

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, October 15, 2019

Minutes of the Regular Meeting of the Lincoln County Commission held at 8:30 AM on October 15, 2019 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 Whitney Whittaker, 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. September 6, 2019 Special Commission Meeting
- b. September 17, 2019 Regular Commission Meeting

Motion: Approve the minutes of the September 6, 2019 Special Meeting and the September 17, 2019 Regular Meeting, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen

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

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

7. Approval of Consent Agenda

- a. Payroll/Accounts Payable/Budget/ Expenditures
- b. Treasurer's Financial Report for the Month ending September 30, 2019
- c. Approval or Disapproval of Safety Net Care Pool & Indigent Health Care Claims

Motion: Approval of the Consent Agenda, **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.

EXHIBIT A: Copies of the Consent Items are attached hereto in reference thereto made a part hereof.

8. Board of Finance-Treasurer Beverly Calaway

Motion: Convene the Board of Finance, **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.

Beverly Calaway, Treasurer directed the Board of Finance's attention to the Treasurer's Financial Report for the month ending July 1, 2019. Ms. Calaway stated the beginning cash balance for Fiscal Year 2019-2020 was \$8,552,233.49.

Ms. Calaway reported the Lincoln County Medical Center General Obligation Bond fund held with the New Mexico Finance Authority contained \$20,981,481.26.

Ms. Calaway noted the Detail of Receipts for the General Fund Account reflected anticipated General Fund revenues of \$14,340,592 for Fiscal Year 2019-2020.

Ms. Calaway informed the total cash held by the Lincoln County Treasurer as of July 1, 2019 was \$33,209,579.05. Ms. Calaway noted the interest earned on investments reflected the increased rates nationwide. Ms. Calaway stated she contacted local banks to seek the best return possible subject to the requirement of 102% collateralization. Ms. Calaway stated plans to invest some county funds in the Local Government Investment Pool (LGIP) through the State Treasurer's office.

Motion: Adjourn the Board of Finance and reconvene the Regular Meeting, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

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

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

9. Forest, Land & Natural Resources Matters:

a. Smokey Bear Ranger District

Jodie Canfield, District Ranger for the Smokey Bear Ranger District reported low fire danger. Ranger Canfield stated on October 10, 2019 the USDA Forest Service received an order from the United States District Court for the District of Arizona stating that the agency's timber management actions must cease on six national forests in Arizona and New Mexico pending formal consultation regarding potential effects to the Mexican spotted owl. Ranger Canfield stated the forest plan is not completed yet and this court ruling could affect the completion of the plan.

Ranger Canfield informed on the Smokey Bear North Restoration Project proposed action which includes thinning, prescribed fire, and trail improvements.

Ranger Canfield stated the South Fork Campground was still set to open in May 2020. Ranger Canfield stated comment period for the Hale Lake Travel and Recreation Plan ended and a variety of comments and assessments were submitted.

b. Extension Services

Melanie Gutierrez, Program Director informed she participated in a large animal rescue with Otero County. Ms. Gutierrez informed four kids made the State Fair animal sale. Ms. Gutierrez stated the Lincoln County booth placed 4th in overall display. Ms. Gutierrez additionally informed more children attended the Eastern New Mexico State Fair where seven kids made the sale.

c. South Central Mountain RC & D

Rick Merrick, Community Forester provided a summary of the FireWise Service Leadership program for Fire Adapted Communities. Mr. Merrick stated he completed the FireWise Community Assessment for the Nogal Canyon area. Mr. Merrick stated the complete study was available upon request.

d. Upper Hondo Soil & Water Conservation District

Judy Bock, Program Coordinator informed she previously worked with the Soil and Water Conservation District in Carlsbad for sixteen years. Ms. Bock invited the Commission to the District's Open House on October 23, 2019.

e. LANRAC

Robert Barber, LANRAC Chair stated the committee was working hard on the Cibola plan review. Mr. Barber stated the 90 day comment period ends November 7, 2019. Mr. Barber stated LANRAC would meet today to discuss the plan.

Mr. Barber informed the second document for the Lincoln National Forest Plan was in process for the wilderness area. Mr. Barber stated the Draft Inventory Map identifies areas which could meet the definition of a wilderness area.

Mr. Barber recommend the Board of County Commissioners consider adopting a Resolution pertaining to the spotted owl issue and the court's decision.

11. 9:30 A.M.: PUBLIC COMMENT AND OTHER BUSINESS FROM COUNTY OFFICIALS

Commissioner Stewart stated he would continue to attend the Joint Land Use Study Group meetings. Commissioner Stewart stated the next quarterly meeting was October 30, 2019.

Commissioner Allen stated she will continue to attend the Greentree meetings.

Commissioner Draper invited the Commissioners to attend the Draft Comprehensive Plan Community Meeting scheduled for October 21, 2019 at the Ruidoso Convention Center.

Commissioner Draper stated he recently visited the Baca Campground and stated it was one of the best kept campgrounds in New Mexico.

