

# COUNTY OF LINCOLN

## New Mexico Regular Meeting Board of County Commissioners

Preston Stone, Chair  
Dallas Draper, Vice Chair

Thomas F. Stewart, Member  
Elaine Allen, Member  
Lynn Willard, Member

### Minutes Tuesday, April 18, 2017

Minutes of the Regular Meeting of the Lincoln County Commission held at 8:30 AM on April 18, 2017 in the County Commission Chambers, Lincoln County Courthouse, in Carrizozo, New Mexico.

#### 1. Call to Order

Chair Stone called the Regular Meeting of the Board of County Commissioners to order at 8:28 AM.

#### 2. Roll Call

##### Roll Call.

**Present:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

Others present included Nita Taylor, County Manager; Alan Morel, County Attorney; and Rhonda Burrows, County Clerk.

#### 3. Invocation

The invocation was presented by Commissioner Draper.

#### 4. Pledge of Allegiance

- a. Pledge – US Flag
- b. Salute – NM Flag

#### 5. Approval of Agenda

**Motion:** Acceptance of the Agenda and authorized the Chair to move items as necessary.

**Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

**Vote:** Motion carried by unanimous vote (summary: Yes = 5).

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

#### 14. 9:30 AM: PUBLIC COMMENT AND OTHER BUSINESS FROM COUNTY OFFICIALS

Representative Nibert discussed his first term in the NM Legislature in 2017 as the Representative from District 59 which includes Chaves and Lincoln County. Representative Nibert commented on the lack of concurrence on the budget and anticipated the Governor would call a Special Session in the near future to resolve the budget concerns. Representative Nibert reminded Governor Martinez had pledged not to increase taxes and therefore did not sign the budget passed by the Legislature.

#### 6. Approval of Minutes

- a. March 21, 2017 – Regular Commission Meeting
- b. April 7, 2017 – Emergency Commission Meeting

**Motion:** Approve the minutes of the March 21, 2017 Regular Meeting and the April 7, 2017 Special Meeting; **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

Commissioner Stewart requested an amendment to the minutes.

**Motion:** Table the approval of minutes, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

**Vote:** Motion carried by unanimous vote (summary: Yes = 5).

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

## 7. Approval of Consent Agenda

- a. Payroll/Accounts Payable/Budget/ Expenditures
- b. Treasurer's Financial Report for the Month ending March 31, 2017
- c. Fair Housing Month Proclamation
- d. 2017 Fire Fund Distribution Applications
- e. Approval of Resolution 2016-42 Disposition of Surplus Inventory

**Motion:** Approval of the Consent Agenda, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Draper.

**Vote:** Motion carried by unanimous vote (summary: Yes = 5).

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

**SEE EXHIBIT A:** Copies of the Consent Items including Resolution 2016-42 as approved are attached hereto in reference thereto made a part hereof.

## 8. Forest, Land & Natural Resources Matters:

- a. Lincoln and Fort Stanton Historic Sites

Ms. Taylor provided a copy of "News From the Frontier" a monthly newsletter developed by Tim Roberts, Regional Manager for the Historic Sites.

- b. Smokey Bear Ranger District

Jodi Canfield, District Ranger discussed increasing fire danger conditions and anticipated the need to enter into fire restrictions in conjunction with Lincoln County and other entities in the near future. Ranger Canfield reported on various thinning projects including thinning to improve visibility along Jicarilla Road in conjunction with the Lincoln County Road Department.

Ranger Canfield stated the Smokey Bear Ranger District issued a scoping letter to solicit public comment on the proposal to close twenty seven abandoned mines across the District which pose a risk to public safety. Ranger Canfield stated the District also issued a scoping letter to solicit public comment on a proposal to install a non-potable livestock water well at the Argentina and Bonita Trailheads for equestrian use.

Ranger Canfield provided updates on the installation of a public downhill bike path at Cedar Creek, assisting with a bike race in the Grindstone area, and the receipt of two Rocky Mountain grants for wet land restoration and water development projects.

Ranger Canfield stated the Special Use Permit and Plan of Operations for the Village of Ruidoso wells located on US Forest Service land was near completion.

Ranger Canfield discussed work at the Bonito Lake Southfork Campground. Ranger Canfield stated the District in collaboration with the City of Alamogordo planned to reopen the campground in 2019.

Ranger Canfield stated the District would work cooperatively with the Arizona Conservation Corp, EcoServants, and local youth groups on trail maintenance and other forest related projects during the summer.

Ranger Canfield stated in addition to finalizing the summer operations plan at the Ski Apache Ski Area, she had met with Flora Padilla from the Mescalero Tribe to plan a field trip to review vegetation and opportunities for forest restoration at Ski Apache.

Ranger Canfield stated the District was collaborating with the Ruidoso News to publish a column titled "Smokey's Corner" to provide updates on activities occurring in the Smokey Bear Ranger District.

c. Community Forester

Rick Merrick with South Central Mountain Resource Conservation and Development District stated the District was accumulating a list of interested individuals for participation in the Lincoln County Cost Share program. Mr. Merrick stated he continued to provide FireWise information and had conducted some home assessments on request. Mr. Merrick stated Ranches of Sonterra continued to participate in the program and would provide roll offs for their residents to dispose of slash.

There was a general discussion of the various cost share opportunities and the required land owner contributions.

d. Upper Hondo Soil and Water Conservation District

Laura Johnson, Program Director reminded the District was accepting applications for scholarship awards for high school seniors who intend to study agriculture or conservation at the college level.

Ms. Johnson reported recently updated interactive maps were now posted on the District's website. Ms. Johnson discussed ongoing treatments for noxious weeds, a rain harvest storage tank cost share program, various collaborative efforts on land management projects, and ongoing work on the Salado Dam.

e. Land and Natural Resources Advisory Committee

Robert Barber, Chair reported the committee continued to review and research the first four sections of the Land Use Resolution 1990-43 and anticipated beginning the major portion of the review in June.

**9. Approval of Entering Into Agreement with State Forestry to Project Manage Hazardous Fuels Reduction Project – Rainmaker NFL**

Xavier Anderson, District Forester for the New Mexico State Forestry Capitan District requested approval to partner with State Forestry to implement a Non-Federal Land (NFL) grant thinning project in the Rainmaker Subdivision area. Mr. Anderson stated grant criteria included a requirement for projects to border federal land. Mr. Anderson stated the identified area bordered US Forest Service land and this project would tie into a larger landscape project. Mr. Anderson anticipated treatment of 155 acres for which contractors would provide the required ten percent match through removal of all slash produced.

Ms. Taylor stated subject to approval of the agreement with the State Forestry, she would present a supplemental agreement between Lincoln County and the South Central Mountain Resource Conservation and Development District for project management.

Commissioner Stewart questioned the funding process.

Mr. Anderson stated the Department of Agriculture provides block grants to the State which are then distributed to the State Forestry Districts. Mr. Anderson stated historically Lincoln County had served as the fiscal agent and the County would receive a fifteen percent administrative fee.

Ms. Taylor stated typically Lincoln County retained two percent of the administrative fee and passed the remaining thirteen percent on to the South Central Mountain Resource Conservation and Development Council (SMRCD) for project management.

**Motion:** Approve agreement between Lincoln County and New Mexico Energy, Mining and Natural Resources Department for Project Number 17-05-1400, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

**Vote:** Motion carried by unanimous vote (summary: Yes = 5).

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

**8. Forest, Land & Natural Resources Matters (continued)**

f. Office of State Engineer-Water Issues

Ms. Taylor reported Sally Canning filed Application No. H-4328-POD1 with the State Engineer for permit to use an existing well as an additional ground water point of diversion to supplement the diversion of 47.075 acre feet per annum of surface waters from the Providencia Ditch for the irrigation of 14.35 acres of land.

Commissioner Allen inquired if this was a routine application.

Andy Morley, District Supervisor for the State Engineer's Office informed this type of application was normally utilized by acequia water right owners to supplement irrigation from a ground water source.

Ms. Taylor noted the posted notice included a clear timeline and procedures for the filing of objections or protests with the Office of the State Engineer.

#### **10. Pattern Development Update - Laura Lee Hunt**

Loralee Hunt of Pattern Development proved on update an anchor tenant agreements and current development of sites to date. Ms. Hunt introduced several members of Pattern Development's staff including Ward Marshall, Director of Wind Development in the United States for Pattern.

Ms. Hunt reported Pattern had acquired agreements with landowners for placement of turbines on 150,000 acres with plans to acquire an additional 50,000 acres extending into Guadalupe County.

