

## COUNTY OF LINCOLN

### New Mexico Regular Meeting Board of County Commissioners

Dallas Draper, Chair  
Lynn Willard, Vice Chair

Thomas F. Stewart, Member  
Elaine Allen, Member  
Preston Stone, Member

#### Minutes Tuesday March 17, 2020

Minutes of the Regular Meeting of the Lincoln County Commission held at 8:30 AM on March 17, 2020 in the County Commission Chambers, Lincoln County Courthouse, in Carrizozo, New Mexico.

#### 1. Call to Order

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

#### 2. Roll Call

##### Roll Call.

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

**Absent:** Commissioner Stone.

Others present included Nita Taylor, County Manager; Alan Morel, County Attorney; and Whitney Whittaker, County Clerk.

#### 3. Invocation

The invocation was presented by Chair Draper

#### 4. Pledge of Allegiance

- a. Pledge – USA 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 Allen, **Seconded by** Commissioner Willard.

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 4).

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

#### 6. Approval of Minutes:

- a. February 18, 2020 Regular Commission Meeting

**Motion:** Approve the minutes of the February 18, 2020 Regular Meeting, **Action:** Approve, **Moved by** Commissioner Willard, **Seconded by** Commissioner Stewart.

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 4).

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

#### 7. Approval of Consent Agenda

- a. Payroll/Accounts Payable/Budget/ Expenditures
- b. Treasurer's Financial Report for the Month ending February 29, 2020
- c. Approval or Disapproval of Safety Net Care Pool & Indigent Health Care Claims
- d. Approval of Procedures & Timeline for 2020-2021 Budget Preparation
- e. 2019 Volunteer Firefighters Annual Reporting  
-Arabela Volunteer Fire Department

- Bonito Volunteer Fire Department
- Glencoe Palo Verde Volunteer Fire Department
- Hondo Valley Volunteer Fire Department
- Nogal Volunteer Fire Department
- White Oaks Volunteer Fire Department

f. Corrected Qualification Report for Volunteer Firefighter Service Credit

- Travis Atwell
- Spencer J. Baldwin
- Riker Davis
- Roy H. Dose
- Richard Hall
- Robby Hall
- Chet J. Southard
- Patty L. Wilson
- Walter Q. Wilson

**Motion:** Approve the Consent Agenda, **Action:** Approve, **Moved by** Commissioner Willard, **Seconded by** Commissioner Allen.

Commissioner Stewart expressed his concern and stated this has been an expensive month.

Beverly Calaway, Treasurer reminded all funds held by the Treasurer were fully vested and collateralized at 102%.

Ms. Calaway stated the Santa Fe County Treasurer has request the Taxation and Revenue Department Property Tax Director to extend the deadline of the 2<sup>nd</sup> half property taxes, due to COVID-19. Ms. Calaway stated she had no knowledge of any other County Treasurer requesting any similar extension.

Ms. Calaway stated the Lincoln County Treasurer will not request to extend the deadline of collections. Ms. Calaway stated due to COVID-19 her staff have been provided personal protective equipment. Ms. Calaway stated her office will monitor the situation and make appropriate changes when needed.

There was a general conversation regarding the general fund budget.

**Vote:** Motion carried by unanimous vote (summary: Yes = 4).

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

**EXHIBIT A:** Copies of the Consent Items including Resolution is attached hereto in reference thereto made a part hereof.

**8. Approval of Budget Adjustment FY 19/20 by Resolution 2019-34**

Nita Taylor, Manager stated per statute Counties may request adjustments to its budget to accommodate changes in its financial operations during the fiscal year. Commission approved adjustments must also be submitted to the Department of Finance and Administration for approval.

**Motion:** Adopt Resolution 2019-34, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

**Vote:** Motion carried by unanimous vote (summary: Yes = 4).

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

**EXHIBIT B:** Copy of Resolution 2019-34 is attached hereto in reference thereto made a part hereof.

**9. Forest, Land & Natural Resources Matters:**

- a. Smokey Bear Ranger District – Acting Ranger Larry Cordova
- b. South Central Mountain RC & D
- c. Upper Hondo Soil & Water Conservation District
- d. Lincoln / Ft. Stanton Historic Sites
- e. Bureau of Land Management
- f. LANRAC

Ms. Taylor informed due to the Governor of New Mexico's Stay at Home Order the Forest, Land and Natural Resources were cancelled.

