

# 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, November 21, 2017

Minutes of the Regular Meeting of the Lincoln County Commission held at 8:30 AM on November 21, 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 8:30 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 Chair Stone.

#### 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.

#### 6. Approval of Minutes:

- a) October 17, 2017 - Regular Commission Meeting

**Motion:** Approve the minutes of the October 17, 2017 Regular Meeting, **Action:** Approve, **Moved by** Commissioner Draper, **Seconded by** Commissioner Stewart.

**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 September 30, 2017
- c. Resolution 2017-14 Renew Per Diem and Mileage Policy Rescinding Resolution 2016-32
- d. Approval of Required 2018 Operational Resolutions:
  - i. Resolution 2017-15 - Establishing 2018 Regular Commission Meetings

- ii. Resolution 2017- 16- Establishing 2018 County Official Holiday Calendar
- iii. Resolution 2017- 17- Open Meetings Act
- iv. Other 2018 Committee Meetings – Lincoln Historic Preservation Board, Lodger's Tax Committee and Land and Natural Resources Committee (LANRAC)

Nita Taylor requested a change to the February Regular Commission Meeting date referenced in Resolution 2017-15 from February 20, 2017 to February 13, 2017.

Beverly Calaway, Treasurer requested a correction to Consent Agenda Item (b) to reflect the Treasurer's Financial Report as ending October 31, 2017.

**Motion:** Approval of the Consent Agenda with revisions, **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.

**SEE EXHIBIT A:** Copies of the Consent Items including Resolution 2017-14, Resolution 2017-15, Resolution 2017-16, and Resolution 2017-17 are attached hereto in reference thereto made a part hereof.

#### **8. Status of Lincoln County Extension Service – Tom Dean, NMSU**

Tom Dean, Southwest District Extension Director for New Mexico State University discussed recent staff openings in the Lincoln County Extension Office with the departure of Audra Lyons, Extension Agent; the retirement of Marsha Palmer; and also a vacancy in the Administrative Assistant position. Mr. Dean stated the office was staffed in the interim by temporary assignments and recently interviews were conducted for the position of Extension Agent. Mr. Dean introduced Melanie Gutierrez as the new County Extension Agent and Marisol Gonzales as the new Administrative Assistant. Mr. Dean stated they would now advertise the Family Consumer Science / 4 H position opening with plans to fill after the first of the year.

Melanie Gutierrez, new Lincoln County Extension Agent informed she was originally from Roy and graduated from Logan then attended New Mexico State University. Ms. Gutierrez stated she served as the 4 H Agent in Roosevelt County for five years prior to coming to Carrizozo as the agriculture teacher. Ms. Gutierrez stated she subsequently taught science in Vaughan for four years and was happy to return to Lincoln County as an Extension Agent.

#### **9. Forest, Land and Natural Resources Matters:**

##### **a. Lincoln and Fort Stanton Sites**

Tim Roberts, Regional Manager commented on the recent success of the Fort Stanton and Lincoln "After Dark" tours noting approximately 1000 people including 700 at Fort Stanton alone. Mr. Roberts informed the sidewalk project in Lincoln was complete and discussed the New Mexico Department of Transportation's current traffic study to develop options for "traffic calming" in Lincoln.

Mr. Roberts discussed the recent dedication and opening of the New Mexico State Veterans Cemetery at Fort Stanton and the history of the Department of Cultural Affairs provision of maintenance of the older Fort Stanton cemetery. Mr. Roberts stated the Veteran's Cemetery staff would now assume maintenance of the whole cemetery facility.

Mr. Roberts reported the New Mexico Chapter of the Daughters of the American Revolution had awarded a \$20,000 grant for restoration of the tin ceiling in the Protestant Chapel in Fort Stanton. Mr. Roberts stated plans to begin an overhaul of the visitor's center in Lincoln with plans to open with new exhibits in February or March of next year.

##### **b. Smokey Bear Ranger District**

Jodi Canfield, District Ranger expressed gratitude for her first year serving as the Smokey Bear District Ranger in Lincoln County. Ranger Canfield stated the District continued work on the South Fork Campground area conducting a small prescribed burn of approximately fifty acres. Ranger Canfield stated the campground was scheduled to open by 2019 but expressed optimism about a partial opening next year.

Ranger Canfield stated District staff were working with Mescalero Tribe on a thinning plan for the Perk Canyon area, completing abandoned mine closures, and working with Gun Club members

on a lead abatement plan. Ranger Canfield stated plans to meet with the Ski Apache operations manager to confirm their operational plan for the upcoming winter. Ranger Canfield also discussed plans to conduct post fire vegetative work in conjunction with the Mescalero Tribe at the Ski Apache site.

Ranger Canfield discussed ongoing dialogue with owners of the El Capitan Mine regarding some reclamation work in the area. Ranger Canfield stated the mine owners had voiced an intent to mine iron ore and were in conversation with the City of Alamogordo about building a smelter to process the ore.

Ranger Canfield discussed plans to update the District's 1987 Travel Plan which would include posting a scoping document for public input.

Commissioner Willard questioned the role of EcoServants in assisting with the Ranger District's projects.

Ranger Canfield stated the group had provided invaluable support and assistance with trail work and many other projects.

#### c. Community Forester

Rick Merrick, Community Forester for South Central Resource and Conservation District (SCRCD) stated fifty acres of thinning were completed utilizing the Lincoln County Cost Share with thirty two acres pending and another eighty seven acres committed. Mr. Merrick reported the North Gavilan Non-Forest Land project was complete with work continuing on the Rio Ruidoso watershed.

Mr. Merrick reported the air curtain incinerator was moved to Village of Ruidoso for a twenty acre slash removal project. Mr. Merrick stated the SCRCD received a New Mexico Association of Counties grant for the Forest Steward's Guild to develop a Fire Adapted Community leadership network.

Mr. Merrick additionally reported the local New Mexico State Forester position was vacant as well as the local Fire Management Officer position. Mr. Merrick stated he would provide an update when those positions were filled.

#### d. Upper Hondo Soil and Water Conservation District

Laura Johnson, Program Director stated the Board of the Upper Hondo was developing comments on the Use Attainability Analysis (UAA) commissioned by the Village of Ruidoso. Ms. Johnson stated understanding the intent of the UAA was to reclassify portions of the Rio Ruidoso River as non-habitable for fish. Ms. Johnson stated belief the reclassification would permit a higher level of nutrient dumping into the Rio Ruidoso from the Regional Wastewater Treatment Plant. Ms. Johnson stated members of the Upper Hondo believed the Village of Ruidoso should strive to provide "the cleanest water possible" rather than the "dirtiest water allowable".

Ms. Johnson stated the Upper Hondo comments would address concerns about the effect of higher nutrient levels on agriculture in the Hondo Valley including livestock and crops ultimately introducing higher levels into the food chain. Ms. Johnson also noted the lack of inclusion of stakeholders in the plan to initiate the UAA.

Ms. Johnson additionally reported on the service and benefits provided to the Upper Hondo District by EcoServants, the completion of the Environmental Assessment Plan for the Salado Dam project, and the District's annual Legislative Dinner set for December 8, 2017.

#### e. Land and Natural Resources Advisory Committee (LANRAC)

Robert Barber, Chair reported the revision of the Land Use Plan was nearing completion and anticipated presenting a revised draft during the January Regular Meeting. Mr. Barber stated LANRAC had commenced discussions with Sabrina Flores of the US Forest Service regarding the Lincoln National Forest Plan Revision with a round table discussion set for December 13, 2017.

Mr. Barber stated the committee reviewed and prepared comments on the Use Attainability Analysis (UAA) of the Rio Ruidoso. Mr. Barber stated the intent of the study was to prove trout could no longer exist in a segment of the Rio Ruidoso with the intent to lessen restrictions on the Village of Ruidoso's wastewater treatment plant. Mr. Barber noted it appeared the wastewater treatment facility was not currently meeting State Standards.

Mr. Barber stated the UAA as developed assumed the only purpose of the Rio Ruidoso was for trout fishing and did not address the other uses such as agriculture. Mr. Barber pointed out the New Mexico Department of Game and Fish routinely stocked the lower Rio Ruidoso and Hondo River with fish and thereby supported the concept the river was suitable for fish.

Mr. Barber stated LANRAC comments also included recommendations to conduct further impact studies addressing impacts to uses other than fishing and to include input from all stakeholders.

f. Lincoln National Forest – Forest Plan Revision

Sabrina Flores, Planning and Natural Resources Staff Officer for the Lincoln National Forest informed the Forest Plan Revision was delayed due to the implementation of the 2012 Planning Rule which serves as the guideline for development of the new Forest Plan. Ms. Flores noted the current Forest Plan was implemented in 1986 and the intent was to revise the plan utilizing the best "available science" as well local information and relevant publications. Ms. Flores stated the revision started in 2015 and began with a Draft Assessment. Ms. Flores stated the assessment was designed to evaluate conditions on the forest after implementation of the 1986 Forest Plan. Ms. Flores referred to the Draft Assessment as a snap shot of what policies and procedures had worked well and what others had failed. Ms. Flores discussed delays in completion of the Draft Assessment including staff turnover and challenges associated with implementing changes under the new 2012 Planning Rule. Ms. Flores noted the Lincoln National Forest was the last forest to complete revision of their forest plan in the region but stated there were benefits to learning from the other processes.