Ms. Hunt introduced a number of local landowners who were participating in the project.

Ms. Hunt reminded the "anchor tenants" would connect to the Sun Zia Transmission Line north of Corona. Ms. Hunt also reminded Sun Zia granted 100% anchor tenancy rights for the supply of energy to the Sun Zia Transmission line in this area to Pattern Development. Ms. Hunt discussed the need to align development schedules between Sun Zia and Pattern to comply with the Federal Production Tax Credit. Ms. Hunt stated the requirement for "initial activities" related to construction was met by Pattern by the construction of roads and holes on private property. Ms. Hunt stated both the County Attorney and Planning Director concurred these actions did not "trigger" the permitting requirements defined in the Lincoln County Wind Ordinance. Ms. Hunt discussed the purchase of equipment to qualify for the full Federal Tax Credit for 2016. Ms. Hunt stated Pattern was on a tight timeline to reach full commercial operation by 2020.

#### **14. 9:30 AM: PUBLIC COMMENT AND OTHER BUSINESS FROM COUNTY OFFICIALS**

Commissioner Stewart reported he continued to work with the Joint Land Use Study group on conflicting requirements for air space use. Commissioner Stewart introduced Adrian Johnson one of the leaders of the JLUS project who was present to hear the wind energy discussion.

Commissioner Draper reported on his attendance at a recent fund raising event associated with the construction of the new hospital where he provided comments on the bond question presented to voters and the plan for financing the new construction. Commissioner Draper also attend a Village of Ruidoso Council Meeting representing Lincoln County as a member of the CHANGE Committee for a discussion of opioid abuse.

Rhonda Burrows, Clerk reminded of the process and timeline for Elected Officials to select Lincoln County's member for the New Mexico Association of Counties Board of Directors.

Beverly Calaway, Treasurer reminded the second half of the 2016 Property Taxes were due on April 10, 2017 and were past due on May 10, 2017. Ms. Calaway stated as of March 31, 2017 the Treasurer's Office had collected seventy percent of the property taxes billed for 2016.

Ms. Calaway informed the NM State Property Tax Division set the Lincoln County delinquent property tax sale for June 8, 2017 in the County Commission Chambers. Ms. Calaway stated she received confirmation of approval of the intercept agreement to direct receipts from the Lincoln County Environmental Gross Receipts Tax directly to the New Mexico Finance Authority for Lincoln County's share of the Greentree Solid Waste Authority debt service.

Robert Shepperd, Sheriff recognized Deputy Jason Green who was injured in the line of duty on April 2, 2017. Sheriff Shepperd stated Deputy Green routinely exhibits dedication and enthusiasm for his duties. Sheriff Shepperd thanked Deputy Green for being a valuable asset to the Sheriff's Department and the citizens of Lincoln County.



Walter Hill, Assessor encourage the public to review the recently mailed property valuations and to contact the Assessor's Office with any questions or to apply for available exemptions.

Lynn Crawford, speaking as Vice President of Help End Abuse for Life (HEAL) which operates the NEST a domestic violence shelter in Ruidoso introduced the newly hired Executive Director, Gwen Kaitis and current Operations Manager, Sue Francis.

Gwen Kaitis, of HEAL expressed appreciation for her new position and commented on the importance of continuing to combat domestic violence in the community.

#### **10. Pattern Development Update - Laura Lee Hunt (continued)**

Commissioner Stewart stated support for the wind energy projects but noted there were competing demands for air space with local military operations. Commissioner Stewart reviewed sections of the Lincoln County Wind Ordinance and pointed out permit requirements to provide proof of efforts to inform and coordinate with the military.

Ms. Hunt commented on efforts to reach out to military installations, to acquire flight plan information, and to meet various agency permitting requirements.

Chair Stone inquired as to the required distance between the placements of wind towers.

Ms. Hunt stated there were no set standards for placement of wind towers and the distance is typically determined by environmental constraints, military restrictions, needs for maintenance space, and terrain. Ms. Hunt stated Pattern would provide final unit numbers and placement locations during the permit process.

Alan Morel, County Attorney questioned the proposed timeline for filing a permit as per the Lincoln County Wind Ordinance.

Ms. Hunt stated Pattern tentatively planned to begin the permit process in the first part of 2018 and there were no plans for additional "on the ground" activities until a permit was issued.

Attorney Morel informed Lincoln County was considering some revisions to the current Wind Ordinance and requested input from all stake holders and recommendations for changes.

Ms. Taylor questioned if Pattern Development had any current plans to acquire water for the construction phase of the project.

Ms. Hunt expressed belief a large quantity of water was needed once construction began and commented Pattern typically contracts with local landowners to purchase water. Ms. Hunt stated this was one of the "late stage development" questions still pending resolution.

#### **11. Clean Line Energy Partners, LLC – Presentation of the Development of "Mesa Canyon Wind Farms" – Keith Sparks**

Matt Desmond, Clean Line Energy Partners provided a brief overview of the company's Mesa Canyon Wind Farms project which extends into Lincoln County. Mr. Desmond stated his company was working with the South Corona Landowners Association to place a wind farm on approximately 125,000 acres.

Mr. Desmond stated Clean Line was known for building transmission lines which support renewable energy projects and they were building their own transmission line to transmit energy from their Mesa Canyon Wind Farm. Mr. Desmond stated Clean Line's new transmission line would start just north of Lincoln County in Torrance County and extend through several counties to the PNM Rio Puerco switching station in Rio Rancho. Mr. Desmond stated as per federal regulation their transmission line was an "open access" line allowing other companies such as Pattern Development to transmit on the line.

Commissioner Draper questioned if the Sun Zia Transmission line was also "open access".

Mr. Desmond expressed belief the Sun Zia Line was also an open access line but all available capacity was currently committed.

Chair Stone expressed concerns about the export of energy from Lincoln County.

Commissioner Willard questioned the estimated number of jobs the project would create.

Mr. Desmond stated Clean Line conducted an economic study in conjunction with New Mexico State and estimated the project would create approximately one hundred permanent jobs in the Corona area.

Brett Blanchard, Blanchard Corona Ranch stated they recently purchased a ranch in the Corona area but were unaware of the proposed installation of turbines on neighboring properties. Mr. Blanchard objected to the potential negative impact of the installations on neighboring property values. Mr. Blanchard requested Lincoln County require developers to provide maps of proposed turbine locations, provide copies of the associated land owner agreements, and assist current owners with appraisals re reflect the placement of wind turbines on property values.

Vivian Johnson, Dona Ana Member to the Joint Land Use Study (JLUS) questioned if the developers had mitigation plans regarding the impact on military airspace.

Ms. Hunt of Pattern stated currently they were conducting aviation studies and they would address those concerns later in the process.

David Stephens, resident of Lincoln County expressed concern about the long term detrimental effects on the aesthetic value and heritage of Lincoln County.

Leon Porter, Corona rancher provided a history of the landowners association which was formed in 2006 to market the area to wind farm developments. Mr. Porter stated as land owners they considered the potential impacts and long term effects of a wind farm project. Mr. Porter stated those involved in the project considered it a means to sustain their ranches for future generations.

Joe Kenmore, Director Office of Emergency Services raised questions regarding the emergency response needs for these types of facilities.

Myra Pancrazio, Executive Director for the Estancia Valley Economic Development Association stated she was present along with Betty Cabber, Torrance County Assessor to offer any assistance as Torrance County had worked through the application process with other development groups. Ms. Pancrazio discussed efforts to encourage local electric cooperatives to purchase energy from these local developments.

Ricky Huey, Corona landowner discussed the opportunity presented by the wind energy development to assist ranchers in retaining ownership of land through family generations.

Vice Chair Draper recessed the Regular Meeting at 10:33 and Chair Stone reconvened at 10:48 PM.

#### **15. Lincoln County Medical Center Update**

##### **a. Update of Design and Construction Activities/Timeline – Bobby George DPS**

Bobby George of Dekker/Perich/Sabatini Architects provided an update on the planning design including recommendations for changes from the original proposal. Mr. George stated recommendations included adding additional access points to the second story for staff, surgical patients, and obstetric patients. Mr. George also provided a proposed timeline of events including construction of the new Emergency Medical Services (EMS) facility; demolition of the current EMS buildings; construction of the new hospital; and eventual demolition of the old hospital to provide parking.

