

SANTA FE COUNTY
BOARD OF COUNTY COMMISSIONERS
REGULAR MEETING

September 30, 2008

Paul Campos, Chair – District 4
Virginia Vigil, Vice Chair – District 2
Michael Anaya – District 3
Harry Montoya – District 1
Jack Sullivan – District 5

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REGULAR MEETING
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This regular meeting of the Santa Fe Board of County Commissioners was called to order at approximately 10:15 a.m. by Chair Paul Campos, in the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

Following the Pledge of Allegiance and State Pledge, roll was called by County Clerk Valerie Espinoza and indicated the presence of a quorum as follows:

Members Present:

Commissioner Paul Campos, Chair
Commissioner Virginia Vigil, Vice Chairman
Commissioner Jack Sullivan,
Commissioner Harry Montoya *
Commissioner Mike Anaya

Members Excused:

[None]

V. INVOCATION

An invocation was given by County Chaplain Jose Villegas.

VI. APPROVAL OF THE AGENDA

- A. Amendments**
- B. Tabled or Withdrawn Items**

ROMAN ABEYTA: Mr. Chair, we have the following amendments to the agenda, the first coming under X. Matters from the Commission, we added an item D, which is discussion and possible approval for an expenditure of community funds in the amount of

* Participated telephonically for item XIII. D. 1.

\$2500 to Pandemonium Productions, LLC, for after-school instruction in the performing arts, including dance, acting and music for youth, targeting low-income families in Santa Fe County.

Continuing through the agenda, under XIII. Staff and Elected Official Items, page 5, C, Matters from the County Attorney, the presentation of the proposed general plan amendment, oil and gas element, 1., and the proposed oil and gas regulatory ordinance. Both items will be heard at 2:00 pm today.

On the next page, still under Matters from the County Attorney, we are requesting that item 4 be tabled, which is a grant agreement between the County and the Department of Finance and Administration, to plan, design and construct film and multi-media production studio.

And lastly, Mr. Chair, under D. Growth Management Department, the Santa Fe Canyon Ranch Case, that is for a vote only today and will be heard at 11:00 am. There are no other changes from staff.

CHAIRMAN CAMPOS: Commissioners, do you have any changes? Anything in addition? Okay.

COMMISSIONER ANAYA: So moved.

COMMISSIONER SULLIVAN: Second.

The motion to approve the agenda as amended passed by unanimous [3-0] voice vote. [Commissioner Vigil was not present for this action.]

VII. APPROVAL OF CONSENT CALENDAR

A. Consent Calendar Withdrawals

CHAIRMAN CAMPOS: Are there any items that any Commissioner wishes to withdraw from the Consent Calendar? for the record, Commissioner Vigil is present.

COMMISSIONER SULLIVAN: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER SULLIVAN: a. 4, and also Commissioner Vigil and I also would like to discuss B. 5. and then the only other one was B. 15. There was nothing in the packet for that. I think that was what was just passed out here by Mr. Ross and I'd like a chance to read it.

CHAIRMAN CAMPOS: Okay, so we can pull that off –

COMMISSIONER SULLIVAN: and I can try to read it while someone else is talking. Or do something. But I just want a chance to read it before we approve it.

CHAIRMAN CAMPOS: Okay, any other withdrawals from the Consent? Okay, is there a motion to approve the Consent Calendar with the exceptions noted by Commissioner Sullivan?

COMMISSIONER ANAYA: So moved.

COMMISSIONER SULLIVAN: Second.
CHAIRMAN CAMPOS: Discussion.

The motion passed by unanimous [4-0] voice vote.

