a star icon next to "CARMONA, RICHARD" and a "Write-in" field. The "2 of 18" section shows a candidate selection for "U.S. Representative in Congress Dist. 1" with a "Write-in" field.

## Features of the Accessible Sample Ballot

- ✓ Complies with AB 683 and all current federal accessibility standards and protocols
- ✓ “Dog-catcher” level sample ballot, specific to each voter
- ✓ Compatible with all accessibility tools (screen readers, sip and puffs, tactile paddles, etc.)
- ✓ LiveBallot mobile app allows voters to access Sample Ballot from any device

## Benefits of an Electronic Ballot Delivery System

- ✓ Deliver ballots directly to your voters anywhere in the world. No more relying on the postal system!
- ✓ Email center helps ensure jurisdictions can monitor receipt and encourage return of ballots.
- ✓ Accessible ballots provide ADA voters the same vote by mail experience (where allowed by law).

*“The Democracy Live ‘LiveBallot’ tool is a testament to marvelous, universal design that enables all voters, regardless of physical limitation to access their balloting information.”*

*-Debbie Cook, University of Washington Center for Technology and Disability Studies*

## The Highest Level of Accessibility

Democracy Live's Web-based technologies were designed in partnership with the University of Washington's Center for Technology and Disability Studies to meet or exceed the highest levels of accessibility. The LiveBallot™ application exceeds the requirements of Section 508 in the Americans with Disabilities Act and complies with the highest levels of web accessibility, the Web Content Accessibility Guidelines (WCAG 2.0). The Accessible Ballot and Voter Guide technologies comply with all major screen readers, tactile switches, closed captioning and sip-and-puff systems. As more and more counties are asked to provide equal access to ballots, sample ballots and other election information, LiveBallot™ can provide jurisdictions with a leading edge suite of online accessibility tools.



## Serving Those Who Serve



LiveBallot™ provides election jurisdictions with a proven, simple, turn-key electronic balloting solution specifically designed to meet 100% of the requirements of both UOCAVA and the Military and Overseas Voter Empowerment (MOVE) Act. In a competitive review process, the U.S. Department of Defense and the Federal Voting Assistance Program chose the LiveBallot™ platform for more states and more funding than any other MOVE Act compliant UOCAVA solution.

## Security and Reliability

Through our partnership with Microsoft Corporation, the entire LiveBallot™ application and all balloting and voter registration data is secured and hosted in the only cloud-platform that has been certified for use by both the United States Department of Defense and the United State Department of Homeland Security. Windows Azure data centers are redundantly co-located in multiple secure servers throughout the United States to ensure the availability of data to seamlessly populate a voter-specific ballot and voter guide for eligible voters. By utilizing the highest levels of cloud-based security and reliability, LiveBallot™ has been proven in over 500 elections, with 100% uptime and zero system crashes.

*"The Democracy Live 'LiveBallot' tool is an easy to use, turn-key system that offers an intuitive eBalloting Web application for our military and disabled voters, while also providing a 21st century, interactive sample ballot for ALL of our voters. One system can really do it all!"*

