

Open Space Alliance Council Meeting

August 16, 2006

Meeting called to order by President Tom Pettit at 5 pm.

Present: Tom Pettit, Ed Parry, Howard Mechanic, Tom Slaback, Janet Preston, Laurel Freeman, Jim Lawrence, Elisabeth Ruffner, and Becky West.

Executive Committee Actions: None.

Minutes from the July meeting were approved.

Treasurer's Report is attached. The report was approved. A bill for \$121.32 to Elisabeth Ruffner was approved.

Correspondence:

None besides information on the state initiatives, that is on the agenda (below).

Unfinished Business:

Open Space Acquisition Committee report from Jim Lawrence. It is below.

State Trust Lands: There are two measures on the ballot – one is the Conserving Arizona Initiative (Prop.106), and the other is the alternative put on the ballot by the legislature with the support from the Homebuilders' Association and the Cattlemen (Prop. 105).

Information about 106 will be sent by email. www.106yes.com should be up by the end of the week. If people want to contact friends and neighbors about the initiative, they will be able to find information on the site.

Motion to approve expenditure to send a mailing to all our members regarding the state lands initiative(s). The motion was dropped in favor of sending out emails.

Open Space Maintenance: About \$30,000 is in the Prescott budget for maintenance of Open Space this year. This includes money for cleaning up brush, etc. Tom will draft a Talk of the Town regarding this subject.

Below is information regarding IRS "h" designation which would clarify and ease our spending on lobbying. This will be on our next agenda.

Wildlife Symposium: Ashley will work to set a specific date around Sept.-Oct. 2007 and let us know. We still need an official contract for the coordinators.

Earth Day:

We are planning on having an Earth Day contract by October.

Greenways:

Will be meeting this Friday at 1:30 at The Grove. The committee is setting up a filing system with information on past and present negotiations, and historical background for the project. The website is www.PrescottGreenways.net

Granite Gardens:

Their web site is www.Granite-Gardens.info Look at the before and after pictures.

This was the property that Mr. Hazelton had bulldozed and filled in the wetlands.

Many members met there on July 30th to look over the situation in that area. The Army Corps gave the county the right to deal with the temporary mitigation plan.

Motion to approve a letter from Open Space Alliance to the L.A. office of the Corps, asking the property be restored to pre-dam conditions and punitive penalties included, requiring other floodplain lands in the amount of three to ten times the area of the land they damaged to be donated to the public. Motion approved.

A draft proposal for a Granite Dells Preservation Committee is below.

As far as we know, Meredith Marder's lawsuit regarding Open Space will have a hearing Aug. 25th at 1:30.

The annual meeting will be September 20 at 5 pm. We will meet at The Grove. This will be a potluck. Please bring food with enough servings for 12 people, and try to bring your own dishes and utensils (we will provide some paper plates, etc. for people who don't bring their own). Elisabeth will be giving a presentation on Prop. 106. Members of the Open Space Acquisition Advisory Committee and the Mayor and some city staff will be invited

<http://savetheverde.org> is a new site from the Center for Biological Diversity for information on what is happening with the Upper Verde and what to do about it.

An announcement is below about the first meeting of the Upper Agua Fria Open Space Committee.

Meeting adjourned at 6:47 pm.

Minutes submitted by Howard Mechanic

Report of Open Space Advisory Committee

The Open Space Advisory Committee met at 5:30 August 9, 2006 at Long Realty, 212 S. Montezuma, Prescott.

Nichole Trushell, the newest member of OSAAC was introduced.

Tom Pettit of OSA presented a discussion on Open Space Maintenance and Management.

Support for Proposition 106 was discussed and the chairman will draft a letter to the city

Council urging endorsement of Proposition 106.

The good news of the meeting was the unanimous vote of the city Council to purchase the Nature Center and the vote by the P.U.S.D board to sell the Nature Center to the city.