Mr. George noted the original plan was for a smaller second floor situated over a larger first floor which would impair views from the patient rooms. Mr. George stated after additional analysis a recommendation was made to stack the two floors to eliminate an extended first floor roof area and to move the Surgery Suite to the second floor for optimal proximity to the Obstetrics Department. Mr. George stated additional access points would provide for a drop off and pick up entrance for patients to enter the second floor directly for surgery or obstetrical services.

Mr. George discussed the previous recommendation for a Construction Manager at Risk contract to speed up the timeline for beginning actual construction. Mr. George stated after consultation with the Bureau Chief from the NM State Procurement Division they learned the Construction Manager at Risk process was available only for education facilities. Mr. George stated as this option was not available the timeline was revised to reflect the issuance of a competitive Request for Proposals (RFP) bid process. Mr. George noted the RFP process resulted in a timeline with increased risk and costs associated with beginning construction during the winter months. Mr. George commented on the 1% administrative fee associated with utilizing a CES process to obtain a Construction Manager at Risk. Mr. George commented on the costs associated with a

delay from utilizing the RFP process versus the cost of utilizing the CES process to obtain a contractor.

Commissioner Draper questioned if vacating El Paso Road was considered to improve access to the Professional Office Building from the main parking area after construction was complete.

Mr. George stated the option to vacate El Paso Road was considered but this would transfer the Village of Ruidoso's responsibility for maintenance of the multiple utility lines located beneath the road to Lincoln County.

b. **LCMC Foundation Capital Campaign: Consideration of Proposed Naming Opportunities – Todd Oberheu, LCMC Administrator**

Todd Oberheu, LCMC Administrator discussed a proposal to name particular areas within the new hospital after large contributors to the LCMC Foundation. Mr. Oberheu reminded the Foundation had pledged five million dollars towards the construction of the new hospital.

Attorney Morel informed Chris Muirhead, Bond Counsel for Lincoln County for the recent sale of General Obligation Bonds posed the question as to whether the sale of "naming rights" would jeopardize the tax exempt status of those bonds. Attorney Morel stated Mr. Muirhead was researching the question and suggested taking no action to approve naming rights pending Mr. Muirhead's response.

**12. Approval or Disapproval of Safety Net Care Pool and Indigent Health Care Claims**

Mr. Annala presented the Safety Net Care Provider Pool claims for approval. Mr. Annala processed 15 claims with 14 recommended for approval and 1 recommended for disapproval for a monthly authorization of \$20,763. Mr. Annala stated approval of the claims would result in a total approval of Safety Net Care Pool claims for Fiscal Year 2016-2017 to date of \$183,678 or a monthly average of \$18,368.

Mr. Annala presented the Indigent Health Care Payments request for the month. Mr. Annala processed 5 claims with 3 claims recommended for approval and 2 claim recommended for disapproval for a total payment this month of \$5,833.72. Mr. Annala stated approval of the claims would result in a total expenditure for Fiscal Year 2016-2017 to date of \$52,217 or a monthly average of \$5,222. Mr. Annala stated based on the current average he estimated expenditure of approximately \$62,660 of the \$100,000 budget.

**Motion:** Approval and denial of the claims as indicated for Indigent Health Care as recommended, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

**Vote:** Motion carried by unanimous vote (summary: Yes = 5).

**Yes:** Chair Stone, Commissioner Allen, Commissioner Draper, Commissioner Stewart, Commissioner Willard.

**SEE EXHIBIT B:** Copies of the Indigent Health Care Payments are attached hereto in reference thereto made a part hereof.

Chair Stone recessed the Regular Meeting at 11:58 AM.

Chair Stone convened the Public Hearing at 1:01 PM.

**22. 1:00 PM: Continuance of a Public Hearing to consider the following: Ordinance 2017-03 - Amending the ordinance regulating improper handling of fire and open burning; establishing powers of County Manager, Emergency Services Director/Coordinator and Peace Officers; establishing provisions for declaring severe fire hazard restrictions and fire danger emergencies and authority to mitigate; establishing penalties; providing for the severability of parts hereof; repealing ordinance 2011-02.**

**Motion:** Remove the item from the table, **Action:** Approve, **Moved by** Commissioner Draper, **Seconded by** Commissioner Willard.

**Vote:** Motion carried by unanimous roll call vote (summary: Yes = 5).

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

Attorney Morel discussed the primary focus of changes to include a definition of agricultural burning, a definition of agricultural land; to clarify burn restrictions associated with residential or

agricultural land, and to clarify enforcement authority. Attorney Morel discussed the new language restricting burning "from dawn to dusk" with an exemption for agricultural burns.

Attorney Morel discussed language changes to the enforcement section of the Ordinance. Attorney Morel noted there were a number of individuals identified who could restrict burning during critical fire conditions but new language was included to clarify only an authorized peace officer may issue a citation.

Attorney Morel stated Lincoln County currently had two different definitions of agricultural land. Attorney Morel informed the Assessor's Office considers land where there is at least one animal unit per sixty acres as agricultural land for assessment purposes while the Lincoln County Subdivision Ordinance defined agricultural land as thirty five acres or larger.

Attorney Morel stated the Board of Commissioners could apply either definition for purposes of identifying agricultural burns versus residential.

There was general consensus to define agricultural land as consisting of a minimum of thirty five acres for burn purposes.

Chair Stone objected to language granting authority to Volunteer Fire Department Chiefs to enter private land without a warrant for the purpose of determining whether a fire emergency exists.

Attorney Morel acknowledged the Ordinance as written did provide authority to non-County employees to access land to determine if an emergency exists. Attorney Morel stated the Fire Chiefs were included at the request of the Office of Emergency Services.

Spencer Baldwin, Coordinator Office of Emergency Services stated he requested the addition of local Fire Chiefs to the list of individuals authorized because the Office of Emergency Services staff were not always available in every area of the County. Mr. Baldwin stated County Fire Chiefs have a due regard to respond to any fire reported and may need access to private property to determine whether a fire presented a danger to the health, safety and welfare of other people's property or lives.

Chair Stone maintained any uncontrolled burn would initiate a call to dispatch and based on that request for assistance any responder would have authority to access and suppress the fire.

Mr. Baldwin concurred but maintained this language was included as a result of several incidents in the past where a homeowner denied entry to his property to assess the threat to other people's property and lives.

Commissioner Allen noted language was included which required any responder to make a "reasonable attempt to contact the property owner".

Sheriff Robert Sheppard reminded once a call was received by dispatch Lincoln County had a duty to respond and suggested the issue was more likely related to a responder entering private property after siting a fire but prior to any call being received by dispatch. Sheriff Sheppard stated Lincoln County incurred liability if they did not respond to a fire but also could incur liability if they trespassed on private property.

After a general discussion, Attorney Morel suggested retaining the language as written but also conduct a training for Volunteer Fire Chiefs about the appropriate response on private property.

23. **1:30 PM: Public Hearing to consider the Appeal of Isidro Molina of an adverse decision of the Lincoln Historic Preservation Board on February 16, 2017 denying appellant for a variance on his gate within the Lincoln Historic Preservation District. The Board of County Commissioner's decision shall be the final administrative appeal.**

Attorney Morel informed there was a possible settlement of the appeal with the Lincoln Historic Preservation Board and therefore the public hearing was not required. Attorney Morel stated should the appeal move forward the County would reset and republish the Public Hearing.

22. **1:00 PM: Continuance of a Public Hearing to consider the following: Ordinance 2017-03 - Amending the ordinance regulating improper handling of fire and open burning; establishing powers of County Manager, Emergency Services Director/Coordinator and Peace Officers; establishing provisions for declaring severe fire hazard restrictions and fire danger emergencies and authority to**

mitigate; establishing penalties; providing for the severability of parts hereof; repealing ordinance 2011-02. (continued)

Attorney Morel reviewed other minor language changes to the Ordinance including a recommend change of language from "home" to "property owner".

Chair Stone requested public comment and receiving none adjourned the Public Hearing and reconvened the Regular Meeting at 1:30 PM.

**Motion:** Adopt Ordinance 2017-03 as amended in the discussion, **Action:** Approve, **Moved by** Commissioner Willard, **Seconded by** Commissioner Allen.

**Vote:** Motion carried by unanimous roll call vote (summary: Yes = 5).

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

**SEE EXHIBIT C:** Copy of Ordinance 2017-03 is attached hereto in reference thereto made a part hereof.

#### 16. Lincoln County Detention Center Discussion

Ms. Taylor reminded of the prior communication from Emerald informing they were ceasing operations and necessitating the Emergency Meeting of April 7, 2017. Ms. Taylor reminded of direction from the Board of County Commissioners to take action to ensure current Emerald employees would continue to receive salary and benefits; immediately issue a Request for Proposals (RFP) for operation of the Lincoln County Detention Center; hold Emerald in default of their agreement with Lincoln County; and research the possibility of assigning the contract to LaSalle Corrections.