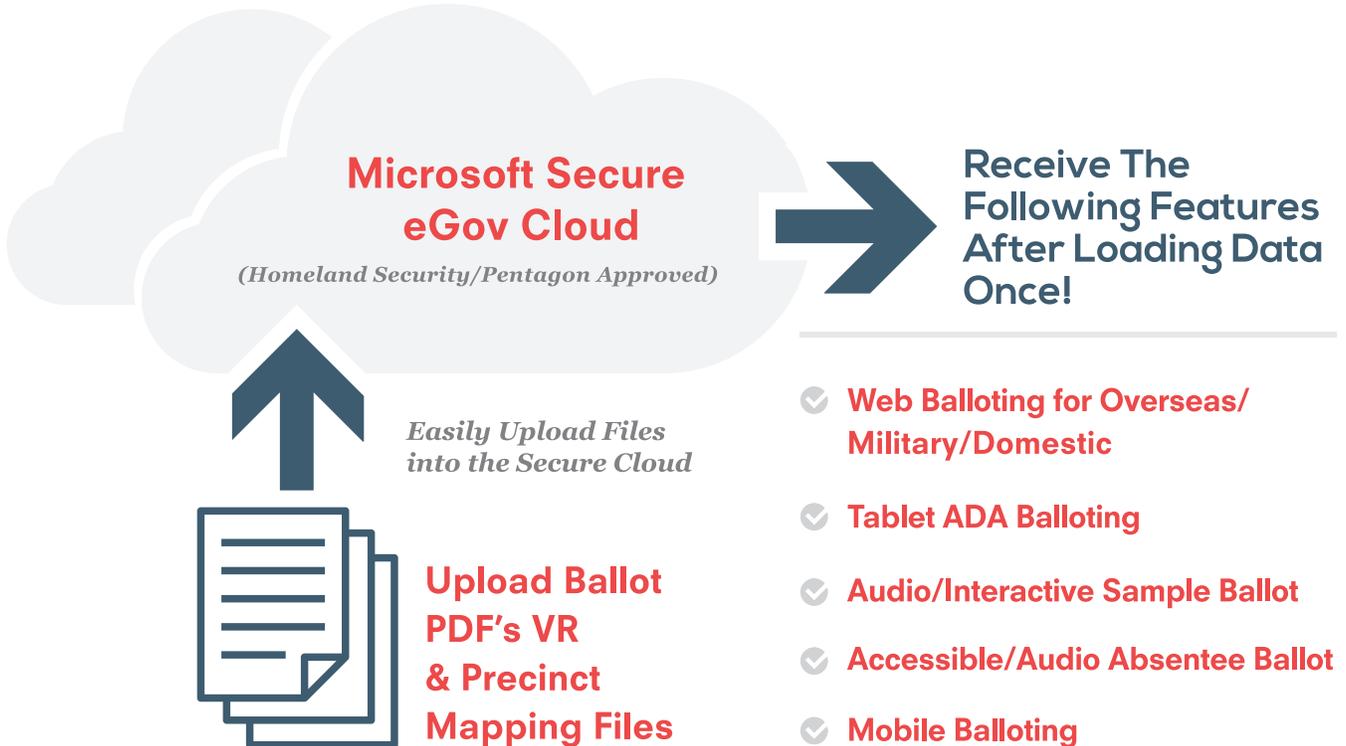
*-Dolores Gilmore, Kitsap County Auditor*

## LiveBallot Implementation Workflow

Democracy Live prides itself on being responsive to the needs of election administrators, involving them in every step of the development process to render the best possible election information and voting solutions. The diagram below outlines the configuration and deployment process of the LiveBallot™ system:

### HOW IT WORKS

# LIVEBALLOT



*“Living abroad with no access to a postal service or U.S. consulate, I was worried that I would not be able to participate in the important elections this year. The LiveBallot technology made the process much easier, and I hope to be able to use it again in the future.”*

*-San Bernardino County UOCAVA voter*

## **Pricing Proposal: Electronic Ballot Delivery and Sample Ballot Tool**

LiveBallot™ gives any voter, regardless of ability or location, access to a Web-based, audio-enabled, voter specific ballot and sample ballot. Ballots are available to UOCAVA voters 45 days in advance of an election and online sample ballots will allow every voter an equal opportunity to learn about the candidates and issues appearing on the ballot before they vote. All ballot data is stored in Windows Azure, which helps ensure 100% uptime and zero system crashes. Together, these tools will increase participation levels among UOCAVA voters and voters with disabilities in Sierra County.

### **LiveBallot Accessibility Features:**

- AB 683, ADA Section 508 and WCAG 2.0 compliant
- Audio-enabled and compatible with all major screen readers
- Compatible with Sip & Puff and tactile button navigation devices
- LiveBallot mobile app allows voters to access Sample Ballot from any device

### **LiveBallot UOCAVA Features:**

- Delivers a voter-specific, customized ballot packet to all eligible UOCAVA voters
- Average LiveBallot™ download time is less than 10 seconds
- Over 500 successful deployments (to date)
- 100% compliant with UOCAVA and the MOVE Act
- All ballot and voter data stored in Windows Azure

**Total Cost:        \$9,500.00 + \$1.00 per UOCAVA ballot download**

**\*\*\*\*\*Pricing available until December 31, 2015\*\*\*\*\***

### **Cost Includes:**

- *Set-up Fee, Windows Azure Hosting Fee & One-Year Software License*
- *After initial election configuration, County will be trained for ongoing election configurations*
- *After one-year license expires, the ongoing cost is \$1,900.00 + \$1/ballot & sample ballot download annually for software maintenance/upgrades (only for election years used)*

*For more information, please contact:*

**George Munro**  
Democracy Live  
[george@democracylive.com](mailto:george@democracylive.com)  
(425) 922-9110



# DELBERT HOSEMANN

## Secretary of State

Font Size: A A

[Home](#) [Contact](#)

### Welcome Mississippi Voters

This site enables overseas and uniformed services voters to access their ballot and ballot return materials.

Follow the screen prompts to download your ballot. Then, follow the instructions for returning your voted ballot.