**10. Lincoln County Community Health Council Update Given By Shannon Dictson, LCCHC Coordinator and Sergio Castro, LCCHC Chairman**

Ms. Taylor informed Shannon Dictson was unable to attend the meeting due to New Mexico Governor's Stay at home Order.

**13. Approval of Proclamation Recognizing April 7, 2020 as National Service Recognition Day**

Ms. Taylor discussed this year's annual day of recognition for National Service is April 7, 2020. Ms. Taylor stated this date was set aside to encourage residents to recognize the significance of our national services in the county.

**Motion:** Approve the National Service Recognition Day Proclamation, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 4).

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

**15. Manager's Report**

1. Office of the State Auditor Notification to Seek Proposals for Auditor. Each year the County receives notification from the OSA reminding all agencies, including local governments, of the requirements to start the process of obtaining an Independent Public Auditor. Public bodies that fall under the tiered system, which counties do, will be able to submit a draft contract for OSA approval through the OSA-Connect Portal. Per the Audit Rule, an IPA is able to conduct an audit for a local government for six years maximum without taking a two year break. Kubiak, Melton and Associates ("KMA") has conducted the County's audit for FYs 17, 18 and 19. I recommend contracting with them again for FY20.

**Motion:** Enter into a contract with Kubiak, Melton and Associates for fiscal year 2020, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 4).

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

2. NM Supreme Court Mental Health Summit; Lincoln County Team. Upon request to Judge Bryant for him to attend the Commission meeting following the Mental Health Summit, he confirmed he would do that. We discussed whether he was able to find another County Manager to participate on his Lincoln County Team. He needs, and is lacking, a First Responder on his Lincoln County Team, rather than a County Manager, and I propose to have Joe Kenmore participate in that initiative. As it is a three day summit, the minimal costs will include two nights lodging and meals.

3. Bill Fulginiti, New Mexico Municipal League President and Long Time Leader, Friend and Participant of Local Government passed away on February 26, 2020.

4. La France Update. While Toni Foligno, Inventory Assets Clerk and Joe Kenmore, Emergency Services Director have routinely scheduled meetings with Ray Seidel, there are a number of months they have been unable to schedule or conduct an inspection. Although in March, Mr. Seidel responded by telephone that beginning in April, he and others will work the first week of each month for several months to bring it to condition to have painted; and predicted that progress would go quickly after that. We are not confident that will happen, as there has not been substantial progress on the restoration work since April 2019. We recommend seeking other alternative measures to restore the vehicle and bring that back for Commission consideration.

5. Disclosure Summary due March 31, 2020. The County has contracted with Loretta Garcia of Accu-Disclosure to prepare the final Disclosure Summary for the County's outstanding public debt. Per Ms. Garcia, "the summary includes a list of the bonds outstanding, the tables required to be updated annually, the due dates and actual filing dates and the links to all the documents that have been posted to EMMA on the County's behalf for the past five years. The County is in material compliance with its disclosure obligations." Ms. Garcia reminded that private placement

debt financed through the NMFA, or a banking institution is now required to be posted on EMMA within 10 business days. The County granted permission for her to work with bond counsel or directly with NMFA or bank for the proper documentation, and make the required EMMA posting.

6. **Pattern Timeline.** Pattern has released an updated timeline for the DURAN MESA LLC / TECOLOTE WIND LLC / RED CLOUD WIND LLC PROJECT. The current activities, March 17th hearing commences at page 6. The timeline calls for finalizing PILT negotiations on April 1, 2020 and finalizing the closing documents at the April 21st Commission meeting.

7. **Purchase of Replacement Network Server for Lincoln County Government.** During the FY19-20 budget cycle, Finance requested, and the Commission approved, the replacement of the existing Network Server, which was installed seven years ago.

8. **Capital Outlay Projects – HB349.** Governor Lujan Grisham passed HB349 on March 11, 2010. All four of the County's requested projects were funded, as summarized below. See Exhibit 6 for a summary of all requests by all entities in the County. Seven of the requests were line-item vetoed, with all targeted to have been allocated out of the General Fund. The remainder of approved requests will be funded by Severance Tax Bonds.

a.	Hospital Replacement	\$460,340
b.	Fairgrounds & Arena Improvements	\$245,250
c.	Courthouse Courtyard Improve (drainage)	\$100,000
d.	Courthouse Accessibility Improvements	\$ 90,000
<b>Total</b>		<b>\$895,590</b>

**SB 207 – General Obligation Bond Projects – Senior Centers**

a.	Vehicles for Carrizozo, Hondo & Ruidoso Downs	\$90,166
b.	Hondo Equipment	\$42,240
<b>Total</b>		<b>\$132,406</b>

Commissioner Allen suggested sending a thank you note to the Governor.

