

**PROCEEDINGS OF THE BOARD OF COUNTY COMMISSIONERS  
REGULAR MEETING, JUNE 9, 2015**

THE BOARD OF COUNTY COMMISSIONERS OF CUSTER COUNTY MET IN REGULAR SESSION IN THE COMMISSIONER’S BOARDROOM.

Commissioner Kit Shy called the meeting to order at 9:00 AM and the Pledge of Allegiance was recited.

Roll Call was taken:

|               |                           |         |
|---------------|---------------------------|---------|
| Kit Shy       | Chairman                  | Present |
| Lynn Attebery | Vice-Chairman             | Present |
| Bob Kattnig   | Commissioner              | Present |
| Clint Smith   | Attorney                  | Present |
| Kris Lang     | Deputy Clerk to the Board | Present |

Also present: Brent Bruser, Suzanne Coleman, Donna Hood, Cal Leslie, Dianne Rose and Paul Sage reporter for the Sangre DeCristo Sentinel.

AGENDA:

- Call meeting to order
- Pledge of allegiance
- Roll Call
- Amend agenda
- Approval of minutes:
- Audience introduction
- Public Comment
- Commissioner Items
- Attorney Items
- Resolution #15-05 Implementation of the County Noxious Weed
- Resolution #15-06 Vacating a Portion of Coronado Road
- Executive Session
- New/Old Business
- Colorado Division of Housing (CDOH) Single Family Owner Occupied (SFOO) Housing Rehabilitation, Community Block Grant from UAACOG.
- Staff Reports: CSU Extension, (Fair Board By Laws, Extension Advisory Board Appointment) VSO, Treasurer, Planning and Zoning Report, Road and Bridge, Landfill/Recycling
- 10:30 AM PUBLIC HEARING Deed of County – Portion of Coronado Road in Custer County to the Coronado Road Owners Association (CROA)
- Resolution #15-06 Vacating Public Roadway Conquistador Filing 1 Vesting Title to the CROA
- 11:30 AM FIRST READING Custer County Open Fire and Open Burn Ordinance #2015-02

AMEND AGENDA

Commissioner Kattnig said that the Custer County Fair Board President and Treasurer were in attendance to discuss the topic of the Fair Board check book and account.

APPROVAL OF MINUTES

None

PUBLIC COMMENTS

Brent Bruser complimented the Chamber of Commerce for their support of the Ride the Rockies Event scheduled on June 20, 2015. He said that he wanted to publically acknowledge and thank Commissioner Kattnig for his attendance and participation during the preparations for the event.

Donna Hood complimented and thanked the Economic Development Corporation for providing WIFI along Main Street and Century Link and Hilltop Broadband for providing temporary WIFI on the Bluff.

COMMISSIONER ITEMS

Commissioner Kattnig presented the Board with confirmation from the Church Mutual Insurance Company that the county courtesy vehicle being utilized at VALI is appropriately insured under the Valley Assisted Living Inc. He remarked that he will be meeting with the Treasurer of the Action 22 organization at 1:00 PM on June 9, 2015.

Commissioner Shy reported that he attended and participated in the Master Plan work shop on June 8, 2015. He announced that the memorial services for Chuck Kastendieck are being held at 4 pm on June 9, 2015

ATTORNEY ITEMS

Resolution #15-05 Implementation of the County Noxious Weed

Resolution #15-06 Vacating a Portion of Coronado Road

Clint Smith, Attorney said that Resolutions #15-05 and #15-06 would be addressed as agenda items during the June 9, 2015 BOCC meeting. He said that he reviewed the legal documentation through and in the court offices regarding the Los Mojadas LLC (Hamilton)/Custer County/Halpin court case. He addressed the inaccurate information published in the Wet Mountain Tribune regarding the county's involvement in the case. Mr. Smith stated that the county has not continued to incur legal fees at their discretion following the court findings of March 18, 2015. The most recent invoice being scrutinized is for services through March 31, 2015 involving the preparation for trial, filing fees; deposition fees; research fees; and warranted travel prior to the courts action. Mr. Smith further clarified that the legal representation for the county did not file a 120 page motion resulting from the court action but rather a 120 page bill of costs which is a standard and routine filing. He said that the county is not pursuing the case but may incur additional costs pending a court of appeals filing from Los Mojadas (Robert Hamilton). Mr. Smith said that to date an appeal has not been filed but if this occurs the county will be obligated to legally respond. Commissioner Kattnig expressed concern regarding the county's legal fees associated with the filing of the bill of cost and questioned whether it was a wise financial decision. Mr. Smith said he could not respond to the specific costs of the filing but felt certain that the legal costs incurred would be substantially less than the actual bill of costs being sought. Commissioner Kattnig said it was important to have a conference call with Berg, Hill, Greenleaf & Ruscitti, Inc. to confirm the county's legal direction. The option of having that teleconference call during a BOCC meeting would require an executive session. Commissioner Shy thanked Attorney Smith for reviewing the documentation and the presentation of his briefing. He remarked that it was a shame that there were not any reporters present from the Wet Mountain Tribune to hear the accurate information.

EXECUTIVE SESSION

None at this time.

NEW/OLD BUSINESS

Colorado Division of Housing (CDOH) Single Family Owner Occupied (SFOO) Housing Rehabilitation, Community Block Grant from UAACOG. Commissioner Shy said that the agenda item would be tabled until the representative from UAACOG was present to review the documentation and attachments with the BOCC.