Ms. Taylor stated after the meeting of April 7, 2017, Emerald leadership contacted Lincoln County and stated they would continue operation of the Detention Center for the near future. Ms. Taylor stated based on current discussions it was unclear what length of time Emerald would continue to operate the facility.

Ms. Taylor informed the process to assume the employee salary and benefits was researched and the RFP was issued. Ms. Taylor stated Attorney Morel sent a formal Notice of Default of Emerald's agreement with Lincoln County.

Warden Anderson reported he was out of the State of New Mexico when he received the initial notification from Emerald. Warden Anderson thanked the Board of County Commissioners for their consideration and support for the Detention Center staff. Warden Anderson stated he had not had any prior indication from Emerald as to their plans or whether they would transfer the agreement to another company.

Commissioner Draper questioned Warden Anderson about LaSalle Corrections.

Warden Anderson stated he personally knew two of the company members and expressed belief they were a good company. Warden Anderson also expressed belief operating the Lincoln County Detention Center was a profitable venture.

Commissioner Willard questioned if there was any additional communication from Emerald since the notification they would continue operations.

Attorney Morel informed Hal Youngblood, Counsel for Emerald had indicated Emerald would continue to operate the Detention Center until the end of the month. Attorney Morel stated Emerald also agreed to supply a copy of the proposed assignment agreement for review but had not yet done so. Attorney Morel stated belief it was likely a lapse in outside management would occur between Emerald's departure and the award of the ongoing contract by RFP if there was not an opportunity to assign the contract.

Commissioner Stewart noted Emerald would continue to be in default if they withdrew now or at the end of the month.

Commissioner Draper questioned if LaSalle assumed the Detention Center through assignment by agreement would that preclude the company from responding to the RFP.

Attorney Morel stated if LaSalle received an assignment of the contract pending the award of the RFP this would not preclude them from responding to the RFP.



**13. Approval of Lodger's Tax Application with backup material:**

- a. Purpose: Ski Run Road Challenge  
Request: \$ 4,300  
Date(s) of Event: July 29, 2017  
Presenter: Frederic Moras/ Ruidoso Grindstone Trail Runs  
**Lodgers Approved: \$ 4,300.00**  
Application No.: 0030

**Motion:** Approve Application No. 0030 for \$4,300, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

**Vote:** Motion carried by unanimous vote (summary: Yes = 5).

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

**6. Approval of Minutes**

- f. March 21, 2017 – Regular Commission Meeting
- g. April 7, 2017 – Emergency Commission Meeting

**Motion:** Remove the item from the table, **Action:** Approve, **Moved by** Chair Stone, **Seconded by** Commissioner Stewart.

**Vote:** Motion carried by unanimous vote (summary: Yes = 5).

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

Rhonda Burrows, Clerk stated after a review of the record there was an agreement on a minor language change to amend the March 21, 2017 Regular Commission Meeting Minutes.

**Restated and Amended Motion:** Approve the minutes of the March 21, 2017 Regular Meeting as amended and the minutes of the April 7, 2017 Special Meeting; **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

**Vote:** Motion carried by unanimous vote (summary: Yes = 5).

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

**25. Approval of Bid 16-17-006 Deep Asphalt Pavement Patching on Gavilan Canyon Road**

Ms. Taylor detailed the bids received and opened on April 12, 2017 for Bid 16-17-006 as follows:

New Mexico Underground of Albuquerque, NM	\$237,800
Renegade Construction of Fairacres, NM	\$222,000
Constructors, Inc. of Carlsbad, NM	\$151,360

**Motion:** Award Bid 16-17-006 to Constructors, Inc for \$151,360, **Action:** Approve, **Moved by** Commissioner Draper, **Seconded by** Commissioner Allen.

**Vote:** Motion carried by unanimous vote (summary: Yes = 5).

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

Chair Stone recessed the Regular Meeting and convened the Public Hearing to consider the Appeal of Denial of Re-plant at 2:00 PM.

**24. 2:00 PM: Public Hearing to consider the Appeal of Denial of the Re-plant by Family Exemption of Tract 2B-1 of the Nicolette Miner Tracts within Lincoln County, New Mexico**

Attorney Morel acknowledge he knew and previously represented the appellants, Tim and Kathy Hoyt, but they were not currently clients of his firm.

Attorney Morel stated the purpose of the public hearing was to hear an appeal of the denial for a family claim of exemption which would provide for a split of a tract located within the Nicolette Miner Tracts. Attorney Morel stated in addition to existing storage units the owners were constructing a home on the tract in question.

Attorney Morel stated as per Section 4.6 of the current Lincoln County Subdivision Ordinance 2013-02 the Lincoln County Planning Director denied the request which resulted in the appeal.



Rhonda Burrows, Clerk swore in all individuals present who wished to offer testimony.

Curt Temple, Planning Director directed attention to the plat presented for the claim of exemption by Mr. and Mrs. Hoyt and noted the tract referenced was within a previously approved "summary subdivision". Mr. Temple stated the request was to split the tract to separate the commercial storage units and the private residence into two separate tracts. Mr. Temple noted Section 4.6 of LC Ordinance 2013-02 prohibited the split of tracts in a previously approved subdivision and stated this was the basis of his denial.

Commissioner Willard noted the language referenced stated "no lot split or re-subdivision of a previously approved subdivision which increases the number of parcels shall be allowed".

Mr. Temple pointed out the original subdivision plat for the Nicolette Miner Tracts also contained a disclaimer stating no tracts may be re-subdivided.

Attorney Morel questioned Mr. Temple if the original Nicolette Miner Tract Subdivision was approved as a subdivision or created under a claim of exemption.

Mr. Temple stated the Nicolette Miner Tract Subdivision was approved as a summary subdivision in 2005.

Attorney Morel questioned Mr. Temple if the split were approved would the well and septic tank remain within the tract housing the commercial storage units or within the tract containing the newly constructed home.

Mr. Temple stated belief the owners currently accessed a shared septic system utilizing a lift system and a shared water well.

Attorney Morel questioned Mr. Temple whether the State of New Mexico had approved the use of a shared well or the use of a septic system for two separate tracts.

Mr. Temple stated he did not know if the State had approved either the septic system or the well arrangements.

Attorney Morel questioned Mr. Temple if he had ever approved a lot split within a previously approved subdivision.

Mr. Temple stated belief he had approved a split within a previously approved subdivision.

Attorney Morel questioned if the approvals where prior to the changes to the Subdivision Ordinance in 2013.

Mr. Temple stated belief there were a "couple" which were approved prior to the changes in 2013.

Attorney Morel questioned if the restriction on splitting lots was contained in the Ordinance prior to 2013.

Mr. Temple stated the language restricting splits in previously approved subdivisions was referenced in the 2008 Subdivision Ordinance.

Attorney Morel questioned if Mr. Temple had previously denied any other requests to split lots in a previously approved subdivision.

Mr. Temple stated he had denied a request from another surveyor which would have increased the number of splits in a subdivision.

Attorney Morel reminded the Appellants they had a right to cross examine Mr. Temple.

Eric Collins, D.T. Collins and Associates acting as agent and surveyor for Mr. and Mrs. Hoyt questioned if Mr. Temple had approved any splits in previously approved subdivisions since the last amendment of the subdivision act.

Mr. Temple stated he had erroneously approved some splits.

Appellant Tim Hoyt stated he currently owned the tract which contained storage units and on which they were building a home. Mr. Hoyt stated he requested the split to remove the residential area from the commercial as this affected financing and insurance. Mr. Hoyt stated he also

wished to obtain a separate 911 address for the residence. Mr. Hoyt stated the current address for the tract was 276 State Highway 220 but the residence was only accessible from Alto Pines Trail. Mr. Hoyt stated they began the process with the belief they would qualify for a family exemption; had paid the taxes current, and obtained the necessary plat signatures.

Chair Stone questioned Mr. Hoyt if he was aware of the restrictive language on the original subdivision plat.

Mr. Hoyt stated he was not aware of the language on the original plat.

Commissioner Willard questioned if there was a water well on the tract.

Mr. Hoyt clarified the well was located on Tract 2A owned by Van Patton with whom they had a shared well agreement and a defined easement.