The committee then went into closed session to review the status of pending potential acquisitions.

Jim Lawrence

Below is information regarding 501(c)3 charitable organizations – like OSA

from

<http://www.irs.gov/charities/charitable/article/0,,id=120703,00.html>

Political and Lobbying Activities

(Adapted from IRS Publication 1828, *Tax Guide for Churches and Religious Organizations* - September 2003)

Political activities and legislative activities are two different things and are subject to two different sets of rules. The rules depend on the type of tax-exempt organization, the type of activity (political or legislative) at issue, the scope or amount of the activity conducted, and the consequences of exceeding the given set of limitations.

Lobbying Activity

In general, no organization may qualify for section 501(c)(3) status if a substantial part of its activities is attempting to influence legislation (commonly known as lobbying). A 501(c)(3) organization may engage in some lobbying, but too much lobbying activity risks loss of tax-exempt status.

Legislation includes action by Congress, any state legislature, any local council, or similar governing body, with respect to acts, bills, resolutions, or similar items (such as legislative confirmation of appointive office), or by the public in referendum, ballot initiative, constitutional amendment, or similar procedure. It does not include actions by executive, judicial, or administrative bodies.

An organization will be regarded as attempting to influence legislation if it contacts, or urges the public to contact, members or employees of a legislative body for the

purpose of proposing, supporting, or opposing legislation, or if the organization advocates the adoption or rejection of legislation.

Organizations may, however, involve themselves in issues of public policy without the activity being considered as lobbying. For example, organizations may conduct educational meetings, prepare and distribute educational materials, or otherwise consider public policy issues in an educational manner without jeopardizing their tax-exempt status.

Measuring Lobbying Activity: Substantial Part Test

Whether an organization's attempts to influence legislation constitute a substantial part of its overall activities is determined on the basis of all the pertinent facts and circumstances in each case. The IRS considers a variety of factors, including the time devoted (by both compensated and volunteer workers) and the expenditures devoted by the organization to the activity, when determining whether the lobbying activity is substantial.

Under the substantial part test, an organization that conducts excessive lobbying activity in any taxable year may lose its tax-exempt status, resulting in all of its income being subject to tax. In addition, a religious organization is subject to an excise tax equal to five percent of its lobbying expenditures for the year in which it ceases to qualify for exemption.

Further, a tax equal to five percent of the lobbying expenditures for the year may be imposed against organization managers, jointly and severally, who agree to the making of such expenditures knowing that the expenditures would likely result in the loss of tax-exempt status.

Measuring Lobbying Activity: Expenditure Test

Organizations other than churches and private foundations may elect the expenditure test under section 501(h) as an alternative method for measuring lobbying activity. Under the expenditure test, the extent of an organization's lobbying activity will not jeopardize its tax-exempt status, provided its expenditures, related to such activity, do not normally exceed an amount specified in section 4911. This limit is generally based upon the size of the organization and may not exceed \$1,000,000.

Organizations electing to use the expenditure test must file Form 5768, *Election/Revocation of Election by an Eligible IRC Section 501(c)(3) Organization to Make Expenditures to Influence Legislation*, at any time during the tax year for which it is to be effective. The election remains in effect for succeeding years unless it is revoked by the organization. Revocation of the election is effective beginning with the year following the year in which the revocation is filed.

Under the expenditure test, an organization that engages in excessive lobbying activity over a four-year period may lose its tax-exempt status, making all of its income for that period subject to tax. Should the organization exceed its lobbying expenditure

dollar limit in a particular year, it must pay an excise tax equal to 25 percent of the excess.

Political Campaign Activity

Under the Internal Revenue Code, all section 501(c)(3) organizations are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office. Contributions to political campaign funds or public statements of position (verbal or written) made on behalf of the organization in favor of or in opposition to any candidate for public office clearly violate the prohibition against political campaign activity. Violation of this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise tax.