Veterans Service Office Report

Tim Swartz, Veterans Service Officer met with the BOCC and gave a report. He said that he completed over 35 forms and correspondence for cases to assist the veterans in the community in the past month. He commented that 9 of those cases were attempts to file an initial first claim. Mr. Swartz expressed concern regarding the lack of privacy and the dysfunction of the space in the facility when servicing the veterans. He presented two diagrams for better usage of the available space. Mr. Swartz said he has engaged the assistance of the American Legion and the Veterans of Foreign War to volunteer and assist with the renovation and construction. The Board reviewed the proposed diagrams. Commissioner Shy said that a work shop regarding the veterans' service office space and the resource center annex as a whole was scheduled for June 30, 2015. Commissioner Attebery commented that he fully supported the renovations and encouraged Mr. Swartz to seek volunteer assistance and material donations to complete the project. He said that before any county capital improvement funding is allocated that the BOCC needs to review and prioritize the existing needs for the other county buildings. He primarily focused on the roofing construction needed at the sheriff's office. Mr. Swartz presented the County Veterans Service Officer Monthly Report and Certification of Pay Report for May 2015.

**MOTION by Commissioner Kattnig, seconded by Commissioner Attebery:**

To authorize the Chairman to sign the VSO report and Certificate of Pay for May 2015 as presented. The motion carried unanimously.

CSU Extension Report, Fair By-Laws, Extension Advisory Committee

Robin Young, CSU Extension Agent met with the BOCC and gave a report. She said that the potato patch area at the courthouse and the vegetable garden area at the sheriff's office are ready for planting. She expressed appreciation for the removal of the satellite dish from the courthouse growing area. Ms. Young asked the BOCC to adopt Resolution #15-05 for the implementation of the Noxious Weed Management Plan.

**MOTION by Commissioner Kattnig, seconded by Commissioner Shy:**

To adopt Resolution #15-05 the Noxious Weed Management Plan as presented.

Custer County Resolution  
Resolution No. 15-05

A RESOLUITON OF THE BOARD OF COUNTY COMMISSIOENRS OF CUSTER COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF COLORADO, ADOPTING A PLAN TO IMPLEMENT THE NOXIOUS WEED MANAGEMENT PLAN PREVIOUSLY ADOPTED BY THE BOARD ON MAY 13, 2015.

WHEREAS, on May 13, 2015, the Board of County Commissioners for Custer County passed Resolution No. 15-02 adopting a Noxious Weed Management Plan prepared by the Weed Advisory Board and submitted to this Board for its consideration and approval; and

WHEREAS, a supplemental resolution is necessary to implement the provisions of the Noxious Weed Management Plan and to establish a protocol for enforcement of said Plan; and

WHEREAS, THE Weed Advisory Board has prepared a Noxious Weed Management Implementation Plan and submitted said Plan for the approval of this Board; and

WHEREAS, the Board of County Commissioners is satisfied that the Noxious Weed Management Implementation Plan prepared by the Weed Advisory Board is sufficiently comprehensive to implement the provisions of Colorado Noxious Weed Act and the Custer County Noxious Weed Management Plan with respect to private lands and public lands within Custer County and should be approved and adopted by a Resolution of this Board.

NOW THEREFORE,

BE IT RESOLVED That the Custer County Noxious Weed Management Implementation Plan prepared by the Custer County Weed Advisory Board and attached to this Resolution is hereby adopted and is in full force and

effect in Custer County until modified or amended by further resolution to conform to the ongoing requirements of the Colorado Noxious Weed Act and also to conform to any modifications of the Custer County Noxious Weed Management Plan.

RESOLVED AND ADOPTED ON THIS 9<sup>th</sup> DAY OF JUNE 2015, AT WESTCLIFFE, COLORADO.

Signed: Christopher L. (Kit) Shy, Chairman; Lyn Attebery, Vice-Chairman; Bob Kattnig, Commissioner; Attest Debbie Livengood, Clerk and Recorder.'

Ms. Young commented that CDOT's budget will allow them to spray weeds until July 1, 2015. She announced that the weed tour will be held at the Rusk Ranch on June 27, 2015. She said that the High Altitude Garden Club was requesting \$50.00 for mulch around the courthouse. The Board agreed the funding would be taken from the county building and maintenance budget line item. The BOCC said that they appreciated all the work the High Altitude Gardening Club of Westcliffe does around the courthouse and would like to present a public acknowledgement to the members. They asked Ms. Young for her input and suggestions. The topic will be discussed at a later date.

Ms. Young said that she was requesting that Cheryl Laramore represent the 4-H Foundation on the Extension Advisory Board and that Donna Hood represent the Fair Board on the Extension Advisory Board.

**MOTION by Commissioner Kattnig, seconded by Commissioner Shy:**

To accept the recommendations of the CSU Extension Agent as requested. The motion carried unanimously.

Ms. Young advised that the Fair Board By-Laws would be tabled at this time.

The BOCC recessed at 10:05 AM.

The BOCC reconvened at 10:15 AM.