Ms. Flores provided handouts defining the fifteen areas of interest identified in the Draft Assessment. Ms. Flores stated the Lincoln National Forest would provide electronic copies of the five hundred page Draft Assessment within the next two weeks for review by the public and other entities. Ms. Flores stated the Lincoln National Forest would conduct public meetings in January in Lincoln, Otero and Eddy counties to present the findings detailed in the Draft Assessment. Ms. Flores stated staff would begin to collect information for "Needs for Change" statements to incorporate into the Environmental Analysis. Ms. Flores stated the Lincoln would also release the Wilderness Inventory Draft and Wilderness Inventory Criteria documents as part of the planning process.

**11. 9:30 AM: PUBLIC COMMENT AND OTHER BUSINESS FROM COUNTY OFFICIALS**

Commissioner Stewart reported he would attend a Joint Land Use Study (JLUS) implementation meeting on December 13, 2017.

Commissioner Draper stated in addition to Manager Nita Taylor and Renee Montes he attended the Legislators Capital Outlay Hearing in Ruidoso to present Lincoln County's capital outlay requests for the upcoming Legislative Session to local Representatives and Senators.

Commissioner Draper reported he attended a Drug Awareness Program at the Hondo High School sponsored by the CHANGE Board on which he serves as Lincoln County's representative. Commissioner Draper stated there was a good turnout of concerned citizens. Commissioner Draper stated the CHANGE group also participated in a "Drug Take Back" day in Ruidoso resulting in the collection of over one hundred pounds of opiates and other prescription drugs. Commissioner Draper informed the Ruidoso Police Department was now Drug Enforcement Administration (DEA) certified to conduct Drug Take Back events and they planned to install a metal drop off box for residents to drop off unused medications outside of their offices. Commissioner Draper congratulated Butch Blazer on his recent election as President of the Mescalero Apache Tribe.

Beverly Calaway, Lincoln County Treasurer reported her office had billed \$30,253,556.21 in property taxes and as of November 20, 2017 had collected approximately \$10,500,000 of the billed amount. Ms. Calaway provided two handouts indicating collections and distribution by School Districts. Ms. Calaway stated any resident could review the chart to determine exactly how their collected taxes were distributed. Ms. Calaway additionally provided a listing of percentages of property taxes collect by county. Ms. Calaway stated typically Lincoln County was among the top ten counties with the highest collection rates and noted the County was listed eleventh currently of the thirty three counties.

Robert Shepperd, Sherriff reported his department would host their annual Christmas Pot Luck on December 13, 2017. Sherriff Shepperd stated the party would also serve as retirement party for Donna Harkey who has worked in the Sheriff Department since 1999. Sheriff Shepperd stated Ms. Harkey was a great asset to the Department and encouraged the Commissioners and other County employees to attend and wish her well.



Beverly Calaway, Treasurer reported she recently hit an elk near Nogal and thanked the Sheriff's Department, Office of Emergency Services and the Nogal Fire Department for their quick response, assistance, and professionalism. Ms. Calaway stated the response made her proud to live in Lincoln County.

Denny Powell, Lincoln County resident since 1977 stated one of the reasons he decided to locate in Lincoln County was because of the excellent fishing opportunities. Mr. Powell stated in the early 1980's and late 1970's the best stretch of fishing he found was between the Biscuit Hill Bridge and Fox Cave. Mr. Powell recalled catching his limit of trout at one time with the smallest fish being approximately thirteen inches. Mr. Powell stated changing the designation to a clear water fishery he believed would be a "big mistake".

Joe Kinnan, resident of San Patricio stated belief any change to the designation of the river from a cold water designation was tragic. Mr. Kinnan stated the change would be a "crime" and detrimental to the wildlife, agriculture, pastureland and way of life in the valley. Mr. Kinnan stated the effects of increased nitrogen and additional chemicals would "worsen the health of the river". Mr. Kinnan commented Ruidoso was considered a "destination" for visitors from all over. Mr. Kinnan stated the reputation of Ruidoso as a destination included the entire "loop of Lincoln County". Mr. Kinnan stated anything unhealthy going into the river was a "depletion" to the complete destination. Mr. Kinnan stated the seventeen mile Hondo Valley was a "diamond" and should not be messed up.

Ted Allen, Lincoln County Juvenile Justice Board stated recently he was working with the High Mountain Youth Project which he reported was a new drop in center for homeless and at risk children. Mr. Allen stated appreciation for Lincoln County's land, cultural, and people and expressed hope that as we move forward people will look at the connection between the health of the people and the health of the land. Mr. Allen stated he also attended the drug forum in Hondo and stated there was a connection between how people treat each other and how they treat the place they live. Mr. Allen stated young people at risk due toxic stress situations and poverty have the same potential to succeed as other children who were often more successful. Mr. Allen stated it was the responsibility of partners in Lincoln County to make sure all children have equal opportunity and as adults we work together to assure their best interests.

Michael Hurd, resident of San Patricio stated he had lived at his ranch for more than forty years and stated he was fortunate to have a mile of river frontage. Mr. Hurd stated he had heard various things from the Village of Ruidoso some of which were "laughable" and some of which were notable. Mr. Hurd stated in 2006 there was a comment by Village of Ruidoso officials that the residents including farmers, ranchers, painters and others were polluting the river. Mr. Hurd stated he called Ron Curry, then the head of the New Mexico Environment Department and he sent a team to check water from Riverside up to the Mescalero Reservation line. Mr. Hurd stated the result of those tests indicated the Hondo Valley was 99% in compliance for discharge from sewage, cattle, and other factors. Mr. Hurd stated the testing identified the main contamination problem was found to be from the Village of Ruidoso's sewage treatment plant through Ruidoso Downs and Ruidoso up to the reservation line. Mr. Hurd stated he chided then Village of Ruidoso Mayor Ray Nunley for the comment. Mr. Hurd stated the latest "big fish story" or "no fish story" about there being no fish in the Hondo Valley was untrue. Mr. Hurd presented a print illustrating him fishing at the age of ten. Mr. Hurd stated having summarized a portion of the history of problems with the river he wanted to inform he returned to the Hondo Valley because of the clean environment. Mr. Hurd encouraged working together to solve these problems for the benefit of all as ultimately decisions would affect everyone. Mr. Hurd noted he had not seen a frog in the river in thirty years and this was a sign of an unhealthy surface water which would leach down into aquifers. Mr. Hurd suggested people should remember the problems of Flint, Michigan.

Jackie Powell, "recovering County Commissioner" and life-long resident of the Hondo Valley stated she never in her life anticipated having to defend fishing in the Hondo Valley. Ms. Powell provided copies of approximately thirty pages of research documenting the history and importance of fishing in the Hondo Valley. Ms. Powell noted her grandfather had fished in the valley in the 1800's, her father fished from 1907 on, and her family fished this last summer. Ms. Powell stated there were never any problems with fishing until the sewage plant was installed. Ms. Powell stated there were many concerns including the fact that any decision should be made by local stakeholders involved. Ms. Powell informed German Brown trout were native to the area and should be protected. Ms. Powell stated at one time fishing in this area was the best in the area for game fishing. Ms. Powell noted the Village of Ruidoso had filed a request with the New Mexico Department of Game and Fish for increased stocking of fish in the river at one time. Ms. Powell provided a copy of a document written in 2003 by the City of Ruidoso Downs and Village of Ruidoso which acknowledged the complexities and the magnitude of the problem created by the sewage plant. Ms. Powell remind the current Use Attainability Analysis was never reviewed

by stakeholders and expressed belief the New Mexico Environment Department skipped "due process" for the residents down below Ruidoso. Ms. Powell stated "the environment does not end at the city limits" and therefore the study should have been handled in a more appropriate manner. Ms. Powell stated residents of the Hondo Valley were requesting the County of Lincoln assist with the submission of formal comments as the County Commission was the primary representative of those residents. Ms. Powell stated the river was the only source of water for the area and with the use of shallow wells the river water would permeate those wells.

Matthew Torrez stated his family had lived in the Hondo Valley for many generations. Mr. Torrez stated he grew up fishing on the river and hoped to see his grandchildren fishing in the river. Mr. Torrez concurred with other speakers that most issues had occurred since installation of the sewage plant. Mr. Torrez stated belief the entities involved need to "spend the money to clean this thing up instead of trying to lower the standards for the river".

Coy Knoll stated he was a retired water and waste water operator. Mr. Knoll supported Ms. Powell's comments stating the proposed change would have a negative impact on drinking water in the Valley. Mr. Knoll stated residents close to the river have well depths as shallow as forty feet. Mr. Knoll stated he lived next to the river and was concerned about add nutrient levels in the water. Mr. Knoll stated he was very aware of the consequences of increased nitrate and phosphate levels in the water. Mr. Knoll stated there was "nothing proactive" about any of the proposed changes for the residents of the valley including the drinking water. Mr. Knoll stated all of the facts needed consideration to preserve the river.

**9. Forest, Land and Natural Resources Matters: (continued)**

**f. Lincoln National Forest – Forest Plan Revision (continued)**

Sabrina Flores, Chief Planner for the Lincoln National Forest continued her presentation on the Lincoln National Forest Plan Revision process. Ms. Flores stated after conducting meetings in January to receive public comment on the Draft Assessment the agency would address those remarks prior to publishing the Final Assessment. Ms. Flores stated once the Final Assessment was published the agency will move into the Environmental Impact Statement process beginning in the spring of 2019. Ms. Flores stated publication would begin a ninety day comment period including public hearings and the opportunity for stakeholders such as Lincoln County to request cooperating agency status. Ms. Flores stated the Forest Plan Revision timeline projected adoption of the Final Forest Plan and a signed decision in late 2019 and beginning operations under the new plan in 2020.