Certain activities or expenditures may not be prohibited depending on the facts and circumstances. For example, certain voter education activities (including the presentation of public forums and the publication of voter education guides) conducted in a non-partisan manner do not constitute prohibited political campaign activity.

In addition, other activities intended to encourage people to participate in the electoral process, such as voter registration and get-out-the-vote drives, would not constitute prohibited political campaign activity if conducted in a non-partisan manner. On the other hand, voter education or registration activities with evidence of bias that: (a) would favor one candidate over another; (b) oppose a candidate in some manner; or (c) have the effect of favoring a candidate or group of candidates, will constitute prohibited participation or intervention.

Individual Activity by Organization Leaders

The political campaign activity prohibition is not intended to restrict free expression on political matters by leaders of organizations speaking for themselves, as individuals. Nor are leaders prohibited from speaking about important issues of public policy. However, for their organizations to remain tax-exempt under section 501(c)(3), leaders cannot make partisan comments in official organization publications or at official functions.

To avoid potential attribution of their comments outside of organization functions and publications, organization leaders who speak or write in their individual capacity are encouraged to clearly indicate that their comments are personal and not intended to represent the views of the organization.

The information below is from CWAG:

III. Lobbying Defined and Described

[Section III, Lobbying Defined and Described, was copied from the AFJ report “Worry-Free Lobbying For Nonprofits.” It refers to 501(c)3s that have made the (h) election, which CWAG has.]

Lobbying consists of communications that are intended to influence specific legislation. Legislation is action by a legislative body including the "introduction, amendment, enactment defeat or repeal of Acts, bills, resolutions, or similar items."

Legislative bodies are Congress, state and local legislatures, and the general public in referenda, initiatives, or proposed constitutional amendments. Typically, they are not judicial, executive and administrative bodies such as school and zoning boards.

For electing public charities, lobbying communications are of two kinds-direct and grass roots.

Generally, a direct lobbying communication is one made to either a legislator, an employee of a legislative body, or any other government employee who may participate in the formulation of the legislation. It must refer to a specific piece of legislation and express a view on it.

Generally, a **grass roots** lobbying communication is an attempt to influence specific legislation by encouraging the public, other than the organization's members, to contact legislators about that legislation. It must refer to specific legislation, reflect a view on it and encourage the recipient to take lobbying action on it.

There are separate expenditure limits for each. Grass roots lobbying expenditures are limited to 25% of the organization's total lobbying limit as calculated using the formula on page 5. Even if the electing charity spends very little or nothing on direct lobbying, it may still spend up to 25% of its limit for overall lobbying on grass roots lobbying.

For direct lobbying, there are four principal exceptions to these definitions. Any communication that meets one of these exceptions does not count as lobbying:

1. Nonpartisan analysis, study or research that presents all sides of an issue
2. Responses to written requests for assistance from committees or other legislative bodies
3. Challenges to or support for legislative proposals that would change the organizations right to exist.
4. Examinations and discussions of broad social, economic, and similar problems

Knowing the definitions and the exceptions is critical for a public charity which wishes to fully exercise its right to lobby while remaining within the limits of the Internal Revenue Code and acting prudently with the limited resources at its command.

IV. What are lobbying restrictions for 501(c)3?

501(c)3s can lobby up to 20% of the first \$550,000 of annual expenditures on a calendar basis (lower percentages apply beyond that amount). Grassroots lobbying can be no more than 25% of the 20% of expenditures. It, therefore, is 5% of the first \$550,000 of expenditures.

V. What is or is not lobbying with respect to 501(c)3?

A number of members heard Hogan say that it is considered lobbying only when the following two conditions are met: there is a reference to specific legislation and a view is expressed. The information from the AFJ report seems to support and expand on that understanding. Legislation is described by the AFJ as that which comes through a legislature of other legislative process. This is interpreted to mean, for example, that CWAG could propose features of potential legislation and it would not be lobbying as long as there is no similar legislation being officially proposed. Or, if legislators were to speak generally about a need for legislation, a 501(c)3 could support or criticize it until proposed legislation is officially developed.