#### Download Your Ballot

Continue

#### View Your Voter Guide

Continue

SIERRA COUNTY CLERK AND RECORDER/ELECTIONS  
**STATEMENT OF WORK** – Accessible, Audio-Enabled Sample Ballot and  
Voter Guide



Project Name & ID: Sierra County Accessible Sample Ballot/Voter Guide and UOCAVA Electronic Ballot Delivery

December 28, 2015

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## A. CONTRACTED SYSTEMS OVERVIEW

Sierra County is engaging Democracy Live, to provide the County Elections Department an ADA compliant, accessible, audio-enabled sample ballot and voter guide, specific to every voter and MOVE compliant electronic ballot (PDF) delivery for UOCAVA voters.

Languages/Accessibility to be supported by LiveBallot:

- English (required)
- Spanish (required)
- Audio-enabled (required)
- ADA compliant (required)

## B. SERVICES AND PRICES/COSTS

Democracy Live shall perform the effort listed below and include a right-to-use subscription license for the following specified price:

- \$ 9,500.00 (One-time)
- \$ 1,900.00 (Annual, beginning 2017\*)
- \$ 1.00 (Transaction Fee per UOCAVA Ballot downloaded\*)
- \$ 1.00 (Transaction Fee per Sample Ballot/Voter Guide - downloaded after 2016 election year\* Sierra County will only be invoiced for the first 2,000 ballot downloads per Election. The number of possible downloads will not be limited.)

*\*applicable only in election years used*

### System Features

The work shall be performed in accordance with all sections of Statement of Work (SOW).

- System shall be Web-hosted in secure Microsoft Government Cloud
- System shall be Web-available, ADA compliant and accessible to voters with disabilities
- System shall display and make available a voter-specific, interactive sample ballot

- System shall electronically deliver voter-specific absentee ballot and materials to qualified military and overseas (UOCAVA) voters through the secure Microsoft Government Cloud and Democracy Live portal.

### C. CURRENT ENVIRONMENT

The Customer currently uses the following:

EMS/Voting system(s) system: Dominion AccuVote

### D. SCOPE

- Democracy Live will deliver to Sierra County the software package known as Live Ballot, v. 3.2, to include the modules identified in Part A. Democracy Live will host the system in the Microsoft Azure Government Cloud.
- Sierra County, as a self-administered account, will be responsible for election configurations with support and training from Democracy Live during the contract period.
- Democracy Live will provide assistance with the initial Account set-up and will provide comprehensive administrative and configuration support during the first election to be administered using the LiveBallot system.

### E. SUPPORT

Democracy Live shall make available an issue-reporting process that includes call-center support and issue-tracking capabilities. Reported issues will be triaged for effective management and appropriate response based upon the severity of the reported issue.

Event	Outside defined election period	During defined election period
<b>Toll free Help Desk with capacity to accept all incoming calls</b>	maximum wait time of 15 minutes	maximum wait time of 10 minutes
<b>Expert Response: (Includes assignment of severity, priority, and required resource for tickets not immediately resolved)</b>	within 8 hours of initial call	within 4 hours of initial call
<b>Resolution Plan: Notify user of intended action or plans to resolve issue</b>	within 8 hours of initial call	within 4 hours of initial call
<b>Notification of Resolution: Successful resolution of reported issue (targeted response)</b>	7 Business Days from Contractor notification	1 Business Day from Contractor notification

## F. DELIVERABLES, MILESTONES AND TIMELINES

### Contractor Tasks/Deliverables

1. Agreement Terms (included within the SOW)
2. LiveBallot Sample Ballot, customized website with accessible features
3. LiveBallot Administration access and controls
4. On-site for self-administered accounts (*written training materials included*).
5. Web training for managed accounts. Democracy Live will deliver Web-based orientation and training services to designated County personnel on the administration and use of LiveBallot.
6. Initial site configuration
  - a. Theme Development
  - b. User set-up
  - c. Customization of editable text fields
  - d. Assist with initial account settings
  - e. Integration of customer-translated text
    - i. Contractor will supply list of all text items to be translated
    - ii. Pre-existing translations may be available for certain languages for customer review and acceptance
  - f. Initial account settings
  - g. Account user set-up and initial password distribution
7. Election Configuration (Managed accounts/First –time self-administered accounts)
8. E-mail Center Support (Managed accounts)
  - a. Note: *Any email communication that constitutes a legally-mandated communication with a voter must be initiated by the Customer.*
9. Contractor Election QA testing (managed accounts)
10. Delivery of configured election and Customer QA components (Managed accounts)
11. Election Activation (Managed accounts)
12. Tiered Technical Support: 24/7 – 365 Days
13. Post-election reporting (Managed accounts)