Mr. Collins informed there were only two lots in the current subdivision and a split would not change the type of subdivision as defined in the LC Subdivision Ordinance. Mr. Collins asserted the problem was one of semantics and noted the thirteen claims of exemption identified contained specific language. Mr. Collins noted the exemption to provide a split every five years was the only one which contained language prohibiting a split in approved subdivisions. Mr. Collins also stated belief the identification of an "exemption" in and of itself exempts the action from the NM Subdivision Statutes and therefore the Lincoln County Subdivision. Mr. Collins stated belief similar exemptions were granted under similar circumstance in other areas.

Commissioner Stewart questioned what exemption was utilized to change the orientation of the lots.

Mr. Collins explained this action was performed under a claim of exemption which provided for the moving of lot lines as long as they are contiguous.

Mr. Temple reminded the decision to deny the request for re-plat was also based on legal analysis provided by Attorney Morel related to property splits. Mr. Temple stated belief the restriction was included in Lincoln County's Subdivision Ordinance to limit any increase in the number of lots in a particular subdivision and the potential water wells associated with those lots. Mr. Temple discussed the abuse of the family exemption to split parcels inappropriately.

Mr. Collins stated agreement as to the abuse of family exemptions, but noted the restrictive covenants of newer subdivisions prohibit lot splits. Mr. Collins stated Mr. and Mrs. Hoyt had consulted with the only other owner in the summary subdivision and he had no objection to the split.

Mr. Collins restated his argument that the creation of exemptions in of themselves created exemptions from the Subdivision Ordinance. Mr. Collins stated claims of exemption were intended to address simple situations. Mr. Collins suggested Lincoln County revisit the Subdivision Ordinance and provide a process within summary subdivisions to accommodate these needs.

Attorney Morel identified Lincoln County's exhibits as Mr. Temple's Memorandum dated April 10, 2017 containing a copy of the claim of exemption which was denied; Exhibit A identified as the original Nicolette Miner Tract Subdivision plat; Exhibit B identified as a lot line exemption within the same subdivision; Exhibit C identified as the Attorney Opinion prepared by Mr. Morel dated February 23, 2017; Appellants Exhibit 1 identified as the plat prepared by Mr. Collins for the claim of exemption request for a lot split; and Mr. Collins' letter requesting an appeal of the denial.

Mr. Collins questioned if the opinion provided by Attorney Morel was in direct response to this request for a claim of exemption noting a reference in the letter to a potential change in the subdivision type should the exemption be granted.

Mr. Morel stated the legal analysis provided was relevant to the question as to lot splits within in a previous subdivision and acknowledged there was not an assertion the exemption would change the type of subdivision.

Chair Stone requested further comment and hearing none adjourned the Public Hearing and reconvened the Regular Meeting at 2:47 PM.

Attorney Morel opined there was a rational reason for local governments to restrict the further subdivision of lots within an existing subdivision which could affect the type of subdivision and associated requirements. Attorney Morel stated when an entity such as Lincoln County had an

adopted Land Use Plan, State Statute allowed that entity to be more restrictive than the State Statute including the claims of exemption. Mr. Morel expressed belief current law supported the denial and suggested if appropriate Lincoln County could consider amending the Subdivision Ordinance.

Attorney Morel stated he would prepare Findings of Fact and Conclusions of Law. Mr. Morel reminded pursuant to the Lincoln County Subdivision Ordinance 2013-2 the appellants would have thirty days to appeal any decision to District Court.

**Motion:** Reverse the denial based on the NM Subdivision Act and the Lincoln County Subdivision Ordinance provisions for a division of land for an immediate family member, **Action:** Approve, **Moved by** Commissioner Willard, **Seconded by** Commissioner Draper.

**Vote:** Motion failed by roll call vote (summary: Yes = 2, No = 3, Abstain = 0).

**Yes:** Commissioner Draper, Commissioner Willard.

**No:** Chair Stone, Commissioner Stewart, Commissioner Allen.

**SEE EXHIBIT D:** Copies of the Board of County Commissioner's Exhibits and Appellant's Exhibits are attached hereto in reference thereto made a part hereof.

**18. Status of Evaluation of Road Damage Identified in DHSEM Sub-Grants FEMA-4197-DR-NM and FEMA-4199-DR-NM**

Ms. Taylor reminded of the prior award of FEMA funding for road damage incurred during rain events in 2014 and 2015. Ms. Taylor stated Lincoln County received advanced funds in the amounts of \$1,792,312 and \$2,491,885 for repair expenses. Ms. Taylor stated Lincoln County had set aside matching funds for the projects in the amount of \$646,423. Ms. Taylor also reminded during the March Regular Meeting the Board of County Commissioners granted the Road Superintendents' request to review each of the roads identified to determine current conditions and provide a recommendation as to whether the repairs were still needed.

Jeff Honeycutt, Road Superintendent stated he reviewed approximately twenty seven of the roads listed for the projects but noted he had no mechanism to compare the current condition of the roads to the post rain event conditions of 2014 and 2015. Mr. Honeycutt stated belief the damage from 2014 and 2015 did not currently exist although the roads continue to need routine maintenance.

Ms. Taylor stated she spoke with the New Mexico Department of Homeland Security and Emergency Management (DHSEM) and confirmed Lincoln County could de-obligate the FEMA funding in total. Ms. Taylor stated DHSEM reminded if the funds were returned, Lincoln County could not reapply for FEMA funding should the roads incur further damage.

Commissioner Stewart stated understanding the use of FEMA funds was limited to returning roads to their original condition.

Commissioner Draper questioned if King Industries assisted with the development of the FEMA funding grants.

Ms. Taylor stated King Industries was paid to conduct the initial evaluation of the roads and to work with FEMA to determine the level of damage.

Commissioner Willard questioned what Lincoln County had spent on the two projects to date.

Sherri Huddleston, Chief Deputy Treasurer informed the only payments issued to date by Lincoln County related to these particular projects were those made to King Industries.

**Motion:** Return advance funding for FEMA 4197-DR-NM and FEMA 4199-DR-NM and de-obligate all funds associated with the grants, **Action:** Approve, **Moved by** Commissioner Willard, **Seconded by** Commissioner Stewart.

Commissioner Draper questioned if the return of the FEMA funds would affect Lincoln County's budget or any other financial matters.

Beverly Calaway, Treasurer reminded the funds were held in an independent non-interest bearing account separate from other Lincoln County funds and expressed belief there were no budget implications associated with returning the FEMA funding.

**Vote:** Motion carried by unanimous vote (summary: Yes = 5).

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

Chair Stone recessed the Regular Meeting at 3:05 PM and reconvened at 3:16 PM.

**17. FEMA-4047-DR-NM and FEMA DR-4079-DR-NM: Status of NM Department of Homeland Security and Emergency Management (DHSEM) Reconsideration of Disapproval of all Task Orders and Related Expenses**

Ms. Taylor informed pursuant to direction received during the March Regular Meeting she submitted an appeal of the denial of all Task Orders issued for FEMA-4047-DR-NM and FEMA DR-4079-DR-NM. Ms. Taylor stated she subsequently received a detailed analysis of the reconsideration of the denied task orders from DHSEM Preparedness Bureau Chief Susan Walker on March 31, 2017.

Ms. Taylor stated the task orders submitted were for work completed, invoiced and paid by Lincoln County amounting to \$81,728.25. Ms. Taylor stated after reconsideration DHSEM determined \$57,256.17 of the total amount was eligible for the 75% reimbursement rate or \$42,942.15.

Ms. Taylor discussed the timeline of events and stated of the 692 hours of work billed, 200 were deemed ineligible by DHSEM due to the work being performed prior to formal approval by that department.

Ms. Taylor discussed the next steps required to begin and complete the thinning project. Ms. Taylor stated the first step was to complete the Environmental Assessment by August 30, 2017 at a total cost of \$85,020 requiring a Lincoln County match of \$21,255. Ms. Taylor stated after the thinning work itself was estimated to cost \$2,635,404 requiring a match of \$658,851 with a completion date of December 15, 2018. Ms. Taylor stated the scope of the work would necessitate the issuance of a Request for Proposals for thinning of approximately 983 acres on 33 private properties.

Curt Temple, Planning Director discussed the education and outreach efforts conducted after the Little Bear Fire and reminded the proposed project was to mitigate potential damage from future fires particularly near populated areas.

There was discussion regarding Lincoln County's financial obligation to FEMA, the County's obligation to individual landowners, the lack of a land owner contribution, returning pledged matching funds to the general budget, and the fire mitigation benefits of the thinning project.