Commissioner Stewart informed the US Congress passed HR 2936 the "Resilient Federal Forest Act" on November 1, 2017. Commissioner Stewart stated the Act was intended to expedite actions to protect the forests. Commissioner Stewart urged the Lincoln National Forest to review the bill's provisions during the Forest Plan Revision process.

Commissioner Willard questioned the "fifteen areas of interest" previously mentioned.

Ms. Flores provided a handout listing the areas and noted these areas included among others ecosystems; natural processes; at risk species including development of a "species of conservation concern" list; carbon stocks; social, cultural and economic conditions; and special designated areas including wilderness and wild and scenic rivers.

**g. Cibola National Forest – Forest Plan Revision**

Nita Taylor, Manager informed the Cibola National Forest Shared Stewardship Collaborative met on November 1, 2017 to receive updates from landscape team meetings on the Forest Plan Revision Process. Ms. Taylor stated the Cibola was planning a smaller Landscape Team Meeting and requested Lincoln County representation. Ms. Taylor stated she would work with LANRAC to assure representation at that meeting.

**20. Water Quality Standards and Use Attainability Analysis for Lower Rio Ruidoso and Upper Hondo**

- a) Presentation of the Process in General – Jennifer Fullam; Surface Water Quality Bureau
- b) Presentation / Discussion of Specific Use Attainability Analysis Conducted for Village of Ruidoso and City of Ruidoso Downs Regional Wastewater Treatment Plant Joint Use Board

Ms. Taylor informed the agenda item was set to provide opportunity for the Village of Ruidoso to discuss their Use Attainability Analysis (UAA) Study. Ms. Taylor stated the Village requested the New Mexico Environmental Department have staff present to discuss provide a general analysis associated with a UAA study. Ms. Taylor informed the Village of Ruidoso and representatives from the NM Environmental Department were unable to attend today's meeting. Ms. Taylor provided a copy of the Village of Ruidoso's introductory letter; portions of the UAA study; and a copy of a presentation on the UAA to the Village of Ruidoso and City of Ruidoso Downs Regional Wastewater Treatment Plant Joint Use Board.

Ms. Taylor commented on the public comments received from generational residents and landowners in the impacted geographic area of Lincoln County and noted the complexity of the issue. Ms. Taylor expressed belief the resolution of the matter was contingent upon facts rather than legal argument and encouraged all impacted individuals and parties to submit comments in a timely manner. Ms. Taylor recommended the County consider enlisting the assistance of an environmental specialist to gather facts and prepare comments for submission.

Commissioner Stewart suggested the County submit comments based on the information and documents provided by the Upper Hondo Soil and Water Conservation District and Lincoln County's Land and Natural Resources Advisory Committee. Commissioner Stewart emphasized the County's position that any decision should consider all factors, not just fish, when making a decision and also that the Board of County Commissioners strongly protests the UAA for the purpose intended.

Chair Stone commented on the Board of Commissioners responsibility to represent all residents of Lincoln County and stressed the importance of water as "infrastructure" for the County. Chair Stone expressed belief Lincoln County was obligated to submit comments and the most effective comments were supported by historical data. Chair Stone supported engaging an expert to assist.

Commissioner Allen supported engaging an expert and expressed belief comments developed by an expert carry more weight during hearings. Commissioner Allen stated it was her experience comments not presented in the language "they want to hear" were not given the same consideration.

Chair Stone stated the intent was not to hire an expert to develop comments but to help prepare comments regarding the appropriate and beneficial use of water in Lincoln County for submission.

Commissioner Draper expressed support of the submission of comments but commented on the need for all parties to "come to the table". Commissioner Draper stated the position of the Village of Ruidoso might be seen in a different light if their position was known.

Commissioner Willard expressed disappointment the Village of Ruidoso and the New Mexico Environmental Department were not in attendance. Commissioner Willard stated his review of the data and noted there were six factors which a UAA could address but this study focused only the one factor of ambient temperature. Commissioner Willard expressed a desire for LANRAC and Jackie Powell to develop and provide comments on behalf of Lincoln County.

Alan Morel, Attorney stated there was a permit issued to the Village of Ruidoso by the Environmental Protection Agency (EPA) and that decision was currently being appealed in the 10<sup>th</sup> Circuit Court of Appeals. Mr. Morel stated additionally there was the development of the Use Attainability Study by the Village of Ruidoso to request a change from a "cold water" designation to a "cool water" designation which would change the amount of sediments discharged into the river. Mr. Morel stated he was in contact with Attorney Steve Sugarman representing the Hondo Ranch in the appeal of the EPA permit issuance. Attorney Morel stated Mr. Sugarman, as an expert in water law, was eminently more qualified to assist with the development of comments.

**Motion:** Authorize the County Manager to engage a specialist to assist with submission of comments, **Action:** Approve, **Moved by** Chair Stone, **Seconded by** Commissioner Allen.

**Vote:** Motion passed (summary: Yes = 4, No = 1).

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

**No:** Commissioner Draper.

#### 10. 12<sup>th</sup> Judicial District Court - Pretrial Detention Presentation

Ms. Taylor reminded 12<sup>th</sup> Judicial District Judge, Dan Bryant, had discussed the concept of contracting with the Bernalillo County 2<sup>nd</sup> Judicial District Metropolitan Court to utilize staff for pretrial assessments during the Public Comment period of the October Regular Meeting. Ms. Taylor further provided copy of a proposal from the Katrina Watson from the 12<sup>th</sup> Judicial District

supporting the Administrative Office of the Court's request for Lincoln County to subsidize contract services from the 2<sup>nd</sup> Judicial District Metro Court for risk assessment.

Katrina Watson, CEO for 12<sup>th</sup> Judicial Court discussed the impact of the recent rule changes addressing pretrial release procedures and the challenges facing local District and Magistrate courts. Ms. Watson explained the increased need for pretrial assessments and the lack of local support staff to conduct these assessments. Ms. Watson stated the 12<sup>th</sup> Judicial District Criminal Justice Coordinating Council (CJCC) was requesting Lincoln and Otero Counties provide financial support to enter into a Memorandum of Understanding the 2<sup>nd</sup> Judicial District Metropolitan Court to provide pretrial assessments.

Mickie Vega, Magistrate Judge acknowledged resources available to the Magistrate Courts were very limited and as a result some non-violent offenders were being held for too long under the new rule. Judge Vega stated some concern about the removal of local authority and the designation of a staff individual from Bernalillo as a "designee" for pretrial release decisions. Judge Vega discussed the ability of each Judicial District to create a "local rule" to define the final process.

Attorney Morel stated he received an email from District Attorney John Sugg stating he was "softening to the idea of allowing outside assistance" but noted someone would have to pay for this service.

Attorney Morel stated belief the County would incur a reduction in the cost of housing detainees as most individuals would spend less time in the detention center. Attorney Morel suggested it was likely the reduction in per day costs would offset the cost of contracting for pretrial assessments. Attorney Morel stated the associated costs, total number of cases, and allocation of costs between Otero and Lincoln Counties would need additional review prior to entering into any agreement.

Commissioner Stewart supported the idea of cost savings through the new process and suggested any County contribution be defined in the Detention Center budget.

**Motion:** Support the initiative subject to negotiation of details, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

Commissioner Willard questioned if Lincoln County participated financially would the County then incur some type of liability.

Attorney Morel stated belief the Tort Claim Act would provide protection but noted details of any agreement of payment for service would need to contain an indemnification hold harmless provision.

Ms. Watson stated belief based on her initial research the court making the determination would incur the liability.

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

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

## **12. Lincoln County Medical Center / Hondo Clinic Update**

### **a) EMS Construction Update / Open House**

Ms. Taylor discussed some recent obstacles as completion of the project nears including some electrical and communication related equipment needs. Ms. Taylor informed the planned Open House was rescheduled to December 13, 2017 pending final inspection by New Mexico State Inspectors.

### **b) Replacement Hospital Design / RFP Issuance**

Bobby George of Dekker/Perich/Sabatini provided an update on the design process for the proposed new hospital. Mr. George reminded there were several phases to the project including building the new hospital, tearing down the old hospital and creating a new parking area. Mr. George stated today's presentation was scheduled to request approval to proceed with the formal release of the Requests for Proposal (RFP) which would then lead to the selection of a construction contractor.



There was general discussion about the Emergency Medical Services (EMS) Facility construction budget exceeding the initial estimates and current construction cost factors.

Mr. George acknowledged certain "unidentified costs" were encountered during construction of the EMS facility. Mr. George discussed the process to build "contingencies" into the new hospital construction budget due to the numerous uncertainties in the building cost sector of the economy.

Chair Stone noted the cost estimates provided illustrated the new hospital construction project was \$1.3 million over budget before construction begins.

Mr. George stated thirteen separate alternatives were identified for potential cost savings to help accommodate the overage.

There was lengthy discussion of the budget and pricing process.

c) Authorization to Enter into Professional Services Agreement for Owner's Representative

Ms. Taylor discussed recent interaction and work with Healthcare Infrastructure and Regulatory Compliance Specialist Jim Klein during the planning and design phase of the new hospital project. Ms. Taylor stated belief, based on her knowledge of Mr. Klein's expertise, he was an excellent choice to serve as the Owner's Representative for Lincoln County during the duration of this project. Ms. Taylor reminded of the prior approval of funding for professional services for this project and noted none of the funding was currently obligated.

Commissioner Stewart questioned the proposed source of funding to hire expert assistance.

Ms. Taylor clarified the money was budgeted from the hospital lease payment line item.