Dianne Rose, President of the Fair Board Committee and Donna Hood, Treasurer of the Fair Board Committee addressed the BOCC and said that they would like a more active role regarding the funding and expenditures related to the function of the Fair Board. Ms. Rose said that as active members they could identify and address the needs of the organization. Ms. Hood said that her financial background experience would enable her to assume the monetary responsibilities of the organization that included the two checking accounts, one savings account and a capital improvement account. The BOCC agreed to the request. Commissioner Shy said that for the record he wanted it clarified that the Fair Board checking account and monetary responsibilities were not mishandled or misappropriated within the extension department. He further thanked the extension office for assuming that responsibility in the past when no one else was willing assume the task. Ms. Hood said that Fair Board will require additional income and that she will outline those needs during the 2016 budget hearings. Ms. Hood asked for clarification of requirements regarding the usage of the county capital improvement funds. Commissioner Attebery said that the fund was allocated for improvements on a fixed county asset.

Commissioner Shy closed the Regular Meeting at 10:30 AM and opened the Public Hearing

**PUBLIC HEARING**

**Deed of County – Portion of Coronado Road in Custer County to the Coronado Road Owners Association, LLC. (CROA)**

**Resolution #15-06 Vacating Public Roadway Conquistador Filing 1 Vesting Title to the CROA**

Jay Printz, Attorney said he was representing the Coronado Road Owners Association, Inc. and that they were requesting the vacation of a public roadway in Conquistador Filing 1 and vestment of the same to the CROA. Ivan and Carlen Graumann were present and said that they were in concurrence with the request.



**CUSTER COUNTY RESOLUTION NO. 15-06**

**A RESOLUTION OF CUSTER COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF COLORADO, VACATING A PUBLIC ROADWAY IN CONQUISTADOR, FILING NO. 1 AND VESTING TITLE TO SAME IN CORONADO ROAD OWNERS ASSOCIATION, LLC.**

**Whereas**, a roadway designated as “Coronado Road” on the official plat of a subdivision known as Conquistador, Filing No. 1, was dedicated to public use on said plat, which was approved by the Board of County Commissioners of Custer County and which was recorded on July 19, 1976; and

**Whereas**, at the time the plat for Conquistador, Filing No. 1, was approved and recorded Coronado Road was not yet constructed; and

**Whereas**, said plat states that Coronado Road would, at the expense of the developer, be “graded, graveled, and provided with proper drainage, all to the satisfaction of the Road Commissioner of Custer County, Colorado”; and

**Whereas**, Coronado Road was not properly graded, graveled and provided with proper drainage as promised, and therefore the Board of County Commissioners declined responsibility for having the County Road and Bridge Department maintain said road; and

**Whereas**, all the property owners who live on Coronado Road have submitted a written request to the Board of County Commissioners asking that Coronado Road be “abandoned” as a county road and that it be designated a private road, thereby allowing the property owners to assume responsibility for maintaining said road themselves; and

**Whereas**, the aforementioned property owners have formed a legal entity known as “Coronado Road Owners Association, LLC”, which is duly registered with the Colorado Secretary of State as a limited liability company and which is in good standing at the present time; and

**Whereas**, the correct legal procedure as set forth in §43-2-301, C.R.S., *et seq.*, is for the Board of County Commissioners to vacate Coronado Road as a public roadway and to vest title in the legal entity known as Coronado Road Owners Association, LLC; and

**Whereas**, the Board of County Commissioners is satisfied that such action would benefit all the property owners on Coronado Road and would not deny any of them access to their respective lots in Conquistador, Filing No. 1, and

**Whereas**, the Board of County Commissioners takes notice of the fact that, although Coronado Road appears on the recorded plat to extend from County Road 160 (Hermit Road) on the north to County Road 150 on the south, said road as it exists on the ground only extends a portion of the way in a southerly direction from County Road 160 and therefore only that portion needs to be vacated;

NOW THEREFORE,

BE IT RESOLVED that a portion of Coronado Road in Custer County more specifically described as follows:

All that portion of Coronado Road, Conquistador Filing No. 1, running southwesterly from the south line of County Road 160 (Hermit Road) to the southwesterly line of Lot 4, Conquistador, Filing No. 1, be vacated as a public roadway, and that all of Custer County’s right, title and interest in said portion of Coronado Road be transferred and conveyed to the legal entity known as Coronado Road Owners Association, LLC, and that title to said property so described hereafter be vested in Coronado Road Owners Association, LLC, subject to the express requirement that all the property owners who comprise said limited liability company shall continue to have full and complete access from Hermit Road to their respective parcels of land,

and further subject to the express requirement that all existing easements or rights-of-way be preserved for sewer, gas, water or similar pipelines and appurtenances, for ditches and canals and appurtenances, and for electric, telephone, and similar lines and appurtenances.

BE IT FURTHER RESOLVED that a Deed of County be executed by the Chairman of the Board of County Commissioners of Custer County on behalf of the Board, and that said deed be duly recorded with the County Clerk and Recorder of Custer County.

RESOLVED AND ADOPTED THIS 9TH DAY OF JUNE 2015, AT WESTCLIFFE, COLORADO.

Signed: Christopher L. (Kit) Shy, Chairman; Lynn Attebery, Vice-Chairman; Bob Kattnig, Commissioner; Attest Debbie Livengood, Clerk and Recorder.

Commissioner Shy closed the public hearing at 10:45 AM and returned to the Regular Session.

Jackie Hobby, Planning and Zoning Director met with the BOCC and the following topics were discussed:

File: 100-86-702 Oversized sign violation (pending)

File: 101-78-950 Building Permit Violation (pending)

File: 102-36-873 Building Permit Violation (resolved)

Ms. Hobby reported that the Sharing Center will temporarily move a small accessory building to private property owned by Myron Mullett. The small accessory building will be relocated to property owned by the Sharing Center at a later date. Mr. Mullett the property owner is requesting that the BOCC waive the fee permit fee for this temporary placement.