It is not lobbying to draw conclusions on issues that are not legislation. It is not lobbying to simply influence public officials or ask citizens to talk to public officials. It is not lobbying for a 501(c)3 to suggest to its members that they support this or that legislation or action. Sending e-mails to members stating positions of the 501(c)3 on legislation is not lobbying.

It is not lobbying to issue "report cards" on water issues, objectively rating candidates and government officials. It is not lobbying to conduct candidate forums that are open to all candidates for specific offices, as long as the forum does not push any view of legislation or otherwise favor specific candidates.

A 501(c)3 must be balanced in what it says concerning legislation to avoid it being considered lobbying. If a 501(c)3 is planning to say something concerning legislation, it must ask itself the question. "Can you guess the position by what is said?" If the position is obvious, it is lobbying.

If a member is lobbying on an issue for which the 501(c)3 has taken an official position, it is judged to be lobbying for the 501(c)3 even with a disclaimer that the member's statements are his or her own.

OSA

16 August 2006

Treasurer's Report

Reconciled Balance Forward \$3089.52

No Income to Report

\$3089.52

Expenses

Bank Service Fee \$9.00

Reimbursement to Tom Pettit 14.40

Unreconciled Balance –general funds available \$3066.12

Badger P Mountain Fund:

YTD Interest 2006 - \$25.80

Balance – \$6949.54

Earth Day Account:

Unreconciled Balance - \$748.24– checking

Artcar registration - \$34.45

Artcar preparation - \$40.00

Balance - \$516.84 – savings

Wildlife Symposium:

Balance - \$1,164.51

Below is a letter sent by the Sierra Club. We suggest you and/or your organization send a similar letter.

David Castanon, Branch Chief

U.S. Army Corps of Engineers

P.O. Box 532711

Los Angeles, CA 90053-2325

Dear Chief Castanon:

There are two riparian areas in Yavapai County that have had gross harm done to them by the clearing of their old growth cottonwood forests and the filling in of their floodplain lands.

Near Prescott in the Granite Dells, developer Hazelwood has drained a lake, Cut down the trees, and is in the process of filling in the land in order to build residences; all without Army Corps

permits. This has been a lake since at least the twenties and prior to the dam's construction was a wetland flowing into Granite Creek, a tributary to the Verde River. Tom Mix made movies here prior to 1927 and the lake has appeared in "Arizona Highways" on various occasions. The area is now a scene of total destruction.

A couple of hundred yards below Arizona's iconic Red Rock Crossing, developer Zito's Bella Terra has removed an Oak Creek old growth riparian forest and filled in the floodplain to a depth of a dozen feet in order to build houses. The next time there is rain on top of snow in the upper watershed, this land will be under water and ultimately washed away. In 1992 and again in 1995 Oak Creek ran at more than a twenty foot depth at Red Rock Crossing, washing out much of the nearby USFS Crescent Moon Ranch Park.

I recommend that the Army Corps Of Engineers find these two men in violation of the law and require that they restore these lands back to their original pre-development condition, including the full replanting of the riparian forest habitat. In the case of Mr. Hazelwood, the land should be returned to its pre-dam, wetland condition.

Punitive damages should also be assessed, requiring each of the developers to acquire other floodplain lands in an amount of three to ten times the area of the land that they damaged, do any restoration to this land as deemed necessary by the Corps, and along with the floodplains they damaged donate these lands to the public. In the case of Mr. Hazelwood, we recommend that it be the land encompassing upstream Granite Creek adjoining the wetland he damaged, extending to the boundary of the City of Prescott's open space land.

Open Space Alliance Granite Dells Preservation Committee

Even in the "Grand Canyon State" with an abundance of natural wonders and scenic delights, Granite Dells is a truly unique location. Massive boulders of ancient rock have weathered into delicately balanced forms and fanciful shapes reflected in the surfaces of Watson and Willow Lakes.