Commissioner Draper questioned the need for hiring an expert.

Ms. Taylor acknowledged County staff had limited construction experience particularly for a project of this size and suggested an Owner's Representative would provide greater expertise to assist with cost control.

Attorney Morel questioned if the gentleman identified would serve as the AIA contract designated Owner Representative.

Mr. George stated that particular designation would still reside with the County Manager as it related to budget decisions but advocated for Mr. Klein as an Owner's Representative noting he was well versed in this type of medical construction activity.

Commissioner Stewart expressed concern about the utilization of funding from the lease fund noting this expenditure was not included in the current hospital construction budget.

**Motion:** Authorize entering into a Professional Services contract with Mr. Klein, **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.

**Motion:** Approve the proposed project schedule and issuance of the RFP as presented in the Dekker/Perich/Sabatini presentation on this date, **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.

d) Hondo Clinic Assessment / Potential Plan of Action

Todd Oberheau, Lincoln County Medical Center Administrator presented a financial analysis regarding the possible assumption of operation of the Hondo Clinic by Presbyterian. Mr. Oberheau stated lacking access to prior La Casa financial records, Presbyterian developed a Statement of Projected Revenue and Expenses for 2018 through 2022. Mr. Oberheau stated the estimates were based on statistics associated with operation of the Carrizozo Health Center which has a similar population and payer mix. Mr. Oberheau stated these projections also included the full allocation of mill levy funding previously awarded to La Casa annually.



Mr. Oberheau pointed out the analysis indicated Presbyterian would incur an annual estimated \$28,000 loss. Mr. Oberheau opined La Casa received some additional federal funding by operating as a Federally Qualified Health Center but noted Presbyterian would not qualify for that funding source. Mr. Oberheau stated if the projections were considered over a twenty year period, the current hospital lease agreement time period, Presbyterian would incur a loss of \$258,773 net value of cash over twenty years.

Mr. Oberheau stated Presbyterian would also incur costs initially for capital improvements estimated at \$35,000 to \$40,000 for implementation of their electronic medical records system. Mr. Oberheau stated additionally Lincoln County would need to fund facility improvements for repair of the existing building including flooring, plumbing, and roofing estimated at \$27,500.

Mr. Oberheau stated he was still researching options for staffing but had encountered an obstacle when Presbyterian's the latest hiring option was rejected. Mr. Oberheau expressed optimism Presbyterian could staff the facility by January or February. Mr. Oberheau reiterated the importance of Lincoln County understanding Presbyterian would assume the operations at a loss based on current information.

Commissioner Willard questioned the status of obtaining a cost estimate to move one of the current EMS buildings to Hondo as a replacement facility.

Mr. Oberheau stated he had requested two bids but had no response as of yet. Mr. Oberheau stated belief he should work with County staff to pursue this as it was a County owned building.

Commissioner Willard suggested Ms. Taylor assist Mr. Oberheau in obtaining a cost estimate to move the EMS building which was currently scheduled for demolition prior to construction of the new hospital.

Ms. Taylor noted Attorney Morel had provided an opinion stating Lincoln County could fund related construction or improvement costs from Mill Levy proceeds.

Mr. Oberheau stated estimates were based on an average of thirteen patients per day operating three days per week. Mr. Oberheau noted the current hospital lease does not include the current Presbyterian operated clinic buildings and the Hondo Clinic would assume the same status.

#### **—15. Discussion of Bureau of Land Management and State Land Office's Joint Land Exchange Proposal**

Ms. Taylor informed the Bureau of Land Management (BLM) notified interested parties on October 17, 2017 the agency was considering a land exchange between BLM and the New Mexico State Land Office.

Laura Riley, Deputy Commissioner of the State Land Office appearing on behalf of Aubrey Dunn, State Land Commissioner discussed the State Land Office's identification of over 200,000 acres of New Mexico State Land "tied up" in wilderness, wilderness study areas, monuments or other federally designated and managed areas. Ms. Riley stated as a result of these designations the State Land Commissioner was unable to manage these lands and therefore the NM State Land Office approached the Bureau of Land Management (BLM) about a potential land exchange. Ms. Riley stated as a result of these conversations resulted in the BLM declining and exchange for the full 200,000 acres but offered to exchange for land out of the Rio Grande de Norte Monument amounting to approximately 38,000 acres. Ms. Riley stated of the 38,000 acres currently 13000 acres produced no income for the State Land Office for the funding of education in New Mexico. Ms. Riley stated the State Land Office was presented with the option to choose lands which the BLM had previously identified as eligible for disposal including a significant portion of acreage in Lincoln County which would move from Federal Land status to State Land status including surface and mineral rights.

Ms. Riley stated in addition to increasing revenue for the State Land Office this transfer would increase local government's ability to utilize lands for development including wind projects and other economic growth industry's which would broaden the local tax base. Ms. Riley stated the State Land Office's management process for leasing was less burdensome and more inviting to industry and developers than the Federal process. Ms. Riley stated the action would impact current grazing leases and suggested the transfer to State Land Office would decrease regulation of management and allow leases to own improvements and control access to these lands. Ms. Riley stated the intent was increase revenue producing lands for the State Land Office.

Chuck Schmidt, Field Manager of the Roswell BLM Office stated the intent was to have a "win, win situation" for both agencies. Mr. Schmidt stated the newly designated in 2013 Rio Grande

del Norte National Monument contained a significant amount of State Land Office "in holdings" in the monument area. Mr. Schmidt stated part of the BLM's ongoing planning process was to identify lands with the potential for disposal. Mr. Schmidt provided an overview of the process and noted there was a web page currently dedicated to the potential transfer process.

Mr. Schmidt discussed the process used to identify acreages for potential disposal and directed attention to a map provided at [www.BLM.gov](http://www.BLM.gov) and information provided under the title Rio Grande del Norte Land Exchange. Mr. Schmidt stated this site also mapped all grazing allotments on BLM land as well as identifying the parcels selected for the trade. Mr. Schmidt stated additionally a letter of notification was sent to know grazing allotment leases and the BLM had also sent notices related to rights of way for transparency. Mr. Schmidt informed the proposed exchange would result in the modification of ninety six grazing allotments with the bulk of lands identified within Lincoln and Otero Counties.

Commissioner Willard questioned why the bulk of land identified in Lincoln and Chavez counties.

Ms. Riley stated BLM provided a state wide map of available property. Ms. Riley stated the State Land Commissioner and staff identified those parcels they felt were most suitable for development and use as State Land. Ms. Riley stated additionally lands with existing federal mineral leases were excluded and BLM had removed lands identified by their Las Cruces office due to the potential need for a future exchange in the Oregon Mountains. Ms. Riley stated this contributed to a "process of elimination" which resulted in a significant portion of the identified land being in Lincoln, Otero, Chavez, and Torrance counties.

Commissioner Willard questioned how the loss of Payment In Lieu of Taxes (PILT) revenue would result in a tax payer savings in Lincoln County.

Ms. Riley stated the offset was not "dollar for dollar" but generally State Land was more amenable to utilization by development industries such as wind projects. Ms. Riley stated belief the transfer would facilitate growth and development in the affected areas. Ms. Riley stated additionally the State Trust Land revenues help offset education costs throughout New Mexico.

Chair Stone questioned if any BLM land near Fort Stanton was included in the proposed transfer.

Mr. Schmidt concurred stated Fort Stanton was a congressionally designated National Conservation Area and mandated for retention.

Commissioner Allen noted some of the land identified for trade from BLM was located near the Sun Zia Transmission Line. Commissioner Allen questioned if State Land Commissioner Dunn had approved the Sun Zia project.

Ms. Riley stated the State Land Office set out some terms for acceptance of a right of way application from Sun Zia approximately eighteen months ago and Sun Zia was working on their application but it was not yet complete.

There was a discussion of the process to transfer grazing allotments. Ms. Riley stated current leases would have priority for transfer and renewal with the State Land Office and stakeholder meetings were planned in December.

Chair Stone stated questioned the impact to County operation of caliche pits on State Land or private owned land with State owned mineral rights. Chair Stone noted currently the pits currently located on BLM land required only an application but no bond and the County was allowed free utilization of the material.

Ms. Riley stated understanding no pits existed on these properties but concurred any transfer would require management under State Land Office procedures because both surface and mineral rights would transfer.

Commissioner Stewart noted Lincoln County would lose 17,000 acres of federal land and as result approximately \$32,000 from the annual PILT payment. Commissioner Stewart questioned if the State Land Commissioner would offer any subsidy to Lincoln County for the loss of PILT.

Ms. Riley stated there was no direct compensation but the State Land Office would do their best to promote economic development and growth throughout the State.

Chair Stone questioned if today's presentation was simply one of acknowledgement and not a request for input and also if the State Land Office had an estimate of revenue generated by the exchange.

Ms. Riley stated the State Land Office holdings would increase by 70,000 acres because of the difference in land values which in turn would potentially double grazing allotment revenues in addition to increasing other opportunities for investment.

Commissioner Stewart suggested seeking an offset for the loss of PILT through NMAC from Rio Arriba and other counties who would receive an increase in PILT as a result of the exchange.

Commissioner Draper questioned the impact on grazing fees.

Commissioner Allen stated belief the State Trust Land grazing fees were higher than BLM grazing fees.

Mr. Schmidt reminded the proposed exchange was subject to the National Environmental Protection Act (NEPA) process and the public and affected stakeholders would have opportunity to comment.

Chair Stone recessed the Regular Meeting at 12:15 PM and reconvened at 1:00 PM.