**Motion:** Declare the DHSEM reconsideration as accurate and direct the County Manager to seek the appropriate reimbursement of funds, **Action:** Approve, **Moved by** Commissioner Willard, **Seconded by** Commissioner Draper.

**Vote:** Motion carried by unanimous vote (summary: Yes = 5).

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

**Motion:** Once reimbursement is received move forward with the project as planned, **Action:** Approve, **Moved by** Commissioner Willard, **None seconded.**

**Motion died for lack of second.**

**Motion:** Suspend action on the project and discontinue the Environmental Assessment work, **Action:** Approve, **Moved by** Commissioner Willard, **Seconded by** Commissioner Allen.

Ms. Taylor reminded of the required thirty day notice for termination of the contract for Environmental Services and noted Lincoln County would owe for services provided.

**Vote:** Motion carried by unanimous vote (summary: Yes = 5).

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

**19. Request for Change in Scope for Road Department Funds Approved During FY16-17 Budget Hearing**

Ms. Taylor reminded of prior approval in the Fiscal Year 2016 – 2017 Road Department budget to purchase three four wheel drive crew cab diesel pick-up trucks for \$119,625.

Jeff Honeycutt, Road Superintendent requested approval to purchase three extended cab gas pickup trucks and one extended cab diesel pickup for a cost of \$111,094 not including safety lights and grill guard.

**Motion:** Approve Road Department request to purchase four extended cab pick-up trucks,  
**Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

**Vote:** Motion carried by unanimous vote (summary: Yes = 5).

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

## 20. Manager's Report

**Budget Preparation:** The Manager, Finance Director, Finance Officer, Treasurer and Chief Deputy Treasurer met with County Elected Officials, Directors and Fire Department Chiefs to work through individual department budget forecasts. As always, the preliminary budget is a "bottoms-up" view, rather than a "top-down" view, with each elected official and department head taking responsibility for developing their conservative budgets and forecasts. Once the documents are reviewed for accuracy and reasonableness staff will present them for consideration during the Preliminary Budget Hearing on May 2, 2017.

**Intercept Agreement:** The Manager received notification from the New Mexico Finance Authority notifying the intercept of the Lincoln County Environment Services Gross Receipts Tax revenues would begin this month. The Manager provided copies of the fully executed Intercept Agreement and the fully executed Intercept Agreements for Capitán, Carrizozo, Corona and Ruidoso Downs. The Manager stated NMFA also provided copies of all agreements to the Greentree Solid Waste Authority.

**The Town of Carrizozo Selected to Receive Planning Assistance through USDA's Cool and Connected Program:** The Manager reported the program provides a team of experts to assist the Town of Carrizozo with strategies to create economically vibrant commercial areas and resident friendly neighborhoods. The Manager reported Carrizozo's immediate goal was to establish public Wi-Fi availability in the recently designated Carrizozo Commercial Historic District. County Commissioners were invited to participate in a special VIP Community Luncheon on April 18, 2017 to kick off the event. The Manager stated other rural communities selected for the program included Lakeville, Indiana; George West, Texas; Clarksville, Arkansas and Edenton, North Carolina.

**Meeting with NMAC Multi-Line Pool Board and NM-DOT Regarding Repair of Bridge on Alamo Canyon Rd:** The Manager and Road Superintendent Honeycutt met with New Mexico Association of Counties (NMAC) Claims Examiner and Attorney along with the NM Department of Transportation (DOT) Bureau Chief and DOT Engineers on March 31, 2017. The Manager stated early correspondence between Lincoln County and DOT considered having the Lincoln County Road Department take the lead and responsibility for repair work with specialty inspections to assure compliance with specifications detailed by the DOT Bridge Engineer. The Manager stated NMAC overruled the proposed process with a preference to receive and pay the claim directly. The estimated cost of the bridge repair was \$197,500 and Lincoln County's deductible for the event is \$2,500.

**Solid Waste Matters:** Van Patton of Sierra Contracting reminded their contact with Lincoln County allows for 1,000 cubic yards of non-household waste disposal by residents. Mr. Patton provided information that as of March 31, 2017 Sierra had collected 225 cubic yards or nearly 25% of the annual allowance. Mr. Patton anticipated due to the upcoming tourist season that this type of disposal would significantly exceed the current allowance. The Manager stated current contractual terms require Lincoln County to pay Sierra's standard rate of \$22.00 per cubic yard once the disposal of this material exceeds the 1,000 cubic yard allowance. Mr. Patton agreed to develop some alternative pricing plans for consideration during the upcoming budget process.

The Manager stated the previously discussed Solar Workshop was tentatively set for May 5, 2017 and current participants included Jim Miller, PhD, OCE; Stirling Spencer; and Affordable Solar. The Manager also reminded the New Mexico Association of Counties would hold a Legislative District Meeting here in Carrizozo on April 27, 2017.

### Department Head Updates:

**Renee Montes, Senior Services Director** informed the Carrizozo Senior Center hosted a presentation with a number of veteran service representatives to provide information



and services for local veterans. Ms. Montes stated the department was working to develop updated policies for equipment maintenance and vehicle usage policy. Ms. Montes stated she would attend a Long Term Aging and Services Advisory Council meeting in Santa Fe to discuss potential NM State budget cuts and review available Federal funding sources for senior services.

Commissioner Willard reminded of several Community Development Block Grant (CDBG) public meetings to identify projects eligible for CDBG funding including meetings in Hondo, Capitan and Carrizozo.

**Joe Kenmore, Director Office of Emergency Services (OES)** stated he serves on the Title V Board at Eastern New Mexico University – Ruidoso to assist with development of opportunities for wildfire and structure fire training in addition to Emergency Medical Technician training. Mr. Kenmore stated OES held a meeting with the Volunteer Fire Chiefs attended by Ken Roberts the Assistant Fire Marshall for the Bureau of Land Management. Mr. Kenmore stated additionally OES participated in a simulation exercise at the Ruidoso Airport in conjunction with multiple entities. Mr. Kenmore point out the Bonito Fire Department was the closest responder to the facility. Mr. Kenmore thanked Rodney Zamora, mapper for the Assessor's Office for his assistance in creating maps to help identify some of the more obscure road access points south of Highway 70 and north of State Road 246.

**Billie Jo Guevara, Administrative Assistance and Human Resources Director** reported on good employee participation for recent Ergonomics and Sexual Harassment trainings. Ms. Guevara stated a Defensive Driving course was scheduled in April for those employees due for the refresher course.

**Curt Temple, Planning Director** stated plans to assist the Lincoln Historic District with a "Cool and Collected" grant application. Mr. Temple stated the grant would provide public wireless internet access in Lincoln and access to additional resources and information about the historic site. Mr. Temple reported he recently attended a New Mexico Floodplain Manager workshop for continuing education credits to maintain his certification. Mr. Temple stated he was also working with the Manager on the new Emergency Services and new hospital building projects. Mr. Temple reported electricity was installed at the Lower Eagle Creek compactor site and the site needed only gravel and a concrete slab prior to final placement.

**Jeff Honeycutt, Road Superintendent** stated the change in project plans for the Alamo Canyon Bridge may result in a delay which could impact local residents. Mr. Honeycutt stated the department was close to finalizing a road maintenance agreement with the Lincoln National Forest. Mr. Honeycutt stated the agreement would mirror the current agreement with the Cibola Forest including reimbursement of \$250 per mile for maintenance on eight seven miles of roads within the National Forest. Mr. Honeycutt stated agreements were also being developed for work in the Jicarilla and for the provision of materials for Ranchman's Camp Road.

Chair Stone questioned the status of plans to pave the parking lot at New Horizon's.

Mr. Honeycutt stated he had received one quote for approximately \$30,000 to \$33,000 with plans to seek an additional quote.

Commissioner Draper questioned if the agreement for road maintenance with the Lincoln National Forest included maintenance on Cora Dutton Road.

Mr. Honeycutt stated the current agreement did not but informed both the Cibola and Lincoln agreements were subject to renegotiation next year.

## **21. Preliminary Requirements for Community Development Block Grant Application**

Ms. Taylor reminded since the CDBG partially funded project to build the new Carrizozo Senior Center was completed Lincoln County could now apply for another grant. Ms. Taylor reminded any project selected must meet the "Low to Moderate Income" or LMI standard. Ms. Taylor stated Dora Batista from the Southeastern New Mexico Economic Development District identified two projects which would likely meet the LMI standard including improvements to the Hondo Senior Center or improvements to the Carrizozo Health Center. Ms. Taylor noted public hearings to consider projects were scheduled in the next two weeks and the grant application deadline was June 23, 2017.