Commissioner Draper informed he attended the Planning and Zoning Training in Silver City which addressed the topic of the legalization of marijuana.

Whitney Whittaker, Clerk introduced Patricia Montes as the new deputy clerk for the County Clerk's office. Ms. Whittaker provided current voting statistics for the 2019 Regular Local Election. Ms. Whittaker reminded Election Day was November 5, 2019.

Walter Hill, Assessor stated the Assessor's Affiliate meeting was held on October 9, 2019 with over 100 attendees registered.

Beverly Calaway, Treasurer informed the auditors would be in Lincoln County beginning October 28, 2019.

Robert Shepperd, Sheriff reported on the current NMC priorities for the upcoming 30 day legislative session.

James Lane, resident of Lincoln County stated he worked with United States Department of Agriculture Region 6 and they experienced something similar to the Little Bear Fire in 2012. Mr. Lane expressed his concerns about the new court ruling limiting access to the forest due to the spotted owl. Mr. Lane stated the Region became infested with bark beetle due to the lack of thinning.

10. Lincoln County Fair Board Update- Billy Bob Shafer and Shad Cox

Billy Bob Shafer, President of the Lincoln County Fair Board discussed renovation plans and improvements needed in order to maintain the facility.

There was a lengthy discussion on different scenarios for obtaining funds to help offset the costs of the renovation plans.

Beverly Calaway, Treasurer informed the Financial Funds report reflected a Lodger's Tax carry over of \$76,000.

There was a discussion of using the facility for other purposes than the fair such as having an overnight rental facility.

Chair Stone recessed the Regular Meeting at 10:33 AM and reconvened at 10:45 AM.

12. Intergovernmental Agreement with the State of New Mexico-Lincoln County Census Outreach Budget

Ms. Taylor reminded during the January Regular Meeting the Commission considered information provided by the Census Partner Specialist for Southern New Mexico regarding local government responsibility to establish a "Complete Count Committee." Ms. Taylor stated the County of Lincoln received a request to consider and adopt a Resolution supporting the United States Census 2020 "Complete County Committee"

Ms. Taylor reminded during the February Regular Meeting the Commission adopted Resolution 2018-32, creating a Census 2020 Complete Count Committee. Ms. Taylor stated potential members were identified and invited to serve on the Committee. Ms. Taylor stated of those selected only three individuals accepted, four declined and four did not respond to the invitation.

Craig Westbrook, citizen discussed the importance of the census and explained responses for the 2020 census were online rather than door to door.

There was a general discussion regarding private property and who is permitted on the property.

13. Resolution 2019-18 Supporting New Mexico Counties (NMC) 2020 Legislative Priorities

Ms. Taylor stated annually New Mexico Counties – 33 Strong adopts legislative priorities to focus efforts at changing, or preventing changes to state statutes and other pieces of legislation impacting counties. Ms. Taylor stated NMC was requesting support for the priorities from all 33 counties.

Motion: Adopt Resolution 2019-18, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

Commissioner Allen questioned the State's responsibility for payment for prisoner transport and why the State has not paid in years.

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

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

SEE EXHIBIT B: Copy of Resolution 2019-18 is attached hereto in reference thereto made a part hereof.

14. Recommendations for Repair of Chaves Street Crossing, Nogal

Jeff Honeycutt, Road Superintendent discussed several construction options.

David Roybal, Engineering Manager with Pettigrew and Associates stated due to the crossing's location in the flood plain the County should try to restore the crossing to its historical condition.

Commissioner Stewart suggested the County consider vacating and abandoning the road.

There was a general discussion of possible outcomes and the proper procedure in handling the crossing in a flood plain.

Mr. Honeycutt recommended the County remove and replace the existing crossing and continue to maintain.

Motion: Remove and replace existing crossing and instruct the Road Department to do as much of the work as possible to reduce expense. **Action:** Approve, **Moved by** Commissioner Willard, **Seconded by** Commissioner Draper.

Vote: Motion passed (**summary:** Yes = 3, No = 2, Abstain = 0).

Yes: Chair Stone, Commissioner Draper, Commissioner Willard.

No: Commissioner Stewart, Commissioner Allen.

15. Update of the 5-Year Road Plan

Jeff Honeycutt, Road Superintendent gave a presentation on the initial Road Department 5-year Plan.

David Roybal, Engineering Manager with Pettigrew and Associates informed on the data findings within the Road Departments' 5- year Plan.

There was a general discussion about returning to dirt roads rather than maintaining pavement.

Commissioner Draper questioned if the Village of Ruidoso and the County of Lincoln could work together on Gavilan Canyon Road since parts are owned by the County and by the municipality.