Historically, Granite Dells was the home of ancient tribes (Hohokam & Sinagua); an area of conflict between the prospectors, settlers and the Indians in the 1800s; turn of the century vacation resorts for the rich; 1920s & 30s site for Western movies and the original "Straight Shooter", Tom Mix. Current activities include hiking, cycling and equestrian activities on the rails-to-trails path; boating; picnicking; and rock climbing on the granite formations.

Large acreage in Granite Dells was acquired by Prescott with the purchase of Watson and Willow lakes. The Mayor's Open Space Acquisition Committee identified Granite Dells as the top priority for acquisition along with Glassford Hill and Badger Mountain.

The city of Prescott has acquired for Open Space Preserves in Granite Dells 25 acres of the Ericksson property, 28 acres of the Payne property and 34 acres from the Storm Ranch. Additional property in the Granite Dells area is under negotiation or investigation.

Unfortunately Granite Dells is also under extreme development pressure. This winter a

developer, without any permits, destroyed the dam, filled in the lake, and cut down a large number of mature trees in the Granite Gardens area. The property is currently under mitigation review by the Army Corps of Engineers. Large scale development is being considered for the Point of Rocks Ranch, the North Storm Ranch and the Granite Dells Ranch.

The Open Space Alliance is establishing a Granite Dells Preservation Committee along the lines of its Greenways Committee. The OSA organizations will be requested to participate in this committee and to designate an official liaison to the committee.

The OSA organizations have diverse and varied skills and experience which are essential for success with a project of this magnitude. Individually they might not be able to undertake this activity alone without endangering their core mission but as a member of the alliance they can volunteer to participate on specific tasks and projects consistent with their experience, expertise and interests.

OSA is planning an initial meeting for early September to establish the scope and structure of the committee. This session will attempt to collect and define short, intermediate and long term activities for the preservation of the Dells.

Potential activities that might be included for evaluation and prioritization include:

Access and management of the former TPL/Payne property including trails, parking and usage rules etc.

Publicizing the features and terrain of the Payne property

Review zoning of Prescott Dells preservation properties and establish conservation easements consistent with the TPL/Payne property.

Establish and implement management plans for the Dells preservation properties similar to the Badger "P" Mountain Preserve Coordination Plan and the Glassford Hill Preserve Coordination Plan.

Review and assist in the implementation of the Granite Gardens mitigation plan

Establish a Granite Dells Scenic Protection District with reasonable restrictions on blasting, mature tree and foliage removal and environmental destruction.

Assist in obtaining revenue sources for management, maintenance and preservation for existing and future Granite Dells acquisitions.

Upper Agua Fria Open Space

The 21st Century

Place: **Bradshaw Mountain Middle School**

Time and Date: **6:30 pm - Monday, August 28, 2006**

Purpose: **Gather ideas on uses, problems, and**

management

Region: Upper Agua Fria River Watershed extending from Prescott Valley and Highway 169 to Cordes Junction and Crown King

Lands: **US BLM, Private, State, and US Forest Service**

You are invited to attend a meeting concerning the open lands surrounding our communities. The time has come to decide how they will be used and managed. A major battle to retain BLM lands has been won. Now we need to agree on the best uses, the major problems, and the most effective management strategies for our open space. Can we use and benefit from our open lands without changing them? Will today's open spaces still be valuable in 2106?

You can make a lasting contribution to the future of our open lands. This meeting will establish the major goals and questions to be answered. So, bring your ideas and your imagination, and help establish the subjects for follow-up meetings aimed at resolving issues and developing plans.

Please join us at the Bradshaw Mountain Middle School at 6:30 pm on August 28.

Call for more information (772-7111) or send us an e-mail at:

AguaFriaOpenSpac@alo.com

Garry Rogers

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