9. **County Labor Relations Attorney Dina Holcomb** notified that the State Board chose to revoke approval of the County's Local Labor Board on the basis that our Board, which had not been firmly established, had not yet met to adopt the Open Meetings Act Resolution. That delay of the full establishment of the County's Board was tied to the third appointed member being a Public Employee, not meeting the criteria of state law. It is most likely that this action was taken by the State Board due to anticipated passage of the changes to the Public Employee Bargaining Act defined by SB110, which would essentially eliminate all local boards.

10. **COVID – 19** has been declared a public health emergency not only by the President of the United States, but also by The State of New Mexico, and many other states, municipalities and counties across the country. Released by Governor Lujan Grisham on Sunday, March 15th is a directive to all state agencies to accelerate remote-work initiatives in the wake of the COVID-19 public health emergency and to temporarily adjust and in some cases suspend certain functions of government to minimize public health risks.

The Governor has encouraged local governments to follow suit and implement telework policies for as many employees as possible; and take other steps to limit person-to-person contact in order to emphasize social distancing.

Mandated school closures have posed a hardship on families unable to obtain childcare. Counties are addressing that circumstance in several ways:

- a. Grant administrative leave on a case-by-case basis to an employee who cannot find child care;
- b. Authorize vacation or sick leave to care for children at home due to school closures. If sick leave, waive the requirement for certification by a physician for an absence greater than three days;

- c. Approve leave or make accommodations for remote work from home, if feasible;
- d. If unable to utilize remote work and the leave balances are exhausted, employee may apply for Emergency Administrative Leave. The County reserves the right to recoup this time from the final paycheck of employees who terminate before they rebuild their accrued sick time.

**Motion:** Direct Manager to waive the requirement for certification by a physician for an absence greater than three days, **Action:** Approve, **Moved by** Chair Draper, **Seconded by** Commissioner Stewart.

There was a general discussion regarding New Mexico Governor's stay at home order and how it would affect the operations of the County of Lincoln.

Chair Draper rescinded his motion, Commissioner Stewart rescinded his second.

#### 11. Departmental Status Report (cancelled).

#### 14. Lodger's Tax Update

- a. Current status
- b. Presentation by Host Compliance on its Address ID Service
- c. Consideration of Entering into Limited Services Agreement

Ms. Taylor reminded during its January 28, 2020 meeting the Commission was briefed by Alex Fuller, Rural Addressing Technician, on the initial compliance requirements tied to the revised Lodger's Tax Ordinance. Ms. Taylor informed the County identified 148 unregistered listings and was able to get 48 of those registered by the January Commission meeting.

Alex Fuller, Rural Addressing Technician reported as of March 9, 2020, the County had registered 108 listing out of the 148 from the original list. Mr. Fuller stated the County of Lincoln had 65 total Lodgers registered encompassing 241 individual cabins. Mr. Fuller stated a second list of 35 additional unregistered lodgings had been compiled and letters were sent to the residents. Mr. Fuller stated 7 of the 35 replied and are now registered.

Mr. Fuller stated Host Compliance identified, as of January of this year, 651 listings and 377 unique properties in the unincorporated areas of the County and found that the median nightly rate was \$215. Mr. Fuller stated the Lodgers tax collected could be \$796,068.

Eric Brown, Host compliance joined by teleconference and provided a short presentation on their Address ID services.

There was a general discussion regarding the Host Compliance Service Agreement.

**Motion:** Enter into a Service Agreement with Host Compliance for one year, **Action:** Approve, **Moved by** Commissioner Allen, **Seconded by** Commissioner Willard.

**Vote:** Motion carried by unanimous vote (summary: Yes = 4).

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

#### 11. 9:30 A.M.: PUBLIC COMMENT AND OTHER BUSINESS FROM COUNTY OFFICIALS (Items are for discussion only – no action will be taken)

Commissioner Stewart informed he will attend a Joint Land Use Study meeting on April 1, 2020.

Commissioner Allen stated will attend a Greentree meeting this week. Commissioner Allen informed the Solid waste issue with Mr. Spiri was resolved.

Commissioner Willard stated he will attend the Southeastern New Mexico Economic Development District meeting.