16. Approval of Agreement and Resolution 2019-16 for the Local Government Transportation Project Fund Grant Agreement for Fort Stanton Road

Ms. Taylor stated the County of Lincoln requested consideration from the New Mexico Department of Transportation for assistance with Fort Stanton Road at a total cost of \$1,885,500.00. Ms. Taylor stated the County was approved for funding from the Local Government Transportation Project Fund. Ms. Taylor stated the Department's share was \$1,791,225.00 (95%) and the County's share was \$94,275.00 (5%). Ms. Taylor stated these funds must be spent by June 30, 2022.

Motion: Adopt Resolution 2019-16, **Action:** Approve, **Moved by** Commissioner Draper, **Seconded by** Commissioner Allen.

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

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

SEE EXHIBIT C: Copy of Resolution 2019-16 is attached hereto in reference thereto made a part hereof.

Chair Stone recessed the Regular Meeting at 12:01 and reconvened at 1:00 PM.

Chair Stone recessed Regular Meeting at 1:00 PM and convened the Public Hearing at 1:01 PM.

- 19. 1:00 P.M.: Public hearing Authorizing The Issuance And Sale Of Lincoln County, New Mexico Taxable Industrial Revenue Bonds (Mesa Canyons Wind LLC Project) And Lincoln County, New Mexico Taxable Industrial Revenue Bonds On Behalf Of One Or More Affiliated Entities Of Mesa Canyons Wind LLC, In One Or More Series, In The Maximum Aggregate Principal Amount Of \$1,400,000,000, To Provide Funds To Finance The Acquisition, Construction, Equipping And Installation Of Wind Energy Facilities To Be Constructed In One Or More Phases For The Purpose Of Generating Electricity; And Located Within The County But Outside The Boundaries Of Any Incorporated Municipality; Authorizing The Execution And Delivery Of An Indenture, A Lease Agreement, A Bond Purchase Agreement, A Sublease Agreement, The Bonds, And Other Documents In Connection With The Issuance Of The Bonds And The Project; Making Certain Determinations And Findings Relating To The Bonds And The Projects; Ratifying Certain Actions Taken Previously; And Repealing All Actions Inconsistent With This Ordinance by Ordinance 2019-01.**

Eduardo Duffy, Bond Counsel for Lincoln County discussed this final action by the Lincoln County Commission in respect to the Mesa Wind Project. Mr. Duffy discussed the timing for issuance and closing of the bond sale and the associated gross receipts taxes and Payment in Lieu of Taxes.

Commissioner Allen questioned the actual property tax on the equipment and value of each wind turbine.

Chair Stone questioned if Guadalupe and Torrance Counties were also doing an Industrial Revenue Bond transfers.

Crystal Coffman, Pattern Energy stated they do not anticipate selling the project. Ms. Coffman stated "we made a promise and entered into an agreement" and do not intend to sell this project.

Chair Stone questioned if the bonds were transferable.

Mr. Duffy stated the bonds were transferable and if Pattern were to sell the project, the bonds would also transfer.

Chair Stone asked for comments from the audience and receiving none adjourned the Public Hearing and reconvened the Regular Meeting.

Motion: Authorize the issuance and sale of Lincoln County New Mexico Taxable industrial Revenue Bonds on behalf of one or more of the affiliated entities of Mesa Canyons Wind, LLC. in one or more series, **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.

18. Pattern Energy Update – Crystal Coffman, Business Development Director

Crystal Coffman, Business Development Director for Pattern Energy provided an update on Pattern's activities and plans in Lincoln County.

There was a general discussion regarding approved routes and PNM's role in the development.

20. Replacement Hospital Update

Ms. Taylor noted on Jaynes' reports there were zero days of delay during the past month. Ms. Taylor stated the six week look ahead reflects the punch-list items as complete by February 19, 2020.

Expenditure Summary

Treasurer Calaway summarized General Obligation Bond expenditures for this project during her earlier Board of Finance Report.

Ms. Taylor stated in addition, the pay application for September for the amount of \$1,770,187.15 was reviewed and approved by Dekker/Perich/Sabatini Architects and by Jim Klein, Lincoln County's Owners Representative. Ms. Taylor stated the payment process was subsequently initiated.

Contingency

Ms. Taylor stated belief the Owner's Contingency Fund of \$1,700,000 would cover remaining costs.

Bobby George, Architect with Dekker/Perich/Sabatini stated the proposed change order request of \$281,937.50 did not include time and work for setting the final completion date.

Motion: Approve the change order, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

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

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

Todd Oberheu, Chief Executive Officer for Lincoln County Medical Center stated the hospital received recognition for patient safety and care and was rated number one in the State of New Mexico for critical care access.

21. Solid Waste Update

a. Approval of Buckhorn Compactor Site

Ms. Taylor stated Commissioner Allen had received requests from her constituents in the Buckhorn Loop area to move the compactor. Ms. Taylor stated the location was not easily accessible and was susceptible to illegal dumping. Ms. Taylor informed Planning, the Office of Emergency Services, and Solid Waste had researched several potential sites for the compactor and agreed a site at the Glencoe #2 Fire Station was the best fit. Ms. Taylor stated this move will not require a new compactor.