### County Tasks/Deliverables

1. Completed contract with all appropriate sign-offs
2. Theme elements
  - a. Banner
  - b. Contact data for site
  - c. Translations
  - d. Page edits
  - e. Account User information
3. System elements
  - a. Ballot PDFs
  - b. Precinct/split data
  - c. VR files (Initial and updates, as needed)
  - d. Ballot mapping files

e. Ballot return package elements

Timetable

Event Name	Event Date and Time
Invoice Date	12/1/2015
Due Date for Completed Edits/Translations/Theme Materials	30 days after agreement
Due Date for Initial Live Ballot Features (defined above)	45 days after agreement
Due Date for Supplementary Live Ballot Features (defined above)	50 days after agreement
Due Date for On-Site Administrative Training, if any	TBD – based on County availability
Due Date for Precinct/Mapping Data (managed accounts)	E-50
Due Date for Ballot PDFs (managed accounts)	E-50
Due date for completion of Customer QA (managed accounts)	E-40
UOCAVA Activation for Electronic Ballot Delivery/Availability	E-45
Due Date for Election Activation (Sample Ballot)	E-30

G. TERMS

1. Sierra County Clerk and Recorder/Elections will have access to Live Ballot (Sample Ballot/Voter Guide and UOCAVA eBD) upon receipt of the paid invoice and will continue through December 31, 2016. Thereafter, the License granted hereunder shall automatically renew unless either party gives written notice at least thirty days (30) prior the end of the current one year period, or unless and until terminated.
2. The original and any copies of the Licensed Programs, made by Licensee, including translations, compilations, partial copies, and modifications and updates are the property of Democracy Live, Inc.

Signature: \_\_\_\_\_

County: Sierra County, California

*By authorizing this request and Scope of Work, Democracy Live Commits to delivering a Software License Agreement for LiveBallot Accessible Sample Ballot and Voter Guide for review in addition to an initial invoice for services.*

# **Software License Agreement**

This Software License Agreement (“Agreement”) is entered into as of January 31, 2016 (“Effective Date”), between Democracy Live, Inc., (“Company”) a Washington Corporation with its principal place of business at 35050 SE Douglas Street, Suite 200 Snoqualmie, WA 98065 and Customer, Sierra County Clerk and Recorder/Elections (“Customer”), located at Clerk and Recorders Office, 1 Courthouse Square, Room 100, Downieville, CA 95936 as an essential element of services to be rendered by Democracy Live, Inc., as defined in the system specification and any associated documents and agreements. System shall mean the deliverable product as defined in this Agreement and Attachment A.

## **Recitals**

WHEREAS, Sierra County Clerk and Recorder/Elections wishes to license software for the purpose of online, accessible sample ballot access, voter guide and UOCAVA electronic ballot delivery through LiveBallot and Democracy Live, Inc., desires to license this software to Clerk and Recorder/Elections.

NOW THEREFORE, the parties hereto agree as follows:

### **1. Grant of License**

- 1.1 Democracy Live, hereby grants to Customer a non-exclusive, non-transferable statewide license to LiveBallot Sample Ballot, Voter Guide and UOCAVA electronic ballot delivery (“software”). Software shall include access to the software programs and the patches, scripts, modifications, enhancements, designs, concepts or other materials that constitute the software program necessary for the proper function and operation of the system as delivered by Democracy Live and accepted by Customer.
- 1.2 Except as expressly set forth in this paragraph, Democracy Live shall at all times own all intellectual property rights in the Software.
- 1.3 Modifications. Democracy Live reserves the right to modify Software at any time, including but not limited to adding or removing features and content.

### **2. Fee**

Customer will pay Democracy Live an one-time fee of \$9,500 for initialization and customization and annual subscription fee of \$1,900/per election year (“Fee”) and per-ballot transaction fees (“Fee”) in accordance with the Fee Schedule presented in Attachment B (“Fee Schedule”). The annual subscription fee will be waived in the event Customer has no elections within a single calendar year.

**NOTE: Since the Initial Setup Fee includes the first election year subscription fee of \$1,900 the reference to an annual fee begins in the year 2017.**

- 2.1 Payment Terms. Unless otherwise provided in Attachment B, payment shall be due by Customer within 30 days after the date of the invoice by Democracy Live. Any late, undisputed amounts will bear a late fee in the amount of 1% per month.

### **3. Ownership**

- 3.1 The original and any copies of the Licensed Programs, made by Licensee, including translations, compilations, partial copies, and modifications and updates are the property of Democracy Live, Inc.

### **4. Term**

- 4.1 This Agreement will begin on the Effective Date and will continue for one year. Thereafter, the License granted hereunder shall automatically renew unless either party gives written notice at least thirty days (30) prior the end of the current one year period, or unless and until terminated pursuant to Section 5.