Whitney Whittaker, Clerk informed the County Clerk's office will take all the necessary steps in order to keep the staff safe during the COVID- 19 issue. Ms. Whittaker stated the 2020 Presidential Election was June 2, 2020 and we will have to keep the office operational due to the federal restrictions on elections.

Beverly Calaway, Treasurer stated the 2<sup>nd</sup> half of the property taxes notices were mailed out. Ms. Calaway stated there was an issue of fraudulent activity or scam the County caught prior to any payments being sent. Ms. Calaway stated the scam could have cost the County a large amount of money, but was glad it was caught early.

Robert Shepperd, Sheriff stated they will not shut down any operations due to COVID-19 but prepare the deputies and staff with proper protective equipment. Sheriff Shepperd stated the Court facility staff will take precautionary actions to prevent the spread of the virus but will not shut down operations.

Walter Hill, Assessor stated the 2020 Notices of Valuation will be mailed on April 1, 2020, with the statutorily mandated 30-day protest period ending on April 30, 2020. Mr. Hill stated correspondence will be handled strictly by email, phone, fax or postal mail.

Chair Draper informed he will host a webinar with community members, municipalities, and other elected officials at 1:30 PM by invitation only to discuss the COVID-19 crisis.

Robert Shepperd, Fair Board Member informed there was no events scheduled at this time to rent the fair building.

Chair Draper stressed the importance of the census and the impact it will have to the County.

**12. Approval of Proclamation Commemorating the Carrizozo Woman's Club's 100 Years of Community Service on April 20, 2020; and Declaring April 20 as Carrizozo Woman's Club Day**

Ms. Taylor stated the Proclamation commemorating the Carrizozo Woman's Club's 100 years of community service on April 20, 2020 and declaring April 20<sup>th</sup> as Carrizozo Woman's Club Day in Lincoln County. Ms. Taylor informed the proclamation detailed the services provided by the Carrizozo Woman's Club over time to individuals and families in need and defined the fundamental principles of the Carrizozo Woman's Club.

**Motion:** Adopt the Lincoln County Commission Proclamation Commemorating the Carrizozo Woman's Club 100 year of community service, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

**Vote:** Motion carried by unanimous vote (summary: Yes = 4).

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

**19. Replacement Hospital Update**

Ms. Taylor informed Ernesto Rodriquez, Lead Project Superintendent was not able to attend the meeting. Ms. Taylor stated the most recent change order was to add emergency power to the imaging equipment and the project was out of the design stage and was being priced out by Jaynes. Ms. Taylor informed the actual construction cannot start until after the Temporary Certificate of Occupancy is awarded; but it was critical the equipment was ordered as early as possible. Ms. Taylor stated they requested a 20% variance of \$100,000 due to the circumstances the costs are higher for this change order.

Ms. Taylor stated the most recent pay application submitted by Jaynes was dated March 5, 2020 in the amount of \$868,734.77 bringing their total invoiced amount to date to \$25,780,075.88. Ms. Taylor stated based on their contractual sum, the balance left on their portion of this project is \$2,620,888.12.

There was a general discussion regarding Bobby George, Lead Architect from Dekker Perich Sabatini and whether the equipment should have been listed in the list of projected construction expenses.

**Motion:** Approve up to \$160,000 for change order, **Action:** Approve, **Moved by** Commissioner Allen, **Seconded by** Commissioner Stewart.

**Vote:** Motion carried by unanimous vote (summary: Yes = 4).

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

Chair Draper informed Village of Ruidoso set up a daycare at the Horton Complex with lunch and afternoon snack for the employees at the Lincoln County Medical Center.

## 20. Lincoln County Detention Center Update

Ms. Taylor stated significant progress had been made in arriving at an agreement on methods to reduce transports between the Detention Center and the County Courts by utilizing video arraignments.

Ms. Taylor stated the major concern was the transportation of an inmate from Lincoln County to another county within the same day.

Ms. Taylor stated the Detention Center had posed two suggestions for the County of Lincoln to consider; obtain assistance from the Sheriff's office for transportation and establish a single point of contact in the Sheriff's office to work with the Detention Center on numerous matters.