**MOTION by Commissioner Shy, seconded by Commissioner Kattnig:**

To waive the permit fee for the temporary placement of a small accessory building belonging to Care and Share on the property of Myron Mullett. The motion carried unanimously.

Ms. Hobby said that another work shop regarding the Master Plan is scheduled for June 26, 2015. She shared a correspondence that she received from Duane Allan Smith of Interplanetary Entertainment in response to the Boards denial to refund the Special Use Permit Application Fee for the proposed fund raising event at the Castle Church for the Redemption of the Office BISHOP. She said the correspondence was directed to herself and the County Commissioners. Attorney Smith expressed concern regarding the accusations and allegations made in the contents of the correspondence and requested that any future correspondence of this nature should be referred directly to him for review and response.

**FIRST READING**

Custer County Open Fire and Open Burn Ordinance #2015-02

June 9, 2015 11:30 AM

Clint Smith, Attorney read the Custer County Fire and Open Burn Ordinance #2015-02 in its entirety for the record.

**Ordinance No. 2015-02**

**AN ORDINANCE OF CUSTER COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF COLORADO, REGULATING AND RESTRICTING OPEN FIRES AND OPEN BURNING IN THE UNINCORPORATED AREAS OF CUSTER COUNTY, AND ALSO INCLUDING THE INCORPORATED TOWNS OF SILVER CLIFF AND WESTCLIFFE and ESTABLISHING A PERMITTING REQUIREMENT FOR SLASH PILE BURNING AND**

OTHER OPEN BURNING IN THE UNINCORPORATED AREAS OF CUSTER COUNTY,  
AND ALSO INCLUDING THE INCORPORATED TOWNS OF  
SILVER CLIFF AND WESTCLIFFE

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF CUSTER COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF COLORADO, THAT:

**Whereas**, §30-15-401(1)(n.5), C.R.S., authorizes the Board of County Commissioners to ban open fires to a degree and in a manner that the Board deems necessary to reduce the dangers of wildfires within those areas of Custer County where the danger of forest or grass fires is found to be high based on competent evidence; and

**Whereas**, the Board of County Commissioners deems it is in the best interest of the citizens of Custer County and the general public that open fires and open burning in Custer County be regulated and restricted to reduce the danger of wildfires in said county; and

**Whereas**, the Board of County Commissioners and the Wet Mountain Fire Protection District have entered into an Intergovernmental Agreement pursuant to §29-20-105.5, C.R.S., with respect to this Ordinance in recognition of the fact that wildfires are impervious to the territorial boundaries of political subdivisions and that the full cooperation of both political entities is necessary to protect the public from the dangers of forest fires and prairie fires; and

**Whereas**, the incorporated Towns of Silver Cliff and Westcliffe are included within the boundaries of the Wet Mountain Fire Protection District and are therefore subject to the restrictions and permit requirements imposed by this Ordinance, and any violations of said restrictions or permit requirements occurring in either town are punishable as set forth herein; and

**Whereas**, a Reciprocal Fire Protection Assistance Agreement exists between the Wet Mountain Fire Protection District and the Rye Fire Protection District wherein the Rye Fire Protection District has agreed to provide equipment and personnel to assist the Wet Mountain Fire Protection District in fighting wildfires in a remote portion of Custer County which is within the boundaries of the Wet Mountain Fire Protection District, and agreements also exist with the Deer Mountain Fire Protection District, the Wetmore Volunteer Fire Department, the Beulah Fire Department and the Florence Fire Department for said agencies to assist the Custer County Sheriff in wildfire suppression efforts in unincorporated areas of Custer County that do not lie within the boundaries of the Wet Mountain Fire Protection District; and

**Whereas**, the Board of County Commissioners finds that Custer County has a substantial forested area, and that an open burning permit system is needed; and

**Whereas**, due consideration has been given to existing laws and processes regulating open burning in the State of Colorado, and the Board of County Commissioners finds that this Ordinance is consistent with all such laws and processes; and

**Whereas**, the Board of County Commissioners finds that this Ordinance is both desirable and necessary for the purpose of providing the Custer County Sheriff with a law enforcement protocol to prevent such fires from occurring and by providing appropriate punitive measures for those who fail to comply with the open fire and open burning restrictions set forth herein and also for those who engage in open burning without the required permit or in violation of the terms and conditions of a permit; and

**Whereas**, there has been full compliance with all statutory requirements concerning notice to the public of this proposed Ordinance and publication of said Ordinance, and the public has now been afforded full opportunity to be heard on this proposed Ordinance at a first reading and a second reading as required by §30-15-404 through §30-15-407, C.R.S.,

**NOW THEREFORE**, the Board of County Commissioners finds and declares as follows:

**PART ONE: STATEMENT OF PURPOSE AND SCOPE**

**Section 1:** This Ordinance shall be known as the “Custer County Open Fire and Open Burning Ordinance”.

**Section 2:** The purpose of this Ordinance is to preserve and protect the public health, safety and welfare of the citizens of Custer County by restricting open fires and open burning in Custer County at certain times in order

to prevent forest and prairie fires when a high danger of such fires exists.

**Section 3:** This Ordinance shall apply throughout all areas of Custer County, including public, private and state lands, and shall also apply to the incorporated Towns of Silver Cliff and Westcliffe by virtue of their inclusion within the boundaries of the Wet Mountain Fire Protection District.