### **5. Termination**

- 5.1 This Agreement may be terminated by either party within sixty days (60) written notice prior to the end of the current one year period. The service cannot be terminated between E-60 and Election Day of a scheduled Election event.
- 5.2 Breach. If either Party defaults in the performance of, or fails to perform, any of the material obligations of this Agreement, and the default or failure is not remedied within thirty (30) days (or ten (10) days in the case of any payment obligations under Section 2) after receipt of

written notice from the non-defaulting Party, then the non-defaulting Party will have the right (i) to terminate this Agreement by giving written notice to the defaulting Party and (ii) to avail itself of any and all other rights and remedies to which it may be entitled by law or equity.

5.3 Effect of Termination.

(a) In the event of Termination, Licensee will immediately discontinue use of the Licensed Programs. Within one (1) month after termination of this Agreement, Licensee will furnish to Democracy Live, Inc., a certificate which certifies with respect to each Licensed Programs that, through its best effort and to the best of its knowledge, the original and all copies in whole or in part and in any form, of each of License Programs have been destroyed.

(b) Upon termination of this Agreement for any reason other than Customer's default, in addition to any remedies available to Customer at law or in equity, Democracy Live will refund to Customer a pro rated portion of any one-time license fees paid by Customer for the Software and a pro rated portion of the then current Annual Subscription Fee (if any) pre-paid on the remainder of the then current term for which those fees were paid.

5.4 Survival. In addition to any payment obligations under this Agreement the following sections 3, 5, 8, 9, 10 will survive in accordance with their terms upon termination of this Agreement.

**6. Support and Maintenance**

6.1 Statement of Work: The Services, Support and Maintenance as agreed by Customer and Democracy Live in the Statement of Work shall be incorporated under this Agreement (Attachment D).

6.2 General. For as long as Customer has paid all applicable fees and is in compliance with all the terms of this Agreement, including as set forth in the Attachments, and as long as this Agreement is in effect, Democracy Live provide Support and Maintenance according to Attachment C. Notwithstanding anything to the contrary in this Agreement, Democracy Live will not provide Support and Maintenance for:

- (a) any products other than the Software provided by Democracy Live under this Agreement;
- (b) any modifications to Software not made by Democracy Live or a third party authorized in writing by Democracy Live to make modifications; or
- (c) any use of Software, that is not in accordance with this Agreement, the Documentation or other written instructions provided by Democracy Live.

6.1 Maintenance Releases. Democracy Live may provide Maintenance Releases (defined in Attachment c) to Customer from time to time at its sole discretion. Customer understands and acknowledges that the Maintenance Releases may be required for the proper functioning of Software. Maintenance Releases do not include Upgrades (defined in Attachment C). Upgrades may be provided to Customer at additional charge upon the Parties' mutual written agreement. All Maintenance Releases and Upgrades will be part of the Software and subject to all terms of this Agreement.

## 7. Delivery.

7.1 After both parties execute this Agreement and Customer pays all applicable Fees, Democracy Live shall use its best efforts to deliver the Licensed Programs, the Documentation and all access information to allow Customer to access the software.

## **8. Representations and Warranties.**

- 8.1 Democracy Live Represents and Warrants to Customer that: it has all necessary rights and authority to execute and deliver the Software License and perform its obligations hereunder and to grant the rights granted under this Software License to Customer; the goods and services provided by contract under this Software License, including the Software and Intellectual Property provided hereunder, are original to Democracy Live, or its subcontractors, or parties; and the software as delivered as part of the system will not infringe or otherwise violate any applicable rule or regulation.
- 8.2 Democracy Live warrants the LiveBallot Software to perform as agreed upon in this Software License Agreement and the Scope of Work provided. Except as expressly stated in this Agreement, there are no warranties, express or implied, including but not limited to, the implied warranty of fitness for a particular purpose, of merchantability or warranty of no infringement of third party property rights.

## **9. Indemnification**

- 9.1 Democracy Live hereby indemnifies and shall defend and hold harmless Customer against any and all third party claims, actions, proceedings and suits and all related liabilities, damages, settlements, penalties, fines, costs or expenses (including without limitation reasonable attorney fees' incurred by Customer arising out of or in connection with any breach of the Agreement or arising out of or relating to any active infringement of any U.S. issued patent or copyright by Software or misappropriation of any trade secret of any third party by Democracy Live.