Chair Draper recesses the regular meeting at 10:33 AM and reconvened at 10:43 AM

## 21. Approval of Cost of Care Agreement

Ms. Taylor stated the County's current agreement with the County of Bernalillo for housing of Lincoln County Juveniles would expire on June 30, 2020. Ms. Taylor stated the cost of the housing is \$225 per day, or any fraction of a day, per detainee. Ms. Taylor stated detainees that required enhanced supervision based on high suicide risk, mental health acuity or other high-risk behavior, to include hospital details requiring one on one staffing, will be charged a daily rate of \$300 per day.

**Motion:** Approve Agreement between Lincoln County and Bernalillo County for the housing of Lincoln County Juveniles, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 4).

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

## 22. Award of RFP 19-20-002 – Ruidoso Downs Senior Center Renovations

Ms. Taylor reminded during the February 18, 2020 commission meeting, the highest scoring offeror was Billy Roach Renovations for the Ruidoso Downs Senior Center Renovations.

	Billy Roach Renovations	Westcon Commercial
1. Experience	8.7	8.7
2. Capacity and Capability	8.7	8.7
3. Past Performance	15.7	17.3
4. Cost	56.7	43.3
<b>Total</b>	<b>89.7</b>	<b>78.0</b>

Ms. Taylor stated the City of Ruidoso Downs, by email correspondence from Carol Virden, Village Clerk/Administrator, had no issues with the renovations.

**Motion:** Award RFP to Billy Roach Renovations, LLC, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 4).

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

## 20. Lincoln County Detention Center Update- continued

Robert Shepperd, Sheriff stated it would be less expensive to hire another officer in order to help the Detention Center with transportation. Sheriff Shepperd stated the Legislation this year approved a new Judge for the 12<sup>th</sup> Judicial District Court and their office will have to accommodate for those hearings.

Joe Kenmore, Office of Emergency Service stated LCDC has been checking temperatures and monitoring signs of the flu within the facility.

## 23. Solid Waste Update

Ms. Taylor stated the compactor move from Buckhorn to the Glencoe Fire Station will advance now that the weather is suitable to pour concrete. Ms. Taylor stated the County departments overseeing the project are the Road Department, Planning and Project Management, and Emergency Services

Ms. Taylor informed prior to issuing the RFP in September, 2016 to pick up slash piles for Lincoln County, substantial field work had been done by the Planning Department to identify the number and location of the slash piles. Ms. Taylor stated the Planning Department identified 4,800 cubic yards of slash located in 375 piles within the geographic boundaries of Lincoln County. Ms. Taylor stated an estimated 91 square mile area encompassed the following subdivisions; Cedar Creek, Alpine Village, Alto Crest, Ranch Ruidoso Valley Estates, Ranches of Sonterra, Loma Grande and Angus.

Ms. Taylor stated the modification for solid waste collection ordinance has been heard through several commission meetings regarding the billing of multiple habitable premises, used primarily for either a private or business purpose; and whether their property owner should be able to file for an exemption if the premises were not being used not generating trash.

There was a general discussion regarding the waiver of the Solid Waste Collection Fee.

**24. Consider Approval for Purchase of Can Am UTV 6x6 Unit and Wildland Fire/Rescue Slip-In for the UTV by Glencoe Fire Department Using Trust Fund**

Ms. Taylor stated Glencoe Fire Department would like to purchase a new Can Am UTV 6x6 unit and a wildland fire/rescue slip-in for the UTV. Ms. Taylor stated the unit will be very useful for suppression and rescue.

**Motion:** Approve the Request to purchase unit, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

**Vote:** Motion carried by unanimous vote (summary: Yes = 4).

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

**25. Approval of Resolution 2019-33 – Disposition of Surplus Inventory**

**Motion:** Approve the listed property for disposition and reporting to the State Auditor and request approval from the Department of Finance and Administration (DFA) to dispose of property by Resolution 2019-33, **Action:** Approve, **Moved by** Commissioner Willard, **Seconded by** Commissioner Stewart.

**Vote:** Motion carried by unanimous vote (summary: Yes = 4).

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

**EXHIBIT C:** Copy of Resolution 2019-33 is attached hereto in reference

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

- a. Old Lincoln Days  
Request: \$16,700.00  
Date(s) of Event: August 7, 8, & 9, 2020  
Presenter: Kristi Morrow/Lincoln Pageant Festival Committee  
Recommendation: \$13,000.00

**Motion:** Approve the Lodger's Tax Committee amount presented for a total amount of \$13,000.00, **Action:** Approve, **Moved by** Commissioner Willard, **Seconded by** Commissioner Stewart.