Alex Fuller, Interim Planning Director stated although the County would need to lay two new concrete pads at the Glencoe site, the current Buckhorn site created safety concerns.

b. Other Compactor Sites

Ms. Taylor stated the NM Department of Transportation approved a compactor site on Arabela Road very close to where the dumpsters are currently located. Ms. Taylor stated Interim planning Director Alex Fuller was researching the associated cost and timing of the concrete pad and the electrical work.

Ms. Taylor stated additionally the construction of the new Hondo Senior Center would necessitate the moving of the compactor currently located at that site. Ms. Taylor informed Engineer David Roybal was assisting with identification of the best location.

Ms. Taylor stated for each new compactor site, the County of Lincoln was required to apply for new service with Otero County Electric Coop and would have to make required changes with the Solid Waste Bureau.

Motion: Approve the relocation of the two compactors and placement of the new compactor at Arabela, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

Chair Stone questioned whether moving the compactor in Hondo would conflict with the current parking for the Hondo Senior Center.

Jeff Honeycutt, Road Superintendent stated until the new senior center was complete the relocation would affect current parking.

Commissioner Willard expressed concern with the look and smell of the current compactors. Commissioner Willard questioned if the trash could be picked up on a weekly or daily basis.

Brianna Herrera, Lincoln County Solid Waste Clerk stated she would research the possibility of a weekly pick up with Sierra Contracting.

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

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

17. Manager's Report

1. Introduction of Finance Manager Margot Weber.
2. Fall Art Show / Sale at the Capitan Library. Manager provided a copy of an Invitation for a Fall Art Show / Sale at the Capitan Public Library on October 19th,
3. Office of the State Auditor Training – The Great GASB Training. The Office of the State Auditor has offered free GASB training. As we've been advised the pronouncements will have significant impact on agencies statewide, the Treasurer's Office and Finance will likely attend.
4. Annual Budget Conference. The Local Government Division Annual Budget Conference is scheduled for November 13 – 15, 2019. This is a critical conference and training that the County's key budget personnel attend every year. It will be especially critical this year, with a new Finance Director on board.
5. NM Counties Facility Inspection was conducted by James Chavez, NMAC Loss Prevention. Most of the findings were easily resolved with minimal cost. We are obtaining bids for the fix to the ramp and steps behind the Sheriff's office.
6. NM Counties' sponsored Grant Pilot Project. The first session of the NM Counties Talent Academy is scheduled for next week. As mentioned last month, the single attendee from the County will be the new Director of Planning and Project Management, whose first day on the job is October 21, 2019. I will attend this first session in her stead.
7. Manager's Affiliate Meeting is scheduled for November 17th and 18th, in Cloudcroft. I will be attending.

8. Department of Finance / Local Government Division has announced expanded and enhanced onsite services to local governments. Included in the services offered is training on quarterly reports and annual budgets, as audit site preparation and training on newly hired staff. We are quick to take advantage of that, and are fortunate that Michael Steininger, Special Director, is working on site with newly hired Finance Director Margot Weber the week of October 15th.
9. State of New Mexico's Children, Youth and Families Department has developed a community training/meeting for Otero and Lincoln County on October 15th on its new Safety and Risk Assessment Tools. It will relay how CYFD is assessing the safety of children in New Mexico. As this session conflicts with this Commission meeting, another location may be available at another date.
10. Next Round of IRBs. Pattern has notified the County that it is planning to initiate steps for their next series of IRBs that it will be requesting of the County; and contemplates it may be timely to request Commission consideration of an Inducement Resolution at the November 19th meeting. The project will be known as the "Corona Projects". We will be working closely with Pattern between now and then on this project.
11. Transition of Lincoln County Detention Center from LaSalle Corrections to Correctional Solutions Group ("CSG"). A great deal of effort and coordination by outgoing Operator (LaSalle) and incoming Operator (CSG) is targeted at achieving a smooth transition. Three CSG leadership employees started working on-site shortly after the award was granted, and hit the ground running. They are becoming very familiar with the staff, the detainees, the processes, as well as the building and grounds.

While CSG has held three job fairs and seem confident with the potential, LaSalle, in the interim has brought the staffing levels up substantially. CSG has provided a full set of Policies that have been provided to the State for review and approval. The hand-over from LaSalle to CSG is November 1st.

22. Approval of Budget Adjustment FY 19/20 by Resolution 2019-17

Ms. Taylor stated per statute, counties may request adjustments to their budgets to accommodate changes in financial operations during the fiscal year. Ms. Taylor stated Commission approved adjustments must also be submitted to the Department of Finance and Administration for approval.

Motion: Adopt Resolution 2019-17, **Action:** Approve, **Moved by** Commissioner Willard, **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: Copy of Resolution 2019-17 is attached hereto in reference thereto made a part hereof.