Commissioner Allen questioned the potential scope of the project.

Ms. Taylor stated the ultimate scope could depend on whether Lincoln County wanted to provide additional funding over and above the maximum grant amount of \$500,000.

There was consensus to support a CDBG application for improvements to the Hondo Senior Center.

The Manager stated she would obtain a cost estimate and bring the matter back for final approval.

**26. Consideration of Appointments and Removals from Boards or Commissioner's Committees:**

**a. Lincoln Historic Preservation Board**

**Motion:** Appoint Katherine Marsh as the District 1 Member for the Lincoln Historic Preservation Board, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.  
**Vote:** Motion carried by unanimous vote (summary: Yes = 5).  
**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

**27. Authorization to Schedule Public Hearing to Consider Other Outdated or New Lincoln County Ordinance:**

**a. Notice of Special Meeting and Public Hearing for May 2, 2017**

**b. Adoption of the 2017-2018 Preliminary Budget May 16, 2017**

**Motion:** Schedule Public Hearings for consideration of the Preliminary Budget for May 2, 2017 and May 16, 2017, **Action:** Approve, **Moved by** Commissioner Allen, **Seconded by** Commissioner Draper.

**Vote:** Motion carried by unanimous vote (summary: Yes = 5).

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

**28. Executive Session Pursuant to the Open Meetings Act: Discussion of Limited Personnel Matters, Section 10-15-1, Sub paragraph H. (2) Evaluation, County Manager, Nita Taylor; Discussion of all Threatened and/or Pending Litigation Section 10-15-1, Sub-Paragraph H. (7); and Discussion of the purchase, acquisition or disposal of real property or water rights by the public body, Section 10-15-1, Sub-Paragraph H. (8).**

**Motion:** To close the meeting for the purposes of an Executive Session to discuss Threatened and/or Pending Litigation Section 10-15-1, Subparagraph H. (7); Discussion of Limited Personnel Matters, Section 10-15-1 Subparagraph H. (2) Evaluation County Manager, Nita Taylor; and Discussion of the purchase, acquisition or disposal of real property or water rights by the public body, Section 10-15-1, Sub-Paragraph H. (8),

**New or Updated Matters since last report \***

**1. Water Rights Protests: New Mexico State Engineer Hearing Unit Numbers: 14-039 and 14-041.** Protests of Applications 01300-1, 01300-2, 01300-3, 0826-2 into 0275 *et. al.* and H-272 *et al* (T) and H-50-1 into H-272 *et. al.* (T) filed July 15, 2013 pertaining to movement / transfer of water rights from the Hondo Valley to the Village of Ruidoso and the City of Ruidoso Downs. Docketing Order filed Sept. 18, 2014. Kelly Cassels/Sanders, Bruin, Coll & Worley, P.A. has been retained by the County, entered his appearance Sept. 22, 2014 and has responded in behalf of the County.

**\*14-014 and 14-018:** Protest of application of the Village of Ruidoso and George P. and Margaret Tune to change point of diversion of the Rio Ruidoso filed November 17, 2014 by Jackie Powell.

**2. A. Preston, DeAnna v. County of Lincoln, Sheriff Robert Shepperd, Et. Seq. D-1226-CV-2015-00112** Notice of Appeal of Post Disciplinary Hearing filed June 10, 2015. Amended Complaint alleging Civil Rights Violation and Gender Based Discrimination filed on Oct. 13, 2015. Removed to Federal Court Nov. 12, 2015. Amended Complaint Appealing the Adverse Administrative Decision filed May 9, 2016 by Mr. Beauvais. Defendant's Notice of Filing Petition for Removal to Federal Court was filed May 19, 2016.

**B. Preston, DeAnna v. County of Lincoln, Sheriff Robert Shepperd, Et Seq in the United States District Court For The District of New Mexico 2:15-cv-01029 / 2:16-cv-00459**

Defendants County of Lincoln and Sheriff Robert Shepperd's Motion to Dismiss entered November 19, 2015. Order Dismissing Without Prejudice entered by Judge Stephan Vidmar April 19, 2016. Amended Complaint Civil Rights Violation filed May 6, 2016 by Mr. Beauvais. Defendant's Motion for Summary Judgment and Qualified Immunity filed November 17, 2016. Plaintiff's Response to Defendant's Motion for Summary Judgment and Qualified Immunity was filed December 12, 2016. Defendant's Reply in Support of their Motion for Summary Judgment and Qualified Immunity in 2:15-cv-01029 was filed January 6, 2017. Motion for Summary Judgment in 2:16-cv-00459 was filed February 13, 2017.

3. **Orlando Montes v. Pinnacle Propane, LLC, Allen Sultemeier, County of Lincoln, Lincoln County Fair Association, John Does; D-1226-CV-2016-00006 United States District Court for the District of New Mexico 2:16-cv-126.** Complaint for Wrongful Death, Statutory Tort, Violation of Constitutional Rights (Due Process), Negligence Per Se: Loss of Consortium, Negligent Infliction of Emotional Distress filed with the 12<sup>th</sup> Judicial District Court Jan. 19, 2016. Incident occurred at Lincoln County Fairgrounds July 2, 2015. County was served with Complaint on January 25, 2016. The case was removed to Federal Court Feb. 22, 2016. County of Lincoln's Answer to Complaint filed February 29, 2016. County's Response to Plaintiff's Motion for Partial Summary Judgment filed July 28, 2016. Estate of Montes and Orlando Montes' Response to County of Lincoln's Motion to Stay Discovery filed August 8, 2016. Settlement Conference took place September 6, 2016. The case did not settle. Motion to Dismiss was denied November 22, 2016. Memorandum and Opinion was filed February 3, 2017 in which Judge Herrera granted the Motion to Dismiss in part, while declining to rule on State issues.

4. **Brian Ray Seidel, Brenda Le Seidel, Walter Ray Seidel, Jr. v. Anthony Manfredi, Lincoln County Sheriff's Department, 5 John and Jane Does D-1226-CV-2017-00025** Civil Complaint for Damages filed January 30, 2017. A Request for Hearing on Motion to Dismiss and Memorandum in Support of Motion to Dismiss was filed March 6, 2017.

5. **Sean McGarry v. Board of County Commissioners, Lincoln County Sheriff's Department, Deputy Mike Wood, Deputy Jason Green, Deputy David Hightower in their individual capacities and as employees of the Lincoln County Sheriff's Department in the United States District Court for the District of New Mexico 2:16-cv-00483 GBW GJF** Complaint for damages resulting from the excessive use of force, false arrest, assault and battery, malicious prosecution and false imprisonment of Plaintiff by Defendants. Complaint filed May 26, 2016. Defendants Board of County Commissioners for Lincoln County and Lincoln County Sheriff's Department's Answer to Complaint for Civil Rights Violations filed August 11, 2016. Stipulated Order Extending Pre-Trial Deadlines and Briefing Schedule filed February 22, 2017 setting Motions Hearing for December 7, 2017, Pre Trial Conference January 5, 2018 and Jury Selection / Trial January 16, 2018.

6. **USA v. Dickerson, David, Lincoln County, et. al. 1:16-cv-00206-BL** Complaint to Reduce to Judgment the Outstanding Joint Federal Income Tax Liabilities filed Nov. 23, 2016 and was received Dec. 1, 2016 at the Lincoln County Treasurer's office. The County Commission approved a Stipulation and Request for Order Regarding Lien Priority of Lincoln County at their regularly scheduled meeting January 10, 2017. United States' Unopposed Motion to Amend its Complaint was filed January 26, 2017.

7. **\*County of Lincoln v. Zia Natural Gas Company: NMPRC No. 17-00041-UT** Formal Complaint re: Bogle Road Gas Line: Requesting that Zia be ordered to take whatever action is necessary to lower or move its pipeline to a depth or location that will allow the County to maintain its road and bar ditches. Notice of Formal Complaint and Order Requesting Answer was filed by the New Mexico Public Regulation Commission March 24, 2017, giving Zia Natural Gas 20 days from service of Notice to respond.