Chair Stone recessed the Regular Meeting at and convened the Public Hearing at 1:01 PM.

**18. 1:00 PM: Public Hearing to amend Alarm Ordinance 2011-04 by Ordinance 2017-06**

Attorney Morel informed the purpose of the Public Hearing was to consider a change in authority for signing Alarm Ordinance violation liens from the County Clerk to the Chair of the Commission. Attorney Morel reminded all such liens required approval by a majority vote of the Board of County Commission.

Commissioner Willard clarified the Alarm Ordinance and any related liens were applicable in only the unincorporated areas of Lincoln County.

Chair Stone requested public comment and hearing none recessed the Public Hearing and reconvened the Regular Meeting at 1:03 PM.

**Motion:** Adopt Alarm Ordinance 2017-06, **Action:** Approve, **Moved by** Commissioner Willard, **Seconded by** Commissioner Draper.

**Vote:** Motion passed by roll call vote (summary: Yes = 4, No = 1, Abstain = 0).

**Yes:** Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.  
**No:** Chair Stone.

**SEE EXHIBIT B:** Copy of Ordinance 2017-06 is attached hereto in reference thereto made a part hereof.

Chair Stone recessed the Regular Meeting and reconvened the Public Hearing at 1:04 PM.

**19. Immediately following 1:00 P.M. Public Hearing: Public hearing to amend Solid Waste Ordinance 2016-01 by Ordinance 2017-07**

Attorney Morel informed the principal proposed revision was to accomplish the same task of reassigning the authority to sign liens approved by the majority vote of the Board of County Commissioners from the County Clerk to the Chair of the Commission. Attorney Morel annotated several other minor language changes.

Commissioner Draper commented on language included in the Application for Waiver, and exhibit to the Ordinance and questioned the definition of a "violation" of the waiver.

Attorney Morel stated those receiving the three hundred acre waiver from solid waste disposal must certify they are not utilizing the current solid waste system. If a waiver was granted and the property owner continued to utilize the County's compactors or dumpsters they were considered in violation of the Ordinance.

There was some discussion of possible language changes to the Application for Waiver and to the associated fine for violation of a granted waiver. There was a general consensus to leave the fine for a violation as it was defined per State Statute.

Chair Stone requested additional comments and receiving none adjourned the Public Hearing and reconvened the Regular Session at 1:15 PM.

**Motion:** Adopt Ordinance 2017-07 as amended, **Action:** Approve, **Moved by** Commissioner Willard, **Seconded by** Commissioner Allen.

**Vote:** Motion passed by roll call vote (summary: Yes = 4, No = 1, Abstain = 0).

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

**No:** Chair Stone.

**SEE EXHIBIT C:** Copy of Ordinance 2017-07 is attached hereto in reference thereto made a part hereof.

### 13. Manager's Report

**Hats Off To Rex Wilson – 2017 Cattleman of the Year:** Rex Wilson was honored by the New Mexico Cattle Growers as the 2017 Cattleman of the year. As stated in the New Mexico Stockman, "Rex honors the legacy of the last four generations of his family who ranched the same land, and finds hope for the future in the next generations." While managing the family's ranching business, he also graciously served Lincoln County as its District 1 Commissioner for two terms spanning 1997 through 2004; and was elected by his peers as Chairman for six of those years. Lincoln County is proud to say "Congratulations and Best Wishes" to one of its own.

**Final Inspection – Alamo Canyon Truss Bridge:** Lincoln County participated in the final inspection for the repair of the Alamo Canyon Truss Bridge on November 7, 2017. Although the initial plan was to repair and reinforce damaged trusses, the final fix was to replace damaged components. The Road Department built a temporary bridge to enable local residents and travelers to cross during repair hours. The New Mexico Department of Transportation donated the timbers to the County, eliminating the need to purchase, as originally anticipated. The bridge was properly labeled at 11 feet 8 inches and carries a weight capacity of 40 tons.

#### Grant Applications:

1. **Southeast Regional Transportation Planning Organization (SERPTO) Roadway Project:** At the suggestion of Commissioner Willard, County Representative on the SERPTO Board, Road Superintendent Honeycutt and Acting Planning Director Mendez researched the opportunity to apply for grant funding and identified the "Roadway" grant as the one most appropriate for Lincoln County. Roads eligible for this grant include those which serve as a "collector" road. The Manager stated three Lincoln County Roads met the criteria: Gavilan Canyon Road, Alpine Village Road and Cedar Creek Road. A Project Feasibility Form was submitted to resurface seven tenths of a mile on Alpine Village Road starting where existing pavement ends on Sequoia Drive and ending on Horizon View trail. Total cost of the job is estimated at \$239,396 and requires a 14.56% local match in the amount of \$34,856.12.
2. **Brownfields Assessment and Cleanup Cooperative Agreement:** Per prior Commission consensus, Lincoln County applied for the Brownfields Assessment and Cleanup Grant. The Manager provided copy of the application letter submitted by Samantha Mendez, Grant Specialist / Project Director. The total estimated cost of the abatement for asbestos materials in existing hospital buildings was \$352,421.88. The grant proposal would fund \$200,000 of the total amount. The Manager stated should the County not receive the grant award, the total cost for abatement was included in the hospital construction budget.
3. **Hubbard Foundation Grant:** The Manager stated Lincoln County was awarded a grant in the amount of \$8,800 for portable extraction equipment for the County's Office of Emergency Services. No local match was required.

The Manager stated Samantha Mendez worked diligently with her peers to identify Lincoln County needs, assemble grant application packages, and submit applications in a timely manner. The Manager thanked Samantha Mendez, Jeff Honeycutt and Joe Kenmore for their work on these grant applications.

**Legislative Health & Human Services Committee – Opioid Crisis Response:** The Manager informed Scott Annala, Indigent Claims Administrator attended the summit on November 2, 2017 attending a number of key presentations.

**Fiscal Year 2018-2019 Budget Conference:** Hosted by the New Mexico Department of Finance and Administration's Local Government Division, the conference was held in Albuquerque on November 16 – 17, 2017. Attending for Lincoln County were Treasurer Calaway, Deputy Treasurer Huddleston, Finance Director Schlarb and Manager Taylor. The training was well-rounded and provided valuable information regarding a number of

topics including a "hands on" introduction to a new budget platform to be implemented for Fiscal Year 2019.

**Local Government Leadership Program:** The Manager stated the program was an educational partnership between the New Mexico Association of Counties, the New Mexico Municipal League, the New Mexico School Board Association and Leadership New Mexico. County Government participants in this program have traditionally consisted of elected officials and the county manager. The Manager provided relevant dates, costs and application deadlines. The Manager strongly recommend Lincoln County consider sponsoring a candidate.

**The Center for Municipal Solutions ("CMS"):** The Manager reported Regional Director Mel Patterson, who had worked with Lincoln County for a number of years as the interface with wireless companies desiring to install or modify wireless communications towers in Lincoln County, was leaving his position in January of 2018. Mr. Patterson was instrumental in assisting both the wireless company's and Lincoln County in compliance with Ordinance No. 2012-03. The Manager stated CMS had provided a critical service and anticipated the County would continue to work with CMS.

**The National Association of Counties (NACo):** NACo is leading a coalition of impacted counties, school districts and other stakeholder organizations in contacting congressional leaders urging them to fully fund the Payments In Lieu of Taxes ("PILT") program for FY2018 and reauthorize the Secure rural Schools ("SRS") program until a permanent solution is developed. Lincoln County met the deadline of November 16, 2017 for submission of letters and comments.

**State Forestry – Lincoln County Office:** The Manager reported on changes in local staffing noting State Forester Xavier Anderson vacated his position to accept a job with the City of Santa Fe and Fire Management Officer David Cunningham retiring. Lincoln County relies on its partnership with State Forestry and these key players and wishes State Forestry the best in filling these critical positions.

**Audit Exit Interview:** Scheduled for November 28, 2017. The Manager requested one or two Commissioners attend this important interview.

Chair Stone and Commissioner Allen stated they would attend the Audit Exit Interview.

**Calendar of Events:** The Manager provided a list of upcoming events and relative dates.

Manager Taylor discussed the recent Capital Outlay presentations to local legislators and the process for submission of projects by local governmental entities. The Manager reminded Hubert Quintana of the Southeastern New Mexico Economic Development District (SNMEDD) advised entities to submit no more than three requests and to limit those requests to \$500,000. The Manager stated Lincoln County requests were in line with this guidance but no other local entity followed this recommendation submitting multiple requests for millions of dollars. The Manager stated Lincoln County's request for funding for the Hondo Senior Center was well received but legislators were uncertain if the Capital Outlay funding available would cover the request.

Commissioner Draper stated Lincoln County also had the opportunity to discuss the lack of Community Development Block Grant funding for counties with the legislators.

#### **Department Head Updates:**

**Joe Kenmore, Director Office of Emergency Services** commented on the extensive assistance provided to his department by EcoServants. Mr. Kenmore stated his department conducted an Exercise and Evaluation Meeting and several trainings related to fire tasks and emergency medical dispatch during the last month. Mr. Kenmore discussed a search and rescue operation to locate lost hikers near Nogal Peak. Mr. Kenmore stated belief the lack of signage on these trails was contributing to the number of search and rescue operations required. Mr. Kenmore stated he had requested assistance from the US Forest Service to reinstate trail signage. Mr. Kenmore also encouraged the public to be careful during the holidays when frying turkeys.

Commissioner Allen questioned the construction status of the new Hondo Fire Department building.