Commissioner Stewart suggested building in an additional 15% of lodger's tax funding for Host Compliance for the fiscal year budget.

**Vote:** Motion carried by unanimous vote (summary: Yes = 3).

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

**Excused:** Commissioner Allen.

**27. Approval of Road Project Agreement Between Lincoln County and the Lincoln National Forest**

Ms. Taylor informed the parties last entered into a Forest Road Cooperative Agreement (Coop Agreement) on April 10, 2017. Ms. Taylor stated the Coop Agreement allowed for the parties to cooperate in the planning, survey, design, construction, reconstruction, improvement and maintenance of certain forest roads.

Ms. Taylor informed Road Superintendent Jeff Honeycutt was in favor of this agreement.

**Motion:** Approve Road Project Agreement between Lincoln County and the Lincoln National Forest, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 4).

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

**28. Consideration of Appointments and Removals from Boards/Commissioners' Committees:**

- a. Lincoln County Historic Preservation Board - Becky Borowski
- b. Lodger's Tax Committee - Sheri Rodgers

**Motion:** Appoint Becky Borowski to the Lincoln County Historic Preservation Board and appoint Sheri Rodgers to the Lodger's Tax Committee, **Action:** Approve, **Moved by** Commissioner Allen, **Seconded by** Commissioner Stewart.

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 4).

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

**23. Solid Waste Update continued**

**Motion:** Schedule the Public Hearing to consider Solid Waste Ordinance, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 4).

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

**29. Executive Session Pursuant to the Open Meetings Act: Discussion of all Threatened and/or Pending Litigation Section 10-15-1, Sub-Paragraph H.(7); and Discussion of the Purchase, Acquisition or Disposal of Real Property or Water Rights by the Public Body, Section 10-15-1, Subparagraph H.(8).**

**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); and Discussion of the purchase, acquisition or disposal of real property or water rights by the public body, Section 10-15-1, Sub-Paragraph H.(8).

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

**1. 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. The case is still pending.

**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. On March 25, 2019, a Notice of Appeal was filed with the N.M. Supreme Court, Case No. S-1-SC-37602 is still pending)

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. The case is still pending.

6. **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 Counts is the presiding Judge. 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., Cause No. S-1-2:19-cv-0087-GJF/GBW

7. **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. On October 16, 2019, Lincoln County received notice that it would be receiving \$46,011.00 from the Judgment Fund.

8. **Brd. 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.

9. **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. On February 28, 2020, a Stipulated Order of Dismissal with Prejudice was entered by Judge Hudson.

10. **City of Albuquerque, et al vs. John Monoforte & N.M. Taxation & Revenue Department, Cause No. D-202-CV-2018-08036** Judge Biedscheid is the presiding judge. Lincoln County has entered into an Agreement for joining in the litigation to recover amounts representing unauthorized reductions in violation of New Mexico Statutes. On November 14, 2019, Lincoln County joined in the litigation.

11. **Greentree Solid Waste Authority v. Lincoln County, Cause No. D-1226-CV-2014-00095** – Compromise and Settlement Agreement and Release executed on December 17, 2015.

12. **Raymond Magana, et al v. Walter Hill, L.C. Assessor, Cause No. D-1226-CV-2019-00335** Complaint for Refund of Property Taxes was filed on December 19, 2019. Judge Daniel A. Bryant is the presiding Judge. On January 29, 2020, Lincoln County filed a Motion to Dismiss in Lieu of an Answer to the Complaint and a hearing on the Motion has been requested.

#### **Tort Claims Notices Received or Threatened**

#### **2020**

**\*LaSalle Corrections** – amendment to Operations and Management Agreement-Lincoln County Detention Center: True-Up Dispute

**Scott, Jacob** – Tort Claim Notice received January 16, 2020 alleging negligent, malicious and/or tortious actions and/or omissions by former employees of the Lincoln County Sheriff's Office, including, but not limited to, infliction of pain and suffering.

**Eagle Creek West Condominiums Owners Association, Inc.** – Tort Claim Notice received January 20, 2020 alleging that if Lincoln County continues to assess a solid waste collection fee to the Members of Eagle Creek West Condominiums Owners Association, Inc. it will be necessary for them to take legal action against the County.

**Hamilton, Erika** – Tort Claim Notice received January 21, 2020 alleging damages for bodily injury due to negligent operation of a motor vehicle while being transported by a detention officer to and from court.