**Section 4:** The Board of County Commissioners hereby declares that there shall be three stages of fire bans that may be imposed for Custer County or portions thereof, and that each of these three stages creates restrictions on open fires and open burning during those periods of time when one or more of these three stages of fire bans may be in effect.

**Section 5:** At any regularly scheduled meeting or special meeting of the Board of County Commissioners, the Board may, by resolution, impose Stage I, Stage II or Stage III restrictions based upon a finding that the danger of forest fires or grass fires occurring in Custer County is high. Such a resolution shall be based on competent evidence which may include:

- a. The recommendation of the Custer County Sheriff;
- b. The recommendation of the Fire Chief of the Wet Mountain Fire Protection District;
- c. The recommendation of the Fire Chief of the Rye Fire Protection District;
- d. The recommendation of any other recognized firefighting entity providing assistance to Custer County for the suppression of forest fires and grass fires;
- e. Any similar ban imposed under the authority of the Governor of the State of Colorado;
- f. Any recommendation from the State Forest Service, the National Park Service, the United States Forest Service, or any other agency of the state or federal government;
- g. A similar ban imposed in any county adjacent to Custer County;

**Section 6.** Any such resolution imposing a fire ban shall specify whether Stage I restrictions, Stage II restrictions or Stage III restrictions shall be in effect and shall further specify whether the restrictions are in effect for all areas of Custer County or for a specific portion thereof.

**Section 7:** Any such resolution shall specify an expiration date for the ban. However, the ban may be extended in the same manner as its original imposition upon competent evidence that the wildfire danger continues.

**Section 8:** Any resolution imposing a fire ban pursuant to this Part One shall be promptly published through a general press release to local media outlets and shall also be posted on the Custer County internet website. The Custer County Office of Emergency Management shall be notified immediately upon imposition of any fire ban. Likewise, when restrictions are in effect and when changing conditions indicate that a reduction or increase in any such restrictions should be imposed, the same notification to the public and to the Custer County Office of Emergency Management shall occur.

**Section 9:** Custer County has also approved an Open Burn Management Policy to serve as a unified plan for management of open burns throughout the Wet Mountain Fire Protection District and the unincorporated areas of Custer County. This Open Burn Management Policy is incorporated into this Ordinance by reference and is intended to be a supporting document to this Ordinance. Any changes that may be made to this Open Burn Management Policy from time to time to accommodate the changing needs of Custer County shall be automatically incorporated into this Ordinance without the necessity of further action by the Board of County Commissioners to modify or amend this Ordinance. To the extent that any inconsistencies may exist between the provisions of this Ordinance and the provisions of the Open Burn Management Policy, the provisions of this Ordinance shall prevail.

## **PART TWO: DEFINITIONS**

“Agricultural Open Burning” means the burning of cover vegetation for the purpose of preparing the soil for crop production, weed control, maintenance of water conveyance structures related to agricultural operations, and other agricultural cultivation purposes. The open burning of animal parts or carcasses is not agricultural open burning, nor is the open burning of household trash, wood and yard debris on agricultural land.

“Burn manager” means an individual who obtains a valid open burning permit in order to plan, build, control, extinguish, and otherwise supervise the open burning of slash.

“Competent evidence” includes the use of the national fire danger rating system and any other similar indices or information.

“Fireworks” shall be defined as set forth in §12-28-101, C.R.S.

“Open Fire” is defined as any outdoor fire, including, but not limited to, campfires, warming fires, charcoal grill fires, fires in wood-burning stoves, the use of explosives, outdoor welding or hot work, fireworks of all kinds and brands, and the outdoor burning of trash and debris. No permit is required for open fires of these types.

“Open Burning” means the intentional ignition of unwanted fuels, in place or collected, for the purpose of eliminating those fuels. Open burning is further defined by Stage I, Stage II and Stage III restrictions as set forth in this Ordinance. An open burn permit is required for fires of these types.

“Open Burn Permit” means a permit issued by the Custer County Sheriff’s Office on a form furnished by the Sheriff’s Office and completed by an applicant for such a permit.

“Open Burn Management Policy” refers to a unified plan adopted by the Board of County Commissioners for the management of open burns within the Wet Mountain Fire Protection District and also within the unincorporated areas of Custer County. A copy of this Open Burn Management Policy may be obtained from the Custer County Sheriff’s Office or may be viewed on the Custer County Office of Emergency Management’s website: [ccoem@custercountygov.com](mailto:ccoem@custercountygov.com).

“Slash” means woody material less than six inches in diameter consisting of limbs, branches and stems that are free of dirt. “Slash” does not include tree stumps, roots, or any other material.

“Special meeting” means a meeting of the Board of County Commissioners called by the Chairman or Acting Chairman of the Board when an emergency situation exists based on competent evidence from the Custer County Sheriff or the Fire Chief of the Wet Mountain Fire Protection District that the danger of a forest fire or grass fire is high and an immediate temporary ban is essential. Such special meeting shall be conducted in person or by telephonic conference and shall be recorded by the clerk of the Board. A temporary ban so issued shall be ratified at the next regular meeting of the Board of County Commissioners.

“Incorporated areas of Custer County” shall mean, for purposes of this Ordinance, the incorporated Towns of Silver Cliff and Westcliffe, which are included within the boundaries of the Wet Mountain Fire Protection District. It does not refer to the Wet Mountain Fire Protection District as an incorporated political entity.