**Lincoln County Ordinance Violations:**  
**Alan P. Morel: 12<sup>th</sup> Judicial District Attorney's Office**  
**Special Prosecutor**

8. **State of NM v. Romero, Roger M-30-MR-2016-00142** Violation of County Ordinance 2016-02 Accumulation of waste and litter on private property. A Non-Traffic Citation was issued by Sheriff's Deputy Evans on December 9, 2016. The Defendant appeared before Judge Vega December 23, 2016 and entered a plea of "Not Guilty." Case was not resolved at a Pre-Trial Hearing on January 24, 2017. A Final Pre-Trial Hearing is scheduled for May 9, 2017, 9 a.m. and a Jury Trial is scheduled for May 24, 2017, 8:30 a.m.

9. **\*State of NM v. Romero, Roger M-30-MR-2017-00007** Violation of County Ordinance 2016-02 Accumulation of waste and litter on private property. A Non-Traffic Citation was issued by Sheriff's Deputy Evans on January 12, 2017. The case was dismissed April 3, 2017 with the filing of a Nolle Prosequi as a result of the Defendant's efforts to clean up the property.

**Tort Claims Notices Received or Threatened**

**2017**

**Powell, Majel F.** – Tort Claim Notice received January 6, 2017 alleging adverse road management by a Lincoln County Road Department employee.

**\*Emerald Correctional Management, LLC – Notice of Default filed April 7, 2017 due to Emerald Correctional Management, LLC's Default of Agreement between Emerald and the County of Lincoln for Emerald's operation of Lincoln County Detention Center.**

**2016**

**Rains, Bonnie** – Tort Claim Notice received January 18, 2016 alleging failure of the County of Lincoln to maintain road surfaces during snow or ice conditions.

**Brazel, Stephanie** – Tort Claim Notice received January 20, 2016 alleging injuries incurred due to Claimant stepping in an alleged uncovered water meter hole at 2801 Sudderth Drive, Ruidoso, NM.

**William Gayford – Roger Linfoot** – Tort Claim Notice received February 17, 2016 from Attorney W. Chris Nedbalek alleging 4<sup>th</sup> and 14<sup>th</sup> Amendments violations and "possibly other constitutional, statutory, regulatory, legal or equitable rights not specifically named."

**Hill, Walter** – Tort Claim Notice received March 8, 2016 via emailed correspondence from Mr. Hill alleging the unlawful disclosure of confidential information from Mr. Hill's Lincoln County personnel file.

**Sonora Corporation (John Russell-CEO)** – Tort Claim Notice received April 6, 2016 via correspondence from Mr. Russell in response to a Notice of Investigation from NM Construction Industries Division due to an alleged lack of final inspection and deviation from approved plans of construction in 2012 at 119 Bald Eagle Court, Alto, NM.

**Jaramillo, Monica** – Tort Claim Notice received April 8, 2016 alleging Lincoln County road department employee in the performance of his road grading duties damaged Ms. Jaramillo's vehicle.

**Wagoner, John** – Tort Claim Notice received April 12, 2016 via telephone call to Mr. Morel's office when Mr. Wagoner threatened suit against Lincoln County with respect to alleged accumulation of garbage at property on Highway 70.

**Steward, Tynell** – Tort Claim Notice received April 18, 2016 alleging abuse while incarcerated in Lincoln County Detention Center.

**Coleman, Chad** – Tort Claim Notice received April 25, 2016 alleging warrantless search and seizure and malicious prosecution.

**Parsons-Williams, Karen** – Tort Claim Notice received June 2, 2016 alleging negligent or malicious medical procedure performed at Lincoln County Medical Center on March 9, 2016.

**Ceja, Dana** – Tort Claim Notice received September 22, 2016 alleging violations of the US and New Mexico Constitution and various charges while Mr. Joey Ceja was incarcerated at Lincoln County Detention Center.

**Vigil, Elisa** – Tort Claim Notice received October 3, 2016 alleging automobile damage due to Lincoln County road conditions.

**Rue, Barney** – Tort Claim Notice received October 4, 2016 via telephone to County Ordinance Administrator's office alleging Lincoln County's non-enforcement of its Solid Waste Ordinance regarding the alleged allowance of accumulation of waste.

**Town of Carrizozo** – Tort Claim Notice received November 14, 2016 from William N. Griffin alleging County of Lincoln's violation of the Town of Carrizozo's Ordinance 8-3-1, *et. seq.* regarding the County of Lincoln's effort to collect its own solid waste within municipal limits.

**New Mexico Department of Transportation** – Tort Claim Notice received December 9, 2016 involving property damage sustained to NMDOT property during a Lincoln County employee's transport of County equipment.

**Estate of Hector Acosta-Jimenez** – Tort Claim Notice received December 27, 2016 alleging negligence and/or failure to provide immediate necessary medical care, and/or allowing the death of Mr. Acosta-Jimenez while incarcerated at the Central New Mexico Correctional Facility and/or Lincoln County Detention Center.

**2015**

**Culp, Susan v. LCMC/Lincoln County**: Tort Claim Notice received May 4, 2015 from Attorney Katherine Channing Roehl/Roehl Law Firm alleging medical malpractice, negligent supervision, negligent credentialing by staff, administrators and doctors at LCMC on or about March 3, 2015 during Ms. Culp's gall bladder removal surgery.

**Reyes, Roberto** – Tort Claim Notice received May 15, 2015 from Attorney Timothy White/Valdez White Law Firm alleging illegal seizure, illegal search, illegal imprisonment and wrongful conduct of the Lincoln County Sheriff's Department.

**Torres, Leopoldo**: Tort Claim Notice received June 4, 2015 from inmate Torres alleging inmate-initiated attack on inmate Torres at Lincoln County Detention Center.

**Wallace, Stephen**: Tort Claim Notice received June 11, 2015 from Attorney Gary Mitchell alleging deprivation of Constitutional rights due to false incarceration at Lincoln County Detention Center without proceeding with a timely extradition.

**Rodriguez, Victor** – Tort Claim Notice received July 13, 2015 from Attorney W. Chris Nedbalek alleging hostile treatment from fellow employees while employed at Lincoln County Detention Center.

**Prudencio, Fabian and Corinne** – Tort Claim Notice received July 24, 2015 from Attorney Daniel P. Ulibarri alleging negligence, personal injury, spoliation, indemnification and property damage against the County of Lincoln.

**Yates, Barbara** – Verbal Threat against the County issued July 21, 2015 due to ongoing flooding at her private property.

**Davis, Jack and Rema** – Verbal Threat against the County issued July 21, 2015 due to ongoing flooding at their private property.

**Capitan Iron Mine** – Tort Claim Notice received Sept. 24, 2015 via email from A. Blair Dunn, alleging County trespass on private property.

**L. Phillip Onsrud** – Tort Claim Notice received Nov. 3, 2015 via email alleging lack of medical care while incarcerated in Lincoln County Detention Center.

**Brown, Shelly** – Tort Claim Notice received December 31, 2015 alleged failure of the County of Lincoln to maintain road surfaces during snow or ice conditions.

**Action:** Approve, **Moved by** Commissioner Draper, **Seconded by** Commissioner Allen.

**Vote:** Motion carried by unanimous roll call vote (summary: Yes = 5).

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

Chair Stone recessed the Regular Meeting and convened the Closed Session at 4:45 PM.

Chair Stone adjourned the Closed Session and reconvened the Regular Meeting at 6:49 PM.

Commissioner Stewart attested that matters discussed in the closed meeting were limited to those specified in the motion for closure or in the notice of separate closed meeting.

- 29. Possible Action: 14-014 and 14-018: Protest of Application of the Village of Ruidoso and George P. and Margaret Tune to change point of diversion of the Rio Ruidoso filed November 17, 2014 by Jackie Powell**

**Motion:** Dismiss the protest of Applications 14-014 and 14-018, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Draper.

**Vote:** Motion carried by unanimous vote (summary: Yes = 5).

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

**30. Signing of Official Documents**

**31. Next meetings:**

- a. May 2, 2017 - Special Commission Meeting
- b. May 16, 2017 - Regular Commission Meeting
- c. Recommendation to Reschedule June 20, 2017 Regular Commission Meeting To June 27, 2017 due to NMAC Summer Conference in Taos

**32. Adjourn**

There being no further business to come before the Board of County Commissioners, Chair Stone adjourned the meeting at 6:50 PM.

County of Lincoln  
Board of County Commissioners

  
Preston Stone, Chair

  
Dallas Draper, Vice Chair

  
Elaine Allen, Member

  
Thomas F Stewart, Member

  
F Lynn Willard, Member

ATTEST:

  
Rhonda Burrows, County Clerk

May 16, 2017  
Date Approved