**Heidbreder, Amanda** – Tort Claim Notice received January 31, 2020 alleging, among other issues, no access to a phone, and unsanitary and overcrowding conditions at the Lincoln County Detention Center.

**Stubblefield, Rory** – Tort Claim Notice received February 20, 2020 alleging that members of the Lincoln County Sheriff's Office did commit multiple torts against Claimant by failing to perform their duties.

## **2019**

**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.)

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

**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.

**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.

**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.

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

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

**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.

**Green, Judy** – Tort Claim Notice received November 21, 2019 alleging that Ms. Green died as a result of the negligence, gross negligence, inattentive care, omissions and actions of the Lincoln County Medical Center.

**Bottlehouse Cabins, L.L.C.** – potential illegal subdivision.

**Ramos, Aaron** – Tort Claim Notice received December 13, 2019 charging the legality of the Lincoln County Sheriff's Office's Invoice for records responsive to an IPRA Request.

**Arenas, Jaime** – Tort Claim Notice received December 25, 2019 alleging that Deputy Finley with the Lincoln County Sheriff's Office cursed at him, brandished his weapons, and used excessive non-contact deadly force.

2018

**Duke, Arnold** – Harrisburg Document recovery

**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.

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

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 4).

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

Chair Draper recessed the Regular Meeting and convened the Closed Session at 11:27 AM.

Chair Draper adjourned the Closed Session and reconvened the Regular Meeting at 11:41 AM.

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.

Commissioner Stewart stated the Commission authorized the Manager to negotiate a resolution with LaSalle during the Special Commission Meeting March 11, 2020.

Commissioner Stewart stated the Lincoln County Commission had reached an agreement.

#### **10. Consideration of Request for True-up of Transition Costs by LaSalle Corrections**

**Motion:** Approve a settlement agreement of \$100,000 to LaSalle Corrections, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Willard.

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 4).

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

Chair Draper recessed the regular meeting at 11:41 AM and reconvened the regular meeting at 12:59 PM.

Chair Draper recessed the regular meeting at 1:00 PM and convened the public hearing at 1:00 PM.

16. **1:00 PM: Public Hearing to Consider: Ordinance No. 2020-01: Authorizing the Issuance and Sale of Lincoln County, New Mexico Taxable Industrial Revenue Bonds (Red Cloud Wind LLC Project), Series 20, in the Maximum Aggregate Principal Amount Of \$125,000,000, 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 Project; Ratifying Certain Actions Taken Previously; and Repealing All Actions Inconsistent with this Ordinance**

Crystal Coffman, Business Development Manager for Pattern Energy joined through teleconference. Ms. Coffman provided a presentation on the status of their wind energy activities in Lincoln County and surrounding counties. Ms. Coffman stated the first project to be implemented in the County would be Red Cloud Wind. Ms. Coffman presented a side by side comparison of the Mesa Canyons Wind project for 1,000 MW with the Red Cloud Wind project for 80 megawatts and pointed out the difference in the Commission approved PILT of \$2,800 per megawatt for Mesa Canyons and \$2,100 per megawatt for Red Cloud. Ms. Coffman explained the reason for the reduce PILT payment was Pattern had a loss of 20% on their federal Production Tax Credit. Ms. Coffman stated 100% of the megawatts in Lincoln County for Red Cloud are entirely within the Corona School District.

Commissioner Stewart questioned the calculations of the PILT.

Ms. Coffman stated economic status was based upon an 80% PTC valuation.

Ms. Coffman stated she would be happy to provide impacts. Ms. Coffman informed the offer was also made to all three counties.

Commission Willard asked if other counties had agreed to project proposal.

Ms. Coffman stated Guadalupe County Commission will meet in April and Torrance County will meet next week.

Attorney Morel questioned why the proposal wasn't brought to the Commission earlier.

Ms. Coffman stated development is always changing.

Commission Willard proposed \$2,400 per megawatt for PILT payment.

Attorney Morel raised concern about adopting items in the ordinance not yet agreed on.

Don Monnheimer, legal counsel for Pattern Energy joined telephonically stated the bond ordinance itself is complete, we just need to put the PILT payment in. Mr. Monnheimer stated the IRB lease can be completed after the ordinance is adopted.

Attorney Morel questioned if the ordinance cannot reflect an agreed upon PILT price for the future, how does it benefit the Commission if they cannot change it in the future.

Mr. Monnheimer stated to move on a schedule that coordinates.