## **10. Confidentiality**

- 10.1 Definition. Each Party may make available to the other Confidential Information under this Agreement. "Confidential Information" means all confidential or proprietary information provided to the other Party in connection with this Agreement, including all information designated as

confidential by the Disclosing Party and all information which by its nature or the circumstances surrounding its disclosure should reasonably be considered confidential. For the purposes of this Section 10, the Party disclosing Confidential Information will be called the "Disclosing Party" and the other the "Receiving Party." For the avoidance of doubt, The LiveBallot Software, of Democracy Live will be deemed Confidential Information of Democracy Live to the extent allowed by the Public Records Act and the Customer technical information will be deemed Confidential Information of Customer. The following information is not Confidential Information:

- (a) Information that is generally known to the public at the time of disclosure or becomes generally known through no wrongful act on the part of the Receiving Party;
- (b) Information that is in the Receiving Party's possession at the time of disclosure other than as a result of the Receiving Party's breach of any legal obligation;
- (c) Information that becomes known to the Receiving Party, through disclosure by a third party that has a legal right to disclose that Confidential Information; or
- (d) Information that is developed by the Receiving Party independently without breach of this Agreement.
- (e) Information which is by law or by statute public.

10.2 Restrictions. Each Receiving Party agrees that all Confidential Information made available by a Disclosing Party to a Receiving Party under this Agreement will:

- (a) Be kept strictly confidential and not disclosed to any third party by the Receiving Party without the Disclosing Party's prior written consent;
- (b) Be treated by the Receiving Party in the same way and with the same degree of care (but with no less than reasonable care) as it treats proprietary or confidential information generated by itself;

(c) Only be shared with the Receiving Party's employees, agents, and representatives (including accountants and attorneys) on a need to know basis and under a written agreement or legal obligations requiring them to keep Confidential Information secret consistent with the terms of this Agreement; and

(d) Remain the property of the Disclosing Party. Neither Party will furnish to the other Party any Confidential Information which it does not have the right to furnish.

(e) However, the parties agree that the Customer may be required to release confidential information to the public pursuant to the requirements of the State of California.

(f) Disclosure Required by Law. Notwithstanding the restrictions in Section 10, the Receiving Party may disclose information that the Receiving Party is required to disclose to comply with applicable laws or governmental regulations, provided that the Receiving Party, to the extent it is allowed under applicable law, provides prior written notice of the disclosure to Disclosing Party and takes all reasonable actions to avoid and minimize the extent of the disclosure.

## 11. Miscellaneous

11.1 Independent Contractor. Nothing in this Agreement will be construed as creating any relationship between Democracy Live and Customer, other than that of independent contractor and customer or licensee and licensor. This Agreement is not intended to be nor will it be construed as a joint venture, association, partnership, franchise, or other form of business organization or agency relationship. Neither Party will have any right, power, or authority to assume, create, or incur any expense, liability, or obligation, expressed or implied, on behalf of the other, except as expressly provided herein.

11.2 Export Controls. U.S. export control laws may apply to Software, and the documentation. Democracy Live and Customer will comply with all U.S. export control laws.

- 11.3 Law and Venues. This Agreement will be interpreted, construed and enforced in all respects in accordance with the laws of the State of California, USA. Venue for any action to enforce or construe this agreement shall be in Superior court of Sierra County, California.
- 11.4 Notices. Unless otherwise agreed by the Parties, all notices required under this Agreement will be in writing and deemed effective when received by (a) personal delivery, (b) internationally recognized courier, or (c) certified mail, return receipt requested, at the addresses written above.
- 11.5 Severability. In the event any provision of this Agreement is determined to be invalid or unenforceable, the remainder of this Agreement shall remain in force as if such provision were not a part.
- 11.6 Non-Assignment. This Agreement and the licenses granted by it may not be assigned, sublicensed or otherwise transferred by Licensee without prior written consent of Democracy Live, which may be withheld in Democracy Live's sole discretion.
- 11.7 Force Majeure. Neither Party will be in default or otherwise liable for any delay in or failure of its performance under this Agreement if the delay or failure arises by any reason beyond its reasonable control, including any act of god, any acts of the common enemy, the elements, earthquakes, floods, fires, epidemics, riots, or mechanical failures or delay in transportation or commercial communications; provided however, that lack of funds will not be deemed to be a reason beyond a Party's reasonable control. The Parties will promptly inform and consult with each other as to any of the above causes, which in their judgment may or could be the cause of a delay in the performance of this Agreement.

- 11.8 Counterparts. This Agreement may be executed in one or more counterparts and by facsimile, each of which will be deemed an original, but all of which together will constitute one and the same instrument.
- 11.9 Entire Agreement. This Agreement, including the attachments to this Agreement, is the Parties' entire agreement relating to the Software, and Documentation. It supersedes all prior or contemporaneous oral or written communications, proposals, or conditions between the Parties relating to its subject matter. No modification or amendment to this Agreement will be binding unless in writing and signed by an authorized representative of each Party.

**DEMOCRACY LIVE, INC.**  
**Software License Agreement**

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Agreement and all Attachments hereto as of the Effective Date.