### **PART THREE: STAGE I, II AND III FIRE BANS**

**Stage I Fire Ban:** When the Board of County Commissioners imposes a Stage One Fire Ban the following restrictions are imposed on open fires and open burning:

- a. Building, maintaining, attending or using a fire, campfire, coal or wood stove, fireplace, any type of charcoal-fueled or wood-fueled cooking, or open fire of any type shall be temporarily suspended in all undeveloped areas.
- b. Campfires contained in constructed permanent fire pits or fire grates within a *developed* recreation area shall be allowed.
- c. Grills using propane and other bottled fuels shall be allowed, but only in areas free of flammable vegetation and other flammable materials, and such fires must be used and maintained in such a manner that no fire danger is presented to the surrounding area.
- d. All open fires allowed by subparagraphs (b) and (c) above must be attended at all times, and an adequate water supply and/or a fire extinguisher shall be on site at all times while such an open fire is burning.
- e. All burning of trash, refuse or debris shall be temporarily suspended.
- f. Smoking shall be temporarily suspended except within an enclosed vehicle, building, or outdoor

smoking area that is hard-surfaced or barren or otherwise cleared of all flammable vegetation or material.

- g. Discarding cigarette butts in a receptacle not designed for disposal of cigarette butts, discarding cigarette butts from a moving or stationary motor vehicle, and discarding cigarette butts in any other outdoor location is expressly prohibited at all times.

The use of explosive materials including fireworks, solid fuel rockets, blasting caps, or any other incendiary device which may result in the ignition of flammable materials shall be temporarily suspended.

- h. Outdoor welding, grinding, or use of any type of torch in any area which presents the possibility of igniting vegetation or other combustible material shall be temporarily suspended unless there is an adequate water supply and/or fire extinguisher on site.
- i. Operating any outdoor equipment or machinery with an internal combustion engine in an undeveloped area shall be temporarily suspended unless said equipment or machinery is equipped with a spark arresting device properly installed, maintained, and in good working order.
- j. The sale, possession and use of fireworks, including permissible fireworks as defined in §12-28-101, C.R.S., shall be temporarily suspended during the imposition of a Stage I Fire Ban. Such a restriction on fireworks within all or any portion of the unincorporated or incorporated areas of Custer County shall not last longer than a period of one year, and shall not be in effect between May 31 and July 5 of each year unless there is an express finding of a high fire danger by resolution of the Board of County Commissioners based on competent evidence as that term is defined herein.

**Stage II Fire Ban:** When the Board of County Commissioners imposes a Stage II Fire Ban, all the prohibited activities set forth in the Stage I Fire Ban shall be in effect and, in addition, the following restrictions shall also be in effect:

- a. Building, maintaining, attending or using a fire, campfire, coal-burning or wood-burning stove, charcoal-fueled or wood-fueled cooking, or other open fires of any type at any location shall be temporarily suspended.
- b. Grills using propane or other bottled fuels shall be allowed only in areas free of flammable vegetation and other flammable materials, and must be used in a manner which presents no fire danger to the surrounding area.
- c. No grill in use shall be left unattended, and there shall be an adequate water supply and/or a fire extinguisher on site during such use.
- d. Use of a coal-burning or wood-burning stove or fireplace in a private residence shall be allowed only if the flue pipe, chimney, or other exhaust structure is equipped with a properly installed NFPA\*-approved spark arrestor such as a chimney cap.
- e. Off-road use or parking of a motor vehicle in an area which presents the possibility of sparks or exhaust heat igniting surrounding flammable vegetation shall be temporarily suspended during the period of time a Stage II Fire Ban is in effect.

\*National Fire Protection Association

**Stage III Fire Ban:** When the Board of County Commissioners imposes a Stage III Fire Ban, all the restrictions

set forth in the Stage I and Stage II Fire Bans shall be in effect, and all open burning of any kind shall be prohibited. In addition, the Board shall have the authority to temporarily close an area to entry or use. Such action will have an extreme impact on the public and on the responsible firefighting agencies and will not be considered except under the most severe conditions. Closures are justified by fire danger alone, but should be driven by the potential for imminent risk to life and safety due to extreme fire behavior, high potential for human-caused fires, severe shortages of resources, and numerous large fires within the state.

Some examples of such situations where a Stage III Fire Ban may be necessary are:

- a. Potential loss of life due to explosive fire conditions;
- b. Potential for extreme or blow-up fire behavior;
- c. Stage I or Stage II Fire Bans are ineffective in reducing the number of human-caused fires;
- d. Resources for fighting wildfires across the geographic area are at a critical shortage level;
- e. The extent of wildland urban interface.

Areas of public lands subject to a Stage III Fire Ban shall be closed to all entry except for individuals carrying written permits from the Custer County Sheriff, federal state and local officers, members of organized search and rescue or firefighting forces performing official duties, and resident landowners and lessees and their invitees and agents.

#### **PART FOUR: EXCEPTIONS TO STAGE ONE, TWO AND THREE RESTRICTIONS**

**Section 1.** The following shall be exceptions to the prohibited activities set forth in Part Three:

- a. Agricultural burning by an agricultural producer on property owned by the agricultural producer unless there is a Red Flag Warning in effect as determined by the National Weather Service.
- b. Fireworks displays properly permitted pursuant to §12-28-103, C.R.S.
- c. Open fires or open burning by any federal, state or local officer or member of an organized fire protection district or department in the performance of official fire suppression, prevention, training function, or other duties.