23. Approval of Prior Year Invoices

Ms. Taylor informed the Center for Municipal Solutions submitted invoices #45809-005; #45326-002 and #554548-004 which were received by mail on September 16, 2019 for services rendered in March 2019. Ms. Taylor stated the Center for Municipal Solutions has since been made aware of the County's timing requirements for year-end invoice submittal.

Motion: Approve payment for invoices #45809-005; #45326-002; and #554548-004, **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. Resolution 2019-15 in Support of HB 4194 (988 Suicide Hotline number)

Ms. Taylor stated during the September meeting the Commission heard and considered a presentation made by Sergio Castro, CYFD Juvenile Probation Office, and Laura Wilson, RN at the Ruidoso Health Office about the alarming increase in suicide rates across the country and specifically in Lincoln County.

Ms. Taylor stated one way of assisting an individual considering suicide was to make it easier to call for assistance. Ms. Taylor informed Congressional HB 4194, The National Suicide Hotline Designation Act, is a bipartisan bill that would create a three digit nationwide telephone number for suicidal counseling.

Ms. Taylor stated the Commission directed Manager Taylor to prepare a Resolution supporting HB 4194.

Motion: Adopt Resolution 2019-15, **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 E: Copy of Resolution 2019-15 is attached hereto in reference thereto made a part hereof.

25. Prioritization of County Projects to Submit to Legislators for Capital Outlay Consideration

Ms. Taylor reminded at the August 25, 2019 Meeting, the Commission approved Resolution 2019-6 supporting the FY 21-25 Infrastructure Capital Improvement Plan (ICIP) for submission to the Department of Finance and Administration's Local Government Division. Ms. Taylor informed prior to finalizing and submitting the ICIP, the Commission ranked the FY 20-21 projects according to priority and need.

Ms. Taylor stated as there may be additional funding available for projects, the Commission may consider submitting each of the five priority projects for funding, in the same order approved in the ICIP.

Motion: Approve priorities of County Projects to submit to Legislators for Capital Outlay Consideration, **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.

26. Authorization to Schedule Public Hearing to Consider Other Outdated or New Lincoln County Ordinances

a. Lodgers' Tax Ordinance No. 2017-05 Revisions Required Pursuant to NMSA 1978, § 3-38-16 [Exemptions] effective January 1, 2020

Motion: Schedule a Public Hearing to consider revision of Ordinance 2017-05 for the next Regular Meeting, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

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

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

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

a. Census Complete Count

Ms. Taylor stated this board was terminated.

b. Land and Natural Resources Committee (LANRAC) Nomination Letters due 10/10/19-None Received

Ms. Taylor stated no letters were received.

c. Lincoln Historic Preservation Board

Ms. Taylor stated the County failed to place proper notice in the paper and therefore appointments will be considered at the next regular meeting.

28. Renewal of County Manager Contract – Terminates November 6, 2019

Attorney Morel stated the current contract expires November 6, 2019. Attorney Morel stated in accordance with Section 5, the Board of County Commissioners may negotiate a new contract or elect to terminate the agreement.

Motion: Approve the Managers contract as presented, **Action:** Approve, **Moved by** Commissioner Stewart, **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.

31. Approval of Request for Proposal 19-20-001 Independent Contractor Services for Misdemeanor Compliance Program.

Ms. Taylor stated the County of Lincoln only received one response to the RFP which was from Kenneth Vega.

Motion: Award RFP 19-20-001 to Kenneth Vega, **Action:** Approve, **Moved by** Commissioner Allen, **Seconded by** Commissioner Draper.

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

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

29. Lincoln County Executive Session Pursuant To The Open Meetings Act: Discussion Of Bargaining Strategy Preliminary To Collective Bargaining Negotiations Between Policymaking Body And A Bargaining Unit Representing The Employees Of That Policymaking Body And Collective Bargaining Sessions At Which The Policymaking Body And The Representatives Of The Collective Bargaining Unit Are Present Section 10-15-1, Subparagraph (H)(5); Discussion Of All Threatened And/Or Pending Litigation Section 10-15-1, Subparagraph (H)(7); Discussion Of The Purchase, Acquisition Or Disposal Of Real Property Or Water Rights By The Public Body, Section 10-15-1, Subparagraph (H)(8).

Motion: to close the meeting for the purposes of an executive session pursuant to the Open Meetings Act: Discussion Of Bargaining Strategy Preliminary To Collective Bargaining Negotiations Between Policymaking Body And A Bargaining Unit Representing The Employees Of That Policymaking Body And Collective Bargaining Sessions At Which The Policymaking Body And The Representatives Of The Collective Bargaining Unit Are Present Section 10-15-1, Subparagraph (H)(5); Discussion Of All Threatened and/or Pending Litigation Section 10-15-1, Subparagraph (H)(7); Discussion Of The Purchase, Acquisition Or Disposal Of Real Property Or Water Rights By The Public Body, Section 10-15-1, Subparagraph (H)(8).