Eduardo Duffy, Sutin Thayer and Browne bond counsel to Lincoln County proposed a continuation of the public hearing to a date certain.

Chair Draper requested public comment and having none adjourned the Public Hearing and reconvened the Regular Meeting at 1:34 PM.

**Motion:** Adopt Ordinance 2020-01 subject to the addition to bond purchase agreement in addition to the PILT payment, **Action:** Approve, **Moved by** Commissioner Willard, **None seconded.**

There was a lengthy discussion about the addition of language into the Ordinance.

Chair Draper recessed the regular meeting at 1:43 PM and reconvened the meeting at 2:10 PM.

**Motion:** Adopt Ordinance 2020-01 with new language on inserted on page 6; an addition of PILT payment of \$2300 per megawatt with no minimum, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

**Vote:** Motion carried by unanimous roll call vote (summary: Yes = 4).

**Yes:** Chair Draper, Commissioner Stewart, Commissioner Allen, Commissioner Willard.  
Chair Draper recessed the regular meeting at 1:19 PM and convened the public hearing at 1:20 PM

17. Immediately following 1:00 PM public hearing for Ordinance 2020-01: Public Hearing to Consider: Ordinance No. 2020-02: Authorizing the Issuance and Sale of Lincoln County, New Mexico Taxable Industrial Revenue Bonds (Tecolote Wind LLC Project), Series 20, in the Maximum Aggregate Principal Amount Of \$196,000,000, 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 Project; Ratifying Certain Actions Taken Previously; and Repealing All Actions Inconsistent with this Ordinance.

Attorney Morel requested same language on Red Cloud on page 6 to be placed on Tecolote Wind LLC Project.

Crystal Coffman Business Development Manager for Pattern Energy joined telephonically stated Pattern does not intend to place more megawatts on Tecolote Wind LLC.

Eduardo Duffy, Sutin Thayer and Browne bond counsel to Lincoln County questioned if the Tecolote Wind LLC was an operational project or a place holder.

Ms. Coffman stated it was a place holder in order to change the name if needed when selling the energy.

Commissioner Allen questioned why another industrial bond for the same project.

Ms. Coffman stated when Pattern first started the project it had a bond already associated.

Commissioner Stewart question the relationship between Pattern, Sun Zia and NMR.

Ms. Coffman stated 3,000 megawatts of wind farms that are to be located in Lincoln, Guadalupe and Torrance, Pattern is the sole owner. Ms. Coffman stated there are two available transition lines; Western Spirit and second one which is owned by NMR – Southwest Power Group. Ms. Coffman stated they own 100% of the Sun Zia transmission line. Ms. Coffman stated Pattern was awarded megawatts on the Sun Zia line as anchor tenants.

Chair Draper requested public comment and having none adjourned the Public Hearing and reconvened the Regular Meeting at 2:32 PM.

**Motion:** Adopt Ordinance 2020-02 with new language on inserted on page 6; an addition of PILT payment of \$2300 per megawatt with no minimum, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Willard.

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

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

**No:** Chair Draper, Commissioner Allen.

Chair Draper recessed the regular meeting at 1:19 PM and convened the public hearing at 2:38 PM.

18. Immediately following public hearing for Ordinance 2020-02: Public Hearing to Consider: Ordinance No. 2020-03. Authorizing the Issuance and Sale of Lincoln County, New Mexico Taxable Industrial Revenue Bonds (Duran Mesa LLC Project), Series 20, in the Maximum Aggregate Principal Amount Of \$120,000,000, 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 Project; Ratifying Certain Actions Taken Previously; and Repealing All Actions Inconsistent with this Ordinance.

Attorney Morel informed no public hearing is needed due to the Duran Mesa project had been pulled.

Chair Draper requested public comment and having none adjourned the Public Hearing and reconvened the Regular Meeting at 2:39 PM.

**30. Signing of Official Documents**

**31. Next meetings:**

a. April 21, 2020 Regular Commission Meeting

**32. Adjourn**

There being no further business to come before the Board of County Commissioners, Chair Draper adjourned the meeting at 2:40 PM.

County of Lincoln  
Board of County Commissioners

Approved Telephonically  
Dallas Draper, Chair

Approved Telephonically  
F Lynn Willard, Vice Chair

Approved Telephonically  
Preston Stone, Member

Approved Telephonically  
Thomas Stewart, Member

  
Elaine Allen, Member

ATTEST:

  
Whitney Whitaker, County Clerk

April 21, 2020  
Date Approved