#### **PART FIVE: PERMITTED OPEN BURNING**

**Section 1:** Any person who desires to use an open burning method to dispose of slash piles shall be required to obtain a permit from the Custer County Sheriff prior to conducting any open burning method for such disposal. This includes agricultural burns of slash. Any open burning of slash piles shall strictly comply with all conditions imposed by the Sheriff as indicated in the permit issued.

**Section 2:** The Sheriff shall be authorized to charge a fee for issuance of an open burning permit in an amount reasonably calculated to offset the actual costs of the permitting and monitoring process, not to exceed \$125. There shall be no fee charged by the Sheriff for permits for agricultural burns of slash.

**Section 3:** §30-15-401 (n.5)(2)(F), C.R.S., requires the Board of County Commissioners to include a mechanism “to notify individuals with respiratory conditions, if requested by the individual, and contiguous landowners of the date, time, and location of slash pile burns.” Therefore, the Custer County Sheriff shall maintain a registry of any such individuals with respiratory conditions who have advised the Sheriff’s Office in writing that they wish to be notified in advance of permitted slash pile burns. This registry shall be made available to all burn managers who apply for an open burning permit. It is the responsibility of the burn manager to review this registry and to identify any individuals who reside within a one-mile radius of the location where the open burning is to occur. Any individuals with respiratory conditions so identified shall be notified by the burn manager of the scheduled burn as far in advance of the burn date as possible. Such notice shall be accomplished in one of three ways: by speaking to the individual(s) with the respiratory condition(s) personally; by telephone call; by posting a written notice in a conspicuous location at the residence of the individual(s) if such individual(s) cannot be otherwise contacted. It shall also be the responsibility of the burn manager to determine the identity of the contiguous landowners and to give them notice of the burn date in the same manner as set forth above for individuals with respiratory conditions. Compliance with this Section 3 by the burn manager shall be deemed sufficient if he/she certifies in writing or by verbal confirmation with the

Custer County Sheriff's Office that all required notices have been given or will be given prior to the scheduled burn occurring. The permit application utilized by the Sheriff's Office shall include a specific certification provision and shall recognize that open burning permits may be issued to burn managers in person or by telephone request.

**Section 4:** When issuing open burning permits, the Sheriff shall give due consideration to safe burning conditions at the burn location, shall impose appropriate permit limitations concerning the number of slash piles that may be burned at one time per person who is managing the burn, the size of the slash piles, the temperature, humidity, snow cover, and wind conditions, the existence of any overhead lines or other utility facilities, fuel type and moisture content, slope, setbacks from physical structures, and a readily available and usable water source.

#### **PART SIX: UNLAWFUL ACTS**

**Section 1:** It shall be unlawful for any person to build, maintain, attend or use an open fire or conduct an open burning activity in the unincorporated and incorporated areas of Custer County, including public, private, state and federal lands, when the same is prohibited by a Stage I, Stage II or Stage III fire ban being in effect.

**Section 2:** It shall further be unlawful for any person to conduct open burning activities at any time without a valid permit issued by the Custer County Sheriff, or to conduct such open burning activities that do not conform to the terms and provisions of the specific permit issued.

**Section 3:** It shall further be unlawful for any person to leave an open fire or open burning activity of any type unattended at any time, regardless of whether or not a fire ban is in effect and regardless of whether or not a permit was required for such open fire or open burning activity.

**Section 4:** It shall further be unlawful for a burn manager to conduct any open burning activity without giving the required notice to individuals with respiratory conditions and to contiguous landowners as set forth in Section 3 of Part Five.

#### **PART SEVEN: PENALTIES**

**Section 1.** Any person who commits a violation of an open fire or open burning ban imposed under the authority of this Ordinance commits a class 2 petty offense under §30-15-402(1), C.R.S., and upon conviction thereof shall be punished by a fine as follows:

- a. Two hundred fifty dollars (\$250) for violation of a Stage I ban.
- b. Five hundred dollars (\$500) for violation of a Stage II ban.
- c. Seven hundred fifty dollars (\$750) for violation of a Stage III ban.

**Section 2.** A violation of the permit requirement as set forth in Section 2 of Part Five shall be punished by a fine of two hundred fifty dollars (\$250).

**Section 3:** Any person who violates Section 3 of Part Six by leaving an open fire or an open burning activity unattended shall be guilty of a class 2 petty offense and shall be punished by a fine of two hundred fifty dollars (\$250).

**Section 4:** Any burn manager who violates the notice provision of Section 3 of Part 5 shall be guilty of a class 2 petty offense and shall be punished by a fine of two hundred fifty dollars (\$250).

**Section 5.** In addition, persons convicted of a violation of this Ordinance shall be subject to a surcharge of ten dollars (\$10) pursuant to §30-15-402(1), C.R.S.

**Section 6.** The penalty assessment procedure set forth in §16-2-201, C.R.S., shall be followed by law enforcement officers charged with enforcement of this Ordinance.

**Section 7.** All fines assessed for violations of this Ordinance shall be paid to the Treasurer of Custer County. All revenues generated through the payment of such fines shall be paid into the general fund and shall be allocated as follows: 40% to the Custer County Sheriff's Office, 40% to the Wet Mountain Fire Protection District, and 20% to the Custer County general fund.

#### **PART EIGHT: EFFECTIVE DATE**

This Ordinance shall be effective immediately following adoption on second reading and shall apply to all open

burning violations occurring or committed on or after said date.