New or Updated Matters since last report *

1. 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 Foreclosure Sale took place on November 15, 2018 @ 10:00 a.m. at the front steps of the 12th Judicial District Courthouse in Carrizozo.

2. Rancho Ruidoso Valley Estates Homeowner's Association v. Diane K. Medcalf, Pioneer Bank, FSB, and the County of Lincoln, NM D-1226-CV-2017-00242 Complaint filed by RRVEHA September 12, 2017 for Foreclosure of the Homeowner's Association Assessment Lien. On January 25, 2019, Judge Blankinship entered a Judgment by Default for Foreclosure.

3. Board of County Commissioners of Lincoln County v. Roger Romero D-1226-CV-2018-00055 Complaint for Foreclosure. Complaint was filed February 20, 2018. Defendant Roger Romero filed an Answer to the Complaint asserting a Counterclaim to be filed in the U.S. District Court on April 2, 2018. A Judicial Inquiry Hearing took place September 4, 2018.

4. Roger Romero v. State of New Mexico – D-1226-CV-2018-00113 (Underlying Cases are: Board of County Commissioners of Lincoln County v. Roger Romero, D-1226-CV-2018-00055, and State of N.M. v. Roger Romero M-30-MR-2016-00142) A Petition for Writ of Habeas Corpus was filed requesting that the Judgment & Sentence entered by Judge Vega in Cause No. M-30-MR-2016-00142 be vacated and set aside. George Romero's Answer to Complaint and Counterclaim was filed April 30, 2018 in Cause No. D-1226-CV-2018-00055. Judge Counts is the presiding Judge. On February 26, 2019, an Order Setting Aside Conviction was entered by Judge Counts and, on March 25, 2019, a Notice of Appeal was filed with the N.M. Supreme Court. (NM Supreme Crt. Case No. S-1-SC-37602)

5. ***Roger Romero, et al vs. Lincoln County, et al – U.S. Dist. Court Cause No. 2:18-cv-01137-JAP-GJF** A Complaint for Violation of Civil, Constitutional and Statutory Rights was filed on December 5, 2018. On December 27, 2018, A Guardian Ad Litem has been appointed to represent the Plaintiffs. On September 16, 2019, the case was dismissed and, on October 7, 2019, Plaintiffs filed their Notice of Appeal to the United States Court of Appeals for the Tenth Circuit.

6. **Pioneer Bank v. Jessica Quintana, and Lincoln County D-1226-CV-2018-00058** Complaint to Foreclose and Collection of Note was filed on March 22, 2018. Lincoln County filed its Answer to the Complaint on April 20, 2018 asserting that any County liens are first and priority liens which should be ordered paid from the proceeds of the foreclosure sale. Judge Bryant is the presiding Judge. On May 2, 2019, the Court entered its Certificate as to the State of the Record and Non-Appearance noting L.C.'s Answer to Complaint having been filed and no other answers or responsive pleadings have been filed.

7. ***Brack Rains v. Lincoln County D-1226-CV-2018-00179** Complaint for Violation of New Mexico Whistleblower Protection Act filed June 6, 2018. The County was served July 10, 2018. Judge Bryant was recused from presiding over the case by Plaintiff and Judge Counts was assigned to preside over the case. County's Answer to the Complaint and Jury Demand (12 person) was filed August 9, 2018. On September 23, 2019, Plaintiff filed his Amended Complaint and, on September 24, 2019, the case was removed to the U.S. District Court for the District of N.M.

8. **Kane County, Utah, et al v. The United States, 17-739C and 17-1991C (Consolidated)** Class Action Lawsuit to recover PILT underpayments for fiscal years 2015-2017. On August 14, 2018, Lincoln County submitted its Opt-In Notice to participate in the lawsuit.

9. **Lorraine Michelle LaMay – Notice of Chapter 13 Bankruptcy Case Number 19-10279-j13** On March 11, 2019, Lincoln County received notice of the Chapter 13 Bankruptcy Case.

10. **Board of County Commissioners of Lincoln County v. Amerisourcebergen Drug Corp., et. al – U.S. Dist. Court Case No. 2:19-cv-00462 –** Complaint for Public Nuisance, Violations of Racketeer Influenced and Corrupt Organizations Act (RICO)... filed on May 20, 2019 by Attorneys Robles, Rail & Anaya, P.C., et. al. After receiving no oppositions to the transfer of the case, on June 17, 2019, the case was transferred to the Northern District of Ohio noting that as of December 5, 2017, 1,534 cases have been transferred to Ohio for further proceedings.

11. ***Baltazar Romo v. Rex Beard, Cause No. D-1226-CV-2019-00144** Complaint for Negligence and Negligence Per Se was filed on May 26, 2019 and served upon Sgt. Rex Beard of the Lincoln County Sheriff's office on June 18, 2019. All Judges in the 12th Judicial District have recused themselves. On September 16, 2019, Judge James M. Hudson was assigned to preside over the case. There is presently pending a Motion to Dismiss the Complaint.