Democracy Live, Inc:

Sierra County Clerk and  
Recorder/Elections:

DEMOCRACY LIVE, INC. CORPORATION

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

# Attachment A – LiveBallot Sample Ballot and Voter Guide

This Attachment A is part of the Software License Agreement (“Agreement”) between Democracy Live and the Sierra County Clerk and Recorder/Elections and it describes the software, and Documentation to be provided under the Agreement.

## A1. Access

**LiveBallot** The Democracy Live LiveBallot Online Sample Ballot, Voter Guide and UOCAVA Electronic Ballot Delivery solution is comprised by the following subcomponents:

1.1 Democracy Live will deliver to Sierra County Clerk and Recorder/Elections the software package known as Live Ballot, v. 3.2, to include the modules identified in Part A. Democracy Live will host the system in the Microsoft Azure Government Cloud.

1.2 Sierra County Clerk and Recorder/Elections, as a self-administered account, will be responsible for election configurations with support and training from Democracy Live during the contract period.

1.3 Democracy Live will provide assistance with the initial Account set-up and will provide comprehensive administrative and configuration support during the first election to be administered using the LiveBallot system.

## A2. Documentation

The Documentation packet for the Democracy Live LiveBallot Sample Ballot and Voter Guide is comprised of the following subcomponents:

2.1 Administrative User Guide

## Attachment B- Fee Schedule

This Attachment B is part of the Software License Agreement (“Agreement”) between Democracy Live and Sierra County Elections as set forth under Section 2 Fees.

### Fees

Software one-time set-up fee . Democracy Live shall provide ADA-compliant, accessible Sample Ballot, Voter Guide and UOCAVA Electronic Ballot Delivery and include a right-to-use subscription license for the following specified price:

\$ 9,500.00 (One-time)

\$ 1,900.00 (Annual\*)

\$ 1.00 (Transaction Fee per UOCAVA Ballot downloaded\*)

\$ 1.00 (Transaction Fee per Sample Ballot/Voter Guide - downloaded after 2016 election year.\* Sierra County will only be invoiced for the first 2,000 ballot downloads per Election. The number of possible downloads will not be limited.)

*\*applicable only in election years used*

The annual subscription fee will be waived in the event Customer has no elections within a single calendar year.

**NOTE: Since the Initial Setup Fee includes the first election year subscription fee of \$1,900 the reference to an annual fee begins in the year 2017.**

## Attachment C –Support and Maintenance

This Attachment C is part of the Software License Agreement (“Agreement”) between Democracy Live and the Sierra County Clerk and Recorder/Elections and it describes Democracy Live’s standard Support and Maintenance services.

Democracy Live shall make available an issue-reporting process that includes call-center support and issue-tracking capabilities. Reported issues will be triaged for effective management and appropriate response based upon the severity of the reported issue.

<b>Event</b>	<b>Outside defined election period</b>	<b>During defined election period</b>
<b>Toll free Help Desk with capacity to accept all incoming calls</b>	maximum wait time of 15 minutes	maximum wait time of 10 minutes
<b>Expert Response: (Includes assignment of severity, priority, and required resource for tickets not immediately resolved)</b>	within 8 hours of initial call	within 4 hours of initial call
<b>Resolution Plan: Notify user of intended action or plans to resolve issue</b>	within 8 hours of initial call	within 4 hours of initial call
<b>Notification of Resolution: Successful resolution of reported issue (targeted response)</b>	7 Business Days from Contractor notification	1 Business Day from Contractor notification

### 2. Support and Maintenance Services:

2.1 After payment of the Annual Subscription Fee and during the term of the Annual Subscription, Democracy Live will perform the Support and Maintenance as specified in this Attachment C and under the terms of the Agreement (exclusions to Support and Maintenance are set forth in the Agreement).

2.2 Customer may contact the Democracy Live support contacts set forth in Section 5 for telephone and email support consisting of: (i) assistance related to questions on the operational use of Software and; (ii) assistance with identification and diagnosis of suspected or reported Errors; and (iii) workarounds for verified Errors. Customer will notify Democracy Live of all Errors by submitting a Support Request.

2.3 Democracy Live will use commercially reasonable efforts to correct Errors that Customer reports using a Support Request, including through the use of workarounds and Maintenance Releases.

2.4 Upgrades are not included in the Support and Maintenance services.

### 3. Customer Responsibilities:

3.1 Customer must provide Democracy Live with reasonable access to all necessary personnel to answer questions regarding Errors and other reported problems.

3.2 Customer will document and promptly report all detected Errors to Democracy Live by submitting a Support Request with enough detail to permit Democracy Live to reproduce the Error. Customer will assist Democracy Live with recreating and diagnosing each Error.