Mr. Kenmore stated they were moving forward and had a timeline for issuance of the bid.

**Punkin Schlarb, Finance Director** reported the annual audit was complete and the auditors were very pleased with documentation provided by Lincoln County. Ms. Schlarb stated auditors reviewed grant and purchasing processes. Ms. Schlarb reported the Budget Conference conducted by the Department of Finance and Administration was very good and expressed belief Lincoln County would have no problem converting to the new budget management system.

**Samantha Mendez, Interim Planning Director** commented on the previously discussed three grant applications.

Commissioner Draper questioned if the County had considered paving a new compactor site for Alpine Village if a grant for paving a portion of Alpine Village Road was awarded.

Ms. Mendez stated the potential site identified for the new compactor site was not in the right of way but noted the removal of the dumpsters from the right of way would improve drainage for the road.

Ms. Mendez stated her department was in the process of renewing alarm permits and also cross checking those addresses through the E911 system to verify for law enforcement response. Ms. Mendez reported she was working with the Village of Ruidoso to renew the Memorandum of Understanding for construction inspection services. Ms. Mendez informed Scott Annala, Health Services from her department was recently assigned additional duties assisting the Solid Waste Clerk with billing as the workload for Indigent Services has declined.

Punkin Schlarb, Finance Director noted the additional assistance in Solid Waste provided a better of separation of duties for solid waste for audit purposes.

**Renee Montes, Director of Senior Services** provided an update on the Program Assessment conducted by the Non-Metro Agency on Aging after visiting all five sites in October. Ms. Montes stated the agency provided some technical support and training including instruction on management software to track the department's perpetual inventory.

Attorney Morel reminded Lincoln County filed a formal complaint against Zia Natural Gas with the Public Regulation Commission regarding conditions on Bogle Road. Attorney Morel stated the parties arrived at settlement more than a month ago but it was taking some time for the PRC to determine how to handle the status of the complaint. Attorney Morel stated the PRC did not accept the format of the written settlement agreement and there were a few issues regarding the waivers requested. Attorney Morel anticipated the parties would sign an agreement and the PRC would then dismiss the case in December.

Commissioner Stewart requested information about DeLanda contract work in Alto. Commissioner Stewart also suggested the County develop a method to develop a long range plan for road improvements.

Ms. Taylor stated she would pass the request on to the Road Superintendent.

Commissioner Willard reminded Rancho Ruidoso Valley Estates had submitted multiple requests for assistance with roads and those residents were told those roads were on a "plan" or list of road repairs.

Ms. Taylor stated she would research the prior discussion and whether such a list was maintained.

Commissioner Willard questioned the status of the open Planning Department Director position.

Ms. Taylor stated a revision of the job description was in process but not considered a priority at this time. Ms. Taylor stated the Interim Planning Director was handling the responsibilities effectively and there was sufficient staff time to cover needed duties.

Commissioner Willard questioned the status of the new Alto Fire Department Building.

Joe Kenmore, Director of OES stated although the Bonito Fire Department had funding set aside for the new facility but had expended there funds due to unanticipated costs associated with site

preparation. Mr. Kenmore stated the current lack of grant funding from the State Fire Marshall's office and the lack of distributions had resulted in a need to review the funding plan.

**14. 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 30 claims with 27 recommended for approval and 3 recommended for disapproval for a monthly authorization of \$32,209. Mr. Annala stated approval of the claims would result in a total approval of Safety Net Care Pool claims for Fiscal Year 2017-2018 to date of \$86,743.

Mr. Annala presented the Indigent Health Care Payments request for the month. Mr. Annala processed 5 claims with 4 claims recommended for approval and 1 recommended for disapproval for a total payment this month of \$513.91 which was a record low. Mr. Annala stated approval of the claims would result in a total expenditure for Fiscal Year 2017-2018 to date of \$24,138 or a monthly average of \$4,828. Mr. Annala anticipated an annual expenditure of \$57,932 of Indigent Health Care funds for Fiscal Year 2017-2018 based on total expenditures to date.

**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 Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

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

**16. Support of 2018 NMAC Legislative Priorities by Resolution 2017-18**

Ms. Taylor reminded the New Mexico Association of Counties annually identified and adopted as priorities certain legislative efforts which impact counties directly. Ms. Taylor noted the five legislative priorities identified for the upcoming legislative session were: Forfeiture Act Reform; Protecting County Funding of Healthcare; Tax Reform; the Local Election Act; and extending the 2014 Liquor Tax Distribution under House Bill 16.

**Motion:** Adopt Resolution 2017-18, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

Commissioner Willard asked for additional information about the Local Election Act.

Rhonda Burrows, Clerk informed the intent of the bill was to consolidate local, nonpartisan elections onto one ballot for an election held in November of the odd numbered years. Ms. Burrows stated currently municipalities, school districts, conservation districts and other small districts held separate elections on different dates at different times during the year. Ms. Burrows stated the Clerk's Affiliate supported the bill as these multiple elections typically received a very low voter turnout but often had tax imposition implications. Ms. Burrows further stated the County Clerk's felt the consolidation would provide transparency and consistency for voters.

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

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

**SEE EXHIBIT E:** Copy of Resolution 2017-18 is attached hereto in reference thereto made a part hereof.

**7. Approval of Budget Adjustments by Resolution 2017-19**

Ms. Taylor reminded as per statute, counties may request adjustments to the budget to accommodate changes in financial operations during the fiscal year. Ms. Taylor stated the intent of Resolution 2017-19 was to modify the current fiscal year budget to accommodate the receipt of grant funding received for the Lincoln County Historic Preservation update to the Ordinance Appendices and to accommodate a request for additional funding from the New Mexico and Arizona Coalition of Counties for legal fees. Ms. Taylor stated an additional adjustments to accommodate HIDTA grant funding was removed from consideration pending further analysis.

Commissioner Allen reminded the \$21,000 referenced as grant funding was not solely comprised of the grant for the revision of the Ordinance Appendices but included an additional grant received for "mapping" the Fort Stanton Historic Site.

**Motion:** Adopt Resolution 2017-19, **Action:** Approve, **Moved by** Chair Stone, **Seconded by** Commissioner Draper.

Commissioner Stewart stated he reviewed the minutes of the budget hearing for the current fiscal year including the original request from the Coalition of Counties. Commissioner Stewart noted the original request from the Coalition of Counties was \$7,600 but the Board of County Commissioners had approved \$2,600. Commissioner Stewart stated the documentation provided indicated fifteen counties participating with annual dues of \$2,600. Commissioner Stewart expressed concern about the apparent lack of a Memorandum of Understanding or contract between the entities and also the lack of a response to a question regarding the provision of an audit record for expenditures. Commissioner Stewart also stated concern about a potential violation of the Anti-Donation Clause.

Attorney Morel informed as the long as Lincoln County received services equal to or exceeding the amount of funding contributed there was no violation of the Anti-Donation Clause. Attorney Morel expressed belief Lincoln County had entered into a contract or some type of agreement with the organization many years ago but noted he was unaware of the status of that agreement.

Commissioner Stewart stated he would prefer to review any agreement prior to voting in favor of this request.

Ms. Taylor stated she would research the existence of the prior agreement. Ms. Taylor noted Chair Stone served as the Lincoln County Representative for the Coalition of Counties Board and received frequent updates on current activities. Ms. Taylor stated she also received updates as Lincoln County's alternate member and reported the latest information indicated the total legal billing for suits related to reintroduction of the Mexican Wolf amounted to \$243,000 with the Coalition having \$190,000 on hand. Ms. Taylor stated this prompted the budget request for an additional \$2400 which would bring Lincoln County's contribution total to \$5000 for the year.

Commissioner Draper expressed support for the request and commented he may have miscalculated his original motion to fund the request.

Commissioner Allen requested the Manager seek additional reports and supporting documentation for any future requests from the Coalition of Counties for funding.

**Vote:** Motion passed (summary: Yes = 4, No = 1, Abstain = 0).

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

**No:** Commissioner Stewart.

Chair Stone stated both he and the County Manager would contact Howard Hutchinson to request additional documentation supporting this request.

**SEE EXHIBIT F:** Copy of Resolution 2017-19 is attached hereto in reference thereto made a part hereof.

**21. Approval of Modified Lincoln County Detention Center Contract Incorporating Language Mandated by New Mexico Attorney General, Risk Management and Department of Finance and Administration**

Attorney Morel reminded a prior contract between LaSalle and the County of Lincoln was approved, signed by both parties and forwarded to several State of New Mexico agencies for review. Attorney Morel stated the Offices of the New Mexico Attorney General, Risk Management, and the Department of Finance and Administration had returned the contract with requested revisions prior to approval by those departments.

Attorney Morel stated the revisions were incorporated into the contract and provided an overview of the most significant changes requested by the State agencies. Attorney Morel stated two issues were still outstanding with one being the need for a Vehicle Use Agreement since LaSalle utilized County owned vehicles for operations. Attorney Morel stated the second issue was a request to provide a policies and procedures related to LaSalle's ankle bracelet policy. Attorney Morel stated the County would provide those documents separately with the final contract.

**Motion:** Approve the revised Lincoln County Detention Center contract, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

Commissioner Draper questioned if the contract included an extension from 3 years to 6 years.

Attorney Morel noted the term of the contract was defined as that allowed by State Statute and was still subject to a 90 day termination notice by other parties.

Commissioner Draper questioned the inclusion of new language relating to "suits, actions, and claims".