12. **Valerie Herrera v. Anthony Manfredi, Cause No. D-1226-CV-2019-00164** Complaint for Negligence and Negligence Per Se (Battery), and Excessive Force as Brought Under 42 U.S.C. § 1983 was filed on June 16, 2019 by W. Chris Nedbalek. Judge Bryant is the presiding Judge. As of June 24, 2019, the Complaint has not been served upon former LCSO employee, Anthony Manfredi.

13. **City of Albuquerque, et al vs. John Monoforte & N.M. Taxation & Revenue Department, Cause No. D-202-CV-2018-08036** Lincoln County has entered into an Agreement for joining in the litigation to recover amounts representing unauthorized reductions in violation of New Mexico Statutes.

14. ***Greentree Solid Waste Authority v. Lincoln County D-1226-CV-2014-00095 –** Compromise and Settlement Agreement and Release executed on December 17, 2015.

Lincoln County Ordinance Violations:
Alan P. Morel: 12th Judicial District Attorney's Office
Special Prosecutor

15. **State of NM v. Kimberly Conner M-30-MR-2018-00043** Violation of County Ordinance 2008-08 Animal Control Ordinance. A Citation was filed May 14, 2018 charging the Defendant with 1 count of Dog Running at Large. On May 14, 2019, a Bench Trial was held at which time the Defendant was found Guilty of 1 Count of Dogs Running at Large. The Defendant was sentenced to 90 days jail time with 90 days suspended based upon the condition that the Defendant received no further Citations for Violation of Lincoln County's Animal Control Ordinance within the next 90 days, 90 days unsupervised probation, assessed \$73.00 court costs, \$300.00 fine and \$100.00 bench warrant fee for a total of \$473.00. On August 5, 2019, the Defendant entered a plea of guilty for probation violation.

Tort Claims Notices Received or Threatened

2019

***Wilcox, Debra –** Tort Claim Notice received September 11, 2019 alleging personal injury and property damage resulting from false arrest, malicious prosecution, abuse of process, libel,

slander, defamation of character, violation of property rights and/or deprivation of any rights, by LCSO Deputy Hanna on or about September 7, 2019.

Arroyos, Joshua – Tort Claim Notice received August 30, 2019 alleging assault while detained at the Lincoln County Detention Center.

Samaniego, Barbara – Tort Claim Notice received June 26, 2019 alleging injuries sustained while undergoing a MRI at the Lincoln County Medical Center.

Divelbliss, Kim – Tort Claim Notice received June 17, 2019 [dated 6-11-19] alleging that the Claimant was taunted, harassed and her rights were violated resulting in her ultimate termination from employment by the Lincoln County Detention Center.

Divelbliss, Ty – Tort Claim Notice received June 17, 2019 [dated 6-11-19] alleging that the Claimant was terminated from employment by the Lincoln County Detention Center out of retribution.

Yokley, Scott – Tort Claim Notice received June 17, 2019 [dated 6-12-19] alleging that the Claimant was sprayed directly in the eye with pepper spray during his employment with the Lincoln County Detention Center.

Udall, Steve – Tort Claim Notice received May 22, 2019 [dated 12-14-19] alleging a Lincoln County Sheriff's Deputy's vehicle hit the air conditioning condensing unit located at the Magistrate Court in Ruidoso damaging the unit beyond repair.

Youtz, Shane – Correspondence received May 7, 2019 threatening litigation if Lincoln County's Right to Work Ordinance (Ordinance No. 2018-01) is not repealed due to the passing of HB85.

Balderas, Hector – Tort Claim Notice received April 9, 2019 regarding threat of litigation and liability for failure to enforce the law.

HES, LLC and, Kenneth and Irene Livingston – Tort Claim Notice received January 3, 2019 alleging The N.M. Dept. of Health seized and destroyed cannabis plants belong to HES, LLC and Kenneth and Irene Livingston. On January 24, 2019, NMAC denied the claim.

Lueras, Ramon – Tort Claim Notice received January 31, 2019 from Pizzonia Law Firm was received which referenced "Lueras v. Lincoln County Road Dept., et al" requesting copies of Mr. Lueras' employment records. While the correspondence appeared to be more like an IPRA, NMAC was notified out of an abundance of caution. On February 8, 2019, NMAC confirmed that Mr. Lueras has a work comp claim and that the January 31, 2019 correspondence from Pizzonia Law Firm relates to that claim. NMAC did open a claim as "record only".

Estrada, Ricardo – Tort Claim Notice received February 14, 2019 alleging that, while incarcerated at LCDC, the Claimant was physically attacked by a former employee of LCDC out of retaliation causing injuries to his small finger on his left hand and possibly a left foot fracture. TCN emailed to R. Martinez on February 15, 2019 and that same day, NMAC advised that there is no coverage for this matter as NMAC does not provide coverage on behalf of counties or their detention centers which are operated or administered by a private contractor.