### 4. Response Times:

4.1 Democracy Live will use the following severity levels to categorize Support Requests and provide Support and Maintenance to Customer. Democracy Live will determine the severity level and communicate it to Customer. Democracy Live will provide an initial response to Customer's Support Requests according to the response times below for the corresponding severity level:

4.2 Severity Level 1 Critical Impact means a Support Request reporting an Error in which the Customer experiences a complete loss of service. Democracy Live will initially respond to Customer and commence work on a resolution within one business hour of Customer's submission of a Support Request and will continue working on resolution during business hours as long as meaningful progress can be made or the issue resolved.

4.3 Severity Level 2 Severe Impact means a Support Request reporting an Error in which the Customer experiences the loss of an important function, and there are no acceptable alternative solutions, although other operations can continue in a restricted fashion. Democracy Live will initially respond to Customer and commence work on a resolution within two business hours of Customer's submission of a Support Request and will continue during business hours as long as meaningful progress can be made or the issue resolved.

4.4 Severity Level 3 Some Business Impact means a Support Request reporting an Error in which an important feature is not available, although an acceptable workaround exists and operations can continue. Democracy Live will initially respond to Customer within one business day after Customer's submission of a Support Request.

4.5 Severity 4 Minimal Business Impact means a Support Request in which Customer submits an information request, suggests an enhancement, or requests a clarification.

Democracy Live will initially respond to Customer within seven business days after Customer's submission of a Support Request.

4.6 Election Period. Democracy Live will provide Support and Maintenance on a 7am to 7pm basis, 7 days a week. If a reported Error impacts the essential functions of an election, Democracy Live will use commercially reasonable efforts to work around the clock as long as meaningful progress can be made or until a resolution is found.

## 5. Contacts

5.1 Customer Contact Persons. Customer will designate one person to act as the single point of contact for all Support Requests, and one additional person to serve in a back-up capacity. The Customer contact person will handle all communication with Democracy Live support personnel and will be relied upon by Democracy Live for key decisions.

5.2 Democracy Live Support Contacts. Contact with Democracy Live support personnel will be either by telephone or e-mail at the contact points set forth below, which are subject to change from time to time upon notice from Democracy Live. Customer's Support Requests will include all information reasonably requested by Democracy Live support personnel sufficient to enable them to reproduce the condition giving rise to the call. This information may include Software component involved, error messages, data being processed, screen images, and the like.

Hours of Operation 9 am to 5 pm PST, Monday to Friday, excluding all U.S. holidays.

Contact Phone Number 855-655-VOTE (8683)

Email Address [support@democracylive.com](mailto:support@democracylive.com)

## 6. Maintenance Releases:

6.1 Maintenance Releases. During the term of the Annual Subscription, Democracy Live will provide Maintenance Releases, which are provided generally to all customers, where these Maintenance Releases are not sold as a separate Upgrade, service or product version. Each Maintenance Release will be subject to the terms of the Agreement.

6.2 Implementation. Democracy Live is responsible for implementing and testing all Web-based Maintenance Releases.

## 7. General

7.1 Annual Subscription, Including Support and Maintenance. Customer will pay the Annual Subscription Fee as specified in Attachment B of the Agreement.



United States  
Department of  
Agriculture

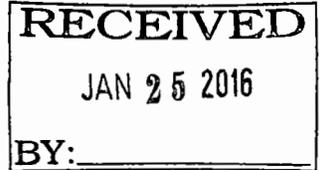
Forest  
Service

Humboldt-Toiyabe  
National Forest

Carson Ranger District  
1536 S. Carson Street  
Carson City, NV 89701  
(775) 882-2766 Fax (775) 884-8199

File Code: 2600

Date: January 14, 2016



Sierra County Board of Supervisors  
100 Courthouse Square  
Room 11  
P.O. Drawer D  
Downieville, CA 95936

Dear County Partner,

The Carson Ranger District would like to invite you to the second annual county partnership meeting being held on February 18, 2016.

The meeting is intended to be an informal exchange of information between the Forest Service and representatives from local counties (Sierra, Washoe, Carson, Douglas, and Alpine) to discuss projects and events occurring within each county. In addition to county representatives, the meeting will be attended by Forest Service staff members from key resource areas including recreation, fire, fuels and vegetation management to provide information and help answer any questions that may arise.

The meeting will be held from 1:00 p.m. to 3:00 p.m. at the Carson Ranger District office located at 1536 South Carson Street in Carson City, Nevada. Please feel free to call or email Maureen Easton on my staff if you have any questions or would like to add any specific agenda items to be addressed at the meeting. Maureen can be reached at (775) 884-8151 or by email at [measton@fs.fed.us](mailto:measton@fs.fed.us).

We look forward to this opportunity to meet with you.

Sincerely,

Irene Davidson  
DISTRICT RANGER