**PART NINE: REPEAL OF PRIOR ORDINANCES**

Upon the effective date of this Ordinance, all prior fire ban ordinances or fire restriction ordinances including, but not limited to, Ordinance No. 2002-1, shall be deemed repealed and shall be of no further validity or effect. INTRODUCED, READ AND ADOPTED ON FIRST READING ON THE 9th DAY OF JUNE, 2015, AND ORDERED PUBLISHED IN THE SANGRE DE CRISTO SENTINEL.

The Board of County Commissioners for Custer County, State of Colorado

Christopher L. (Kit) Shy, Chairman; Lynn Attebery, Vice-Chair; Robert Kattnig, Commissioner; Attest, Debbie Livengood, Clerk and Recorder.

ADOPTED ON SECOND AND FINAL READING ON THE 30th DAY OF JUNE, 2015, AND ORDERED PUBLISHED BY REFERENCE TO TITLE ONLY IN THE SANGRE DE CRISTO SENTINEL.

The Board of County Commissioners for Custer County, State of Colorado

Christopher L. (Kit) Shy; Chairman, Lynn Attebery, Vice-Chair; Robert Kattnig, Commissioner; Attest, Debbie Livengood, Clerk and Recorder.

Commissioner Shy said that although this was not a public hearing, he asked if anyone in the audience had comments. Jackie Hobby, Cindy Howard, and Cal Leslie shared concerns regarding the application fee for the open burning permit. Deputy Halpin said that he was representing Sheriff Byerly and that the sheriff recommended removing the section related to the fee for an open burn permit. Ms. Hobby and Ms. Howard shared concerns regarding the section addressing a mechanism notifying individuals with respiratory conditions. Mr. Leslie emphasized that all outdoor equipment and machinery is required to have a spark arresting device. He also shared concern regarding the specific definition of open fire and open burn.

**MOTION by Commissioner Kattnig, seconded by Commissioner Shy:**

To adopt Ordinance 2015-02 with the agreed revisions on the First Reading. The motion carried unanimously.

The BOCC asked Attorney Smith to revise the Ordinance to include the changes and revisions discussed. The Board advised the Administrative Assistant to send the revised Ordinance to the Sangre DeCristo Sentinel for publication; to forward the revised Ordinance to the IT Director for inclusion on the county web site; and forward a hard copy of the Ordinance to the Clerk and Recorder’s Office for the public to view on request.

Road and Bridge/Landfill Report

Rusty Christensen, Road and Bridge/Landfill Supervisor and Roger Squire Assistant Westcliffe R&B Supervisor met with the BOCC and gave a report. The work completed in May 2015 included: the grading of roads; the hauling of water and gravel; the cleaning and repair of culverts, ditches and cattle guards; the repair and replacement of road signage; the hand patching of pot holes, the sealing of cracks and numerous repairs and clean from the flooding and rains in the county. The worked planned for June 2015 will include but not be limited to: the hauling of gravel water and hot mix asphalt; the grading of roads, the cleaning of culverts and ditches and the patching of pot holes and crack sealing. Mr. Christensen reported that Jim Andrews last day of employment is June 11, 2015 and that he is training a replacement within the department. Mr. Squire said that the R&B department will need to fill the position in July 2015. He said that the culvert at the Wetmore Fire Station has been installed and that the representative from Environtech has investigated several of the areas in the county for dust control and soil stabilization. Commissioner Kattnig expressed concern regarding the dust distribution. He asked if the department had the equipment to place counting strips on the highway to help determine the usage on the roads. Mr. Squire responded said the department has setup it up in the past and that the necessary equipment required was available in the R&B department. Commissioner Kattnig encouraged the department to reinstall the tracking device in an effort to obtain accurate numbers of road usage.

Mr. Squire reported that the price from Fremont Paving and Ready Mix for hot mix asphalt is going to be \$62.00 per ton from the plant in Canon City, CO. Mr. Christensen commented that the loader at the landfill will need to be rebuilt and that approximate cost is \$30,000.00. He remarked that D&W Services is selling a tire changer and balancer and that the R&B department would benefit from its usage.

Commissioner Kattvig asked Mr. Christensen to consider scheduling a discounted day at the landfill for the county residents. He said that the county provides free annual service to the two towns during clean up days and that he felt the county residents should have a similar option.

Commissioner Attebery thanked the R&B personnel for their assistance in the deconstruction and removal of the satellite dish on the courthouse property.

Treasurer Report

Virginia Trujillo, Treasurer met with the BOCC and gave a report. The beginning balance on May 1, 2015 was \$5,206,255.21 and the ending balance on May 31, 2015 is \$4,245,177.88.

**MOTION by Commissioner Attebery, seconded by Commissioner Kattvig:**

To accept the Treasurers Report for May 2015 as presented. The motion carried unanimously.

Commissioner Attebery expressed concern regarding the inconsistent usage of the cooling system in the courthouse. He said that Moore Heating and Cooling will inspect and calculate the cooling system next week. He said in an effort to maintain the system and achieve the best universal benefits that he was proposing the BOCC establish a courthouse policy notifying the departments not to turn off the cooling system and that all outside windows and doors remain closed. The Board agreed to address the topic at the next scheduled BOCC meeting on June 17, 2015.

Commissioner Shy asked if there was any more business to discuss. Hearing none, he adjourned the meeting at 1:05 PM

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Debbie Livengood, Clerk and Recorder  
Attest

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Christopher L. (Kit) Shy,  
Chairman

(Audio Recordings of the BOCC meetings are available for public review or purchase)