Lopez, Iris; May, Andrew; Bustamante, Joseph; Flanagan, Wayne Otero; Hernandez, Gabriel – Tort Claim Notice received March 18, 2019 from Chris Nedbalek, Nedbalek Law Office, LLC alleging deprivation of Claimants' rights, including the Eighth Amendment prohibiting cruel and unusual punishment (i.e. unsanitary conditions, drug use by inmates, and mold problems.)

2018

Duke, Arnold – Harrisburg Document recovery

Warren, Judy Yates – Tort Claim Notice received January 8, 2018 from Attorney Gary Mitchell alleging Lincoln County Sheriff's Department and Lincoln County Detention Center's failure to provide immediate necessary medical care.

Corpening, Melissa – Tort Claim Notice received January 30, 2018 alleging road management failure by Lincoln County Road Department.

Brownell, Johnathon L. – Tort Claim Notice received February 1, 2018 alleging Claimant did not receive proper medical care while incarcerated at Lincoln County Detention Center.

Estate of Marlysa Sanchez – Tort Claim Notice received February 2, 2018 from Attorney Andrew P. Ortiz alleging Lincoln County Emergency Medical Services' providing service below the "standard of care."

Anonymous Group of Capitan residents – Tort Claim Notice received February 21, 2018 alleging violations of County Ordinance 2016-02: accumulation of unacceptable solid waste.

Ford, Richard E. – Tort Claim Notice received September 26, 2018 from Attorney Gary Mitchell alleging damages due to the Lincoln County Sheriff's Department's alleged unlawful entry, wrongful taking of monies, and civil rights violations that took place on or about June 25, 2018.

Russell, Eric – Tort Claim Notice received September 28, 2018 alleging damages related to an incident involving the Lincoln County Sheriff's Department and Claimant's dog.

Steward, Tynel – Tort Claim Notice received November 1, 2018 alleging that while incarcerated at Lincoln County Detention Center, the Claimant (i.) was attacked due to the negligence, reckless, and/or intentional actions of jailers and other county employees, (ii.) has not

received adequate medical care, and (iii.) is being held in inhumane conditions of confinement, including, but not limited to, sewage gas, overcrowding, and sleeping conditions.

Windstream – Tort Claim Notice received November 13, 2018 alleging that Windstream Facilities at 147 Pfingsten Rd., Nogal, N.M. sustained damage as a result of the negligent acts or omissions by employees or agents of Lincoln County. Alleges that on or about September 22, 2018, Lincoln County was installing a culvert and damaged a Windstream Cable.

Windstream – Tort Claim Notice received November 13, 2018 alleging that Windstream Facilities at 148 Nogal Canyon Rd., Nogal, N.M. sustained damage as a result of the negligent acts or omissions by employees or agents of Lincoln County. Alleges that on or about September 27, 2018, Lincoln County was installing a culvert and damaged a Windstream Cable.

2017

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 LCDR for 15 days, November 10-25, 2015, and alleging paperwork to hold Plaintiff did not contain a cause number.

Action: Approve, **Moved by** Commissioner Stewart, **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 3:26 PM.

Chair Stone adjourned the Closed Session and reconvened the Regular Meeting at 3:56 PM.

Commissioner Stewart attested 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.

30. Potential Property Purchase by Resolution 2019-19

Commissioner Stewart read Resolution 2019-19 approving the purchase of property from LSEP, LLC.

Motion: Adopt Resolution 2019-19, **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 F: Copy of Resolution 2019-19 is attached hereto in reference thereto made a part hereof.

31. Signing of Official Documents

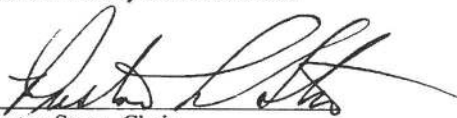
32. Next meetings:

- a. November 19, 2019 Regular Commission Meeting

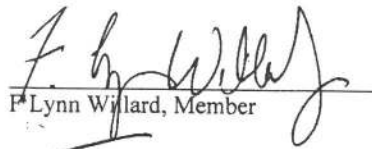
33. Adjourn

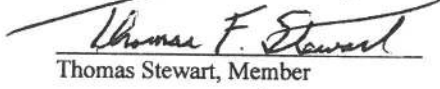
There being no further business to come before the Board of County Commissioners, Chair Stone adjourned the meeting at 3:59 PM

County of Lincoln
Board of County Commissioners


Preston Stone, Chair

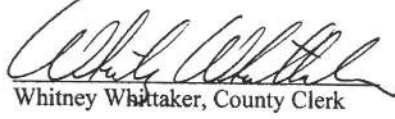

Dallas Draper, Vice Chair


F. Lynn Willard, Member


Thomas Stewart, Member


Elaine Allen, Member

ATTEST:


Whitney Whitaker, County Clerk

November 19, 2019
Date Approved