Attorney Morel stated the language in question was included in the Request for Proposals (RFP) but was now included in the contract itself at the request of the State. Attorney Morel stated there was a change from "occurrence based" policy to a "claims made" policy. Attorney Morel confirmed the coverage was essentially the same and the insurance certificate attached indicated this type of coverage was what was provided and consistent with the RFP and the State of New Mexico's requests.

Commissioner Willard noted a typographical error and also questioned the method of determination of the \$60 per day rate referenced in the contract.

Ms. Taylor stated the last rate paid to Emerald Corrections was \$58.06 with an annual percentage increase which was reflected in the rate negotiated with LaSalle.

Commissioner Willard requested Ms. Taylor research other fee arrangements in other counties.

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

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

**23. Consideration of Appointments and Removals from Boards/ Commissioner's Committees:**

a) Labor Management Relations Board

No action taken.

b) Road Review Advisory Committee

**Motion:** Reappoint Lance Hale to the Road Review Advisory Committee, **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.

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

No action taken.

**26. Executive Session Pursuant to the Open Meetings Act: Discussion of all Threatened and/or Pending Litigation Section 10-15-1, Sub-Paragraph H (7).**

**Motion:** To close the meeting for the purposes of an Executive Session to discuss all Threatened and/or Pending Litigation Section 10-15-1 H (7);

New or Updated Matters since last report \*

1. **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.

2. **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. Zia Natural Gas filed their answer with the New Mexico Public Regulation Commission April 13, 2017. County's Response to Bench Request Order was filed June 6, 2017. Zia Natural Gas' Offer to Satisfy Formal Complaint was filed October 5, 2017 at the New Mexico Public Regulation Commission.

3. **Chad and Stacia Coleman v. The County of Lincoln, Sheriff Robert Shepperd, Brett (sic) Rains, Randal Wikoff, and John Does I-III: 2:17-cv-663** Complaint for Civil Rights Violation and Ancillary State Claim. Complaint was filed in US District Court June 21, 2017. County was made aware of Complaint on June 22, 2017. Complaint claims constitutional violation and statutory tort in connection with the Coleman's alleged false arrest and detention; warrantless search and seizure and malicious prosecution.

4. **Rancho Ruidoso Valley Estate Homeowners' Association v. Roy Padilla, et. al – D-1226-CV-2017-00195** Complaint filed by RRVEHA for foreclosure of the Homeowners' Association Assessment Lien. The County is a named Defendant due to the filing of a GSWA lien on March 22, 2006, and a L.C. Solid Waste Lien filed on December 16, 2016 for non-payment of solid waste services and potential ad valorem taxes due and owing. The County's Answer to Complaint for Foreclosure was filed September 1, 2017.

5. **\*Rancho Ruidoso Valley Estates Homeowner's Association v. Diane K. Medcalf, Pioneer Bank, FSB, and the County of Lincoln, NM D-1226-CV-201700242** Complaint filed by RRVEHA September 12, 2017 for Foreclosure of the Homeowner's Association Assessment Lien. The County's Answer to Plaintiff's Complaint for Foreclosure was filed October 12, 2017.

6. **\*Valle del Sol Development, Inc. v. Thornton, et. al. D-1226 CV-2017-00252** Complaint filed by Valle del Sol September 18, 2017 to enforce and Collect Upon Promissory Note and to Foreclose Mortgage Upon Real Property. The County's Answer to the Complaint for Foreclosure was filed October 19, 2017.

7. **\*Valle del Sol Development, Inc. v. Matthews et. al. D-1226-CV-2017-0253** Complaint filed by Valle del Sol September 20, 2017 to enforce and Collect Upon Promissory Note and to Foreclose Mortgage Upon Real Property. The County's Answer to the Complaint for Foreclosure was filed October 19, 2017.

8. **Seidel v. Manfredi, et. al. D-1226-CV-2017-00184** Civil Complaint for Damages Direct and Punitive was improperly filed with the 12<sup>th</sup> Judicial Court by Mr. Seidel July 18, 2017 utilizing the Court's receipt number to identify the filing. The County has not been properly served.

9. **\*Matthew Coulter v. Lincoln County / Robert Shepperd: Charge of Discrimination: EEOC Charge No. 39B-2017-02285** filed October 11, 2017. County received notification dated October 11, 2017 from the State Department of Workforce Solutions, Labor Relations Division, Human Rights Bureau of a Charge of Discrimination filed by Matthew Coulter against Lincoln County and Sheriff Shepperd.

10. **\*Floyd Kenneth Ryen v. Board of County Commissioners of the County of Lincoln D-1226-CV-2017-00281** Civil Complaint filed October 16, 2017 alleging violation of Article II, Section 10 of the New Mexico Constitution: Plaintiff was allegedly held in custody at LCDC for 15 days, November 10-25, 2015, also alleging paperwork to hold Plaintiff did not contain a cause number.

11. **\*Valle del Sol Development, Inc. v. Hodge, et. al. D-1226-CV-2017-00289** Complaint filed October 24, 2017 to Enforce and Collect upon Promissory Note and Foreclose Mortgage Upon Real Property.

12. **Greentree Solid Waste Authority v. Lincoln County D-1226-CV-2014-00095.** Suit filed May 1, 2014. Verified Petition for Declaratory and Supplemental Relief: Injunction. County was served May 14, 2014. Settlement Agreement signed by County of Lincoln December 15, 2015 and GSWA December 17, 2015. Stipulated Order of Dismissal Part With Prejudice and Part Without Prejudice was entered January 19, 2016 by Judge Ritter.

**Lincoln County Ordinance Violations:**

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

13. **\*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 Non-Jury Trial took place Tuesday, August 1, 2017 at 2 p.m. before Judge Vega, where a Judgment and Sentence was issued for a total of \$373 in fines and court costs, 30 days jail-confinement, 60 days supervised probation and ordering that the Defendant clean his property and stay in compliance with Ordinance 2016-02. The deadline for the Defendant to clean his property was October 23, 2017 at which time, the matter was turned over to the County to contract for the clean-up of said property pursuant to Ordinance 2016-02, Section 2, subparagraphs (G) and (I).



14. **\*State of NM v. Kimberly Conner M-30-MR-2017-00072** Violation of County Ordinance 2008-08 Animal Control Ordinance. A non-traffic citation was issued by Lincoln County Sheriff's Office Animal Control Officer Russell Wehnau on June 20, 2017 for violation of Section 16: Neglect and Cruelty to Animals. The Arraignment Hearing scheduled for August 18, 2017 was continued and rescheduled to take place September 20, 2017 at 8:30 a.m. at which time the Defendant failed to appear. A Bench Warrant was issued and subsequently returned. The Arraignment was rescheduled to take place on Wednesday, October 11, 2017 at 8:30 a.m. before Judge Vega at which time the Defendant pled "Not Guilty." A Pre-Trial Hearing was scheduled for November 7, 2017 at 9:00 a.m. before Judge Vega at which time the case was dismissed per plea agreement. The Defendant was fined \$100.00 in Bench Warrant fees.

15. **\*State of NM v. Kimberly Conner M-30-MR-2017-00106** Violation of County Ordinance 2008-08 Animal Control Ordinance. A non-traffic citation was issued by Lincoln County Sheriff's Office Animal Control Officer Russell Wehnau on July 21, 2017 for violation of Section 11, Dogs Running at Large. The Arraignment Hearing scheduled for Friday, August 18, 2017 at 9:15 a.m. before Judge Vega was continued and rescheduled to take place September 20, 2017 at 8:30 a.m. at which time the Defendant failed to appear. A Bench Warrant was issued and subsequently returned. A Pre-Trial Hearing took place November 7, before Judge Vega at which time the case was dismissed per plea agreement. The Defendant was fined \$100.00 in Bench Warrant fees.

16. **\*State of NM v. Kimberly Conner M-30-MR-2017-00108** Violation of County Ordinance 2008-08 Animal Control Ordinance. An amended criminal complaint ("Amended" is a typo-the complaint is the only one on file) was filed by Lincoln County Sheriff's Deputy Ryon McInnes on July 26, 2017 for one count of violation of Section 11: Dogs and Cats Running at Large, one count of Section 7: Vicious animals, one count of Section 4: Rabies Vaccination violation. An Arraignment Hearing scheduled for Friday, August 18, 2017 at 9:15 a.m. before Judge Vega was continued and rescheduled to take place September 20, 2017 at which time the Defendant failed to appear. A Bench Warrant was issued and subsequently returned. The Arraignment was rescheduled to take place Wednesday, October 11, 2017 at 8:30 a.m. before Judge Vega at which time the Defendant pled "Not Guilty." A Pre-Trial Hearing was scheduled for November 7, 2017 at 9:00 a.m. before Judge Vega at which time Counts 2 and 3 of the case were dismissed per plea agreement. The Defendant pled "No Contest" and was found "Guilty" of Count 1, fined a total of \$323.00 and placed on 90 days unsupervised probation.

17. **State of NM v. James Keck M-30-MR-2017-00097** Violation of County Flood Damage Prevention Ordinance 2014-05. A non-traffic citation was issued by Lincoln County Sheriff's Office Deputy Charlie Evans June 11, 2017 for violation of Section 6- Establishment of Development Permit, and Section 12, Application for a Floodplain Use Permit. The Defendant appeared before Judge Vega at an Arraignment Hearing on August 18, 2017 at which time the Defendant entered a plea of "Not Guilty." A Pre-Trial Hearing took place Tuesday, October 10, 2017 at 1:30 p.m. on a Trailing Docket before Judge Vega and was continued until Tuesday, December 12, 2017 in order to allow the Defendant time to comply with the Flood Plain Ordinance.

18. **\*State of NM v. Christine A. Polaco M-30-MR-2017-00084** Violation of County Ordinance 2008-08 Animal Control Ordinance. Two non-traffic citations were issued by Lincoln County Sheriff's Office Animal Control Officer Russell Wehnau (1 issued on June 26<sup>th</sup> and 1 issued on June 27<sup>th</sup> 2017) for violation of Section 11, Dogs and Cats Running at Large. A First Appearance/Arraignment Hearing took place before Judge Vega August 9, 2017 at which time the Defendant entered a plea of "Not Guilty." Pre-Trial Hearing took place Tuesday, October 10, 2017 at 1:30 p.m. at which time the Defendant advised the Court that she has "applied" for legal counsel. The Pre-Trial was continued and was scheduled for Tuesday, November 7, 2017 at which time the Defendant pled "No Contest" and was found "Guilty" of 1 Count of Dogs Running at Large and was sentenced to a 90 day deferred confinement, 90 days probation, and fines totaling \$173.00.

19. **\*State of NM v. Kimberly Conner M-30-MR-2017-00128** Violation of County Ordinance 2008-08 Animal Control Ordinance. A Criminal Complaint was filed by Lincoln County Sheriff's Office Animal Control Officer Russell Wehnau on September 6, 2017 for violation of Section 11 (Dogs Running at Large), and Section 4 (Rabies Vaccination violation). An Arraignment Hearing was scheduled for Wednesday, October 11, 2017 at 8:30 a.m. before Judge Vega at which time the Defendant pled "Not Guilty." A Pre-Trial Hearing was scheduled for November 7, 2017 at 9:00 a.m. before Judge Vega at which time Count 2 was dismissed per plea agreement. Defendant pled "No Contest" and was found "Guilty" of Count 1, was fined a total of \$223.00 and was placed on 90 days unsupervised probation.

20. **\*State of NM v. Ivan Kimberley McClure M-30-MR-2017-00132** Violation of County Ordinance 2008-08 Animal Control Ordinance. A Criminal Complaint was filed September 8, 2017 by Lincoln County Sheriff's Office Animal Control Officer Russell Wehnau for violations of Sections 4, 7, and 11 (Rabies Vaccination violation, Vicious Animals, Dogs Running at Large). An Arraignment Hearing was scheduled for October 18, 2017 at which time the Defendant pled "Not Guilty." The Pre-Trial Hearing took place November 14, 2017 at which time the Defendant pled "No Contest" and was found "Guilty," and sentenced to 90 days jail time, suspended, 90 days unsupervised probation. The Defendant was ordered to pay all Humane Shelter fees, along with a total of \$173.00 in fines.

21. **\*State of NM v. James M. Flores M-32-MR-2017-00392** Violation of County Ordinance 2008-08 Animal Control Ordinance A non-traffic Citation was issued by Lincoln County Sheriff's Deputy Rex Beard on October 7, 2017 for violation of Section 11 (Dogs Running at Large). An Arraignment Hearing was scheduled for November 6, 2017 at which time the Defendant pled "Guilty." The Defendant was placed on 90 days unsupervised probation and assessed fees of \$73.00 in Court costs.

22. **\*State of NM v. Randall E. Eikanger M-30-MR-2017-00153** Violation of County Ordinance 2008-08 Animal Control Ordinance. A non-traffic Citation was issued October 19, 2017 by Lincoln County Sheriff's Office Animal Control Officer Russell Wehnau for violation of Section 11 (Dogs Running at Large). A First Appearance/ Arraignment Hearing is scheduled before Judge Vega for November 22, 2017.

23. **\*State of NM v. Kerry P. Carver M-30-MR-2017-00158** Violation of County Ordinance 2008-08 Animal Control Ordinance. A Criminal Complaint was prepared by Lincoln County Sheriff's Office Animal Control Officer Russell Wehnau for violations of 2 counts of Section 11 (Dogs Running at Large) and 2 counts of Section 4 (Rabies Vaccination violations). A First Appearance / Arraignment Hearing is scheduled for December 1, 2017 before Judge Vega at 8:30 a.m.

#### **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.

**McKenzie, Brian** – Tort Claim Notice received May 1, 2017 from Attorney W. Chris Nedbalek alleging deprivation of Claimant's constitutional rights "and possibly other substantive and procedural rights under the US Constitution and the New Mexico Constitution..." while incarcerated at Lincoln County Detention Center.

**Lacy, Jim and Judy** – Tort Claim Notice received May 8, 2017 from Attorney W. Chris Nedbalek alleging "...property damage and an "...unconstitutional seizure under the 4<sup>th</sup> amendment of the US Constitution and an unconstitutional 'taking' under the 5<sup>th</sup> amendment to the US Constitution and a violation of other federal and state constitutional provisions, and statutes, regulations, rules, and common practices" during a fugitive search conducted by the New Mexico State Police.

**Coulter, Matt and Ashleigh** – Tort Claim Notice received June 22, 2017 from Attorney Timothy White naming Sheriff Robert Shepperd.

**Solarczyk, Frank** – Tort Claim Notice received August 21, 2017 alleging unlawful arrest, unlawful detention, negligence, false imprisonment, abuse of process, battery, cruel and unusual punishment, negligent and intentional infliction of emotional distress, violation of civil rights, violation of due process rights under the U.S. and New Mexico Constitutions, and other related torts and actions during Claimant's incarceration at Dona Ana and Lincoln County Detention Centers.

**Montoya, Joseph** – Tort Claim Notice received August 25, 2017 alleging great bodily harm during Claimant's incarceration at Lincoln County Detention Center.

**Martin, Stephen Wayne** – Tort Claim Notice received August 25, 2017 naming Clerk Rhonda Burrows. Additional document received September 15, 2017 from Mr. Martin referencing same cause.

**\*Ryen, Kenneth Lloyd** – Tort Claim Notice received October 18, 2017 alleging violation of Article II, Section 10 of the New Mexico Constitution: Plaintiff was allegedly held in custody at LCDC for 15 days, November 10-25, 2015, and alleging paperwork to hold Plaintiff did not contain a cause number.

##### **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, Elsa** – 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 Attorney 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**

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

**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 2:25 PM.

Chair Stone adjourned the Closed Session and reconvened the Regular Meeting at 3:43 PM.

Commissioner Draper 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 and no action was taken.

25. **Discussion-potential action: State of NM. V. Roger Romero: M-30-MR-2017-00142 Violation of County Ordinance 2016-02: Accumulation of waste and litter on private property. Discussion-potential action for County to order the correction of and/or approve funding to contract for the correction of unlawful accumulation of waste at the Romero property as set forth in Section 2 (G) (2) of Ordinance 2016-02.**

Attorney Morel reminded the Board of County Commissioners previously authorized \$15,000 to clean up the property in the Hondo Valley. Attorney Morel stated subsequent cost estimates indicated the cleanup could take an additional \$5000 or up to \$20,000.

**Motion:** Authorize up to \$20,000 to clean up the property, **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.

**22. Enforcement of Solid Waste Liens: Application of Statute of Limitations pursuant to Section 37-1-14, NMSA 1978 and the case of Hurley v. Village of Ruidoso, 2006-NMCA-041, 139 N.M. 306, 131 P.3d 693**

Attorney Morel stated he discussed Hurley v. Village of Ruidoso wherein the Court of Appeals ruled municipal and county liens in excess of four years old were not enforceable with Zach Cook, Attorney for Greentree Solid Waste Authority (GSWA). Attorney Morel stated Mr. Cook expressed belief GSWA liens were exempt from this ruling under the Solid Waste Act. Attorney Morel stated the Solid Waste Act was not adopted until two years after the creation of GSWA by Joint Powers Agreement among the various municipalities and Lincoln County.

Attorney Morel stated belief Lincoln County's liens for solid waste or alarm ordinance violations were not effective after four years. Attorney Morel stated counties and municipalities should seek a legislative fix for this problem but would have to deal with the situation in the interim.

Attorney Morel stated the options were to authorize a release of lien for liens over four years old or to issue a statement informing the County of Lincoln does not believe liens exceeding four years old are enforceable and does not intend to enforce them. Attorney Morel clarified this statement would not address the status of the lien of record but simply would state the County's position as it relates to the lien.

Commissioner Allen supported issuing a statement indicating the County believed the liens were invalid after four years but not take the position of releasing the liens since GSWA believed the liens were valid.

**Motion:** Issue a statement of policy stating County liens in excess of four years were not enforceable and therefore would not be enforced by the County of Lincoln. **Action:** Approve, Moved by Commissioner Stewart, Seconded by Commissioner Draper.

Commissioner Allen questioned if the intent was to release the liens or simply to state the liens were not valid.

Commissioner Stewart stated intent was to state the liens were not valid and the County would not enforce them.

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

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

**27. Signing of Official Documents**

**28. Next meetings:**

- a. December 19, 2017 - Regular Commission Meeting
- b. January 9, 2018 - Regular Commission Meeting

**29. Adjourn**

There being no further business to come before the Board of County Commissioners, Chair Stone adjourned the meeting at 3:52 PM.

County of Lincoln  
Board of County Commissioners

  
Preston Stone, Chair

  
Dallas Draper, Vice Chair

Elaine Allen  
Elaine Allen, Member

Thomas F Stewart  
Thomas F Stewart, Member

Approved Telephonically  
F. Lynn Willard, Member

ATTEST:

Rhonda Burrows  
Rhonda Burrows, County Clerk

December 19, 2017  
Date Approved