XII. CONSENT CALENDAR

A. Budget Adjustments

1. Resolution No. 2008-150. A Resolution Requesting an Increase to the Roads Projects Fund (311)/CR 88A to Budget Prior Fiscal Year 2008 Grant Balance for Expenditure in Fiscal Year 2009/\$68,812.85 (Growth Management Department)
2. Resolution No. 2008-151. A Resolution Requesting an Increase to the General Fund (101)/Solid Waste Division to Budget Prior Fiscal Year 2008 Cash Balance for Transfer Station Upgrades in Fiscal Year 2009/\$79,857.96 (Growth Management Department)
3. Resolution No. 2008-152. A Resolution Requesting an Increase to the Road Projects Fund (311) to Budget Grants Awarded Through the New Mexico Department of Transportation for Various Road Projects/\$229,000 (Growth Management Department)
4. Resolution No. 2008-__ Resolution Requesting a Budget Decrease to the State Special Appropriations Fund (318)/Eldorado Senior Center to Realign the Fiscal Year 2009 Budget with the Fiscal Year 2008 Available Grant Balance <\$64,946> (Community Services Department) ISOLATED FOR DISCUSSION
5. Resolution No. 2008-153. A Resolution Requesting an Increase to the State Appropriations Fund (318)/Clerk's Digital Equipment to Budget Prior Fiscal Year 2008 Grant Balance for Expenditure in Fiscal Year 2009/\$1,145 (Community Services Department)
6. Resolution No. 2008-154. A Resolution Requesting an Increase to the State Special Appropriations Fund (318)/Nambe Headstart to Budget Prior Fiscal Year 2008 Grant Balance for Expenditure in Fiscal Year 2009/\$110,000 (Community Services Department)
7. Resolution No. 2008-155. A Resolution Requesting an Operating Transfer From the Capital Outlay GRT Fund (213) to the Economic Development Fund (224) for the Santa Fe Farmers' Market Institute Economic Development Project Participation Agreement/\$200,000 (Administrative Services Department)

B. Miscellaneous

1. Request Approval of the Accounts Payable Disbursements Made

- for All Funds for the Month of August 2008 (Administrative Services Department)**
- 2. Review and Discussion of the Monthly Financial Report for the Month of August 2008 Specific to the General Fund (Administrative Services Department)**
 - 3. Resolution No. 2008-156. A Resolution Authorizing the Surplus of Fixed Assets in Accordance with State Statutes (Sheriff's Department/Administrative Services Department)**
 - 4. Requesting Approval to Enter into Contract #28-0150-FD/RSM with Riskin Associates Architecture for \$422,410, Excluding Applicable NM Gross Receipts Tax, for Architectural/Engineering Services for the Design of the Western and Southern Regional Fire Stations in Santa Fe County. (Community Services/Fire)**
 - 5. Request for Approval and Consent for the Santa Fe Solid Waste Management Agency to Accept Waste From Los Alamos County and the North Central Solid Waste Authority (SFSWMA)**
ISOLATED FOR DISCUSSION
 - 6. The Youth Development Program Requests Authorization to Enter into Agreements with the Following Counties: San Miguel County, Colfax County, Taos County, Mora County, Otero County, Pueblo of Sandia and Torrance County. Whereas, the Above Mentioned Counties Are in Need of a Facility for Incarceration, Care, and Maintenance of Persons Charged with or Arrested for Violation of Santa Fe County's Ordinances, Arrested By Santa Fe County Law Enforcement Agencies within Santa Fe County's Jurisdiction; and Whereas, the Youth Development Program Is Willing to Incarcerate the County's Inmates on a Space Available Basis (Corrections Department)**
 - 7. The Adult Detention Facility Requests Authorization to Enter into Agreements with the Following Counties: San Miguel County and Taos County. Whereas the Above Mentioned Counties Are in need of a Facility for Incarceration, Care, and Maintenance of Persons Charged with or Arrested for Violation of Santa Fe County's Ordinances, Arrested By Santa Fe County Law Enforcement Agencies within Santa Fe County's Jurisdiction; and Whereas the Adult Detention Facility Is Willing to Incarcerate the County's Inmates on a Space Available Basis (Corrections Department)**
 - 8. Resolution No. 2008-157. A Resolution to Enter in an Agreement with NMDOT in the Amount of \$199,000 for Road Projects: La**

- Barbaria, La Tierra, CR 42, Raven Ridge Road (CR67-G), Eldorado Roads – Capital Coop Agreement for 2008 Legislative Appropriations (Growth Management Department)**
- 9. Resolution No. 2008-158. A Resolution to Enter in an Agreement with NMDOT in the Amount of \$30,000 for CR 55 Road Projects – Capital Co-op Agreement for 2008 Legislative Appropriations (Growth Management Department)**
 - 10. Resolution No. 2008-159. A resolution to Enter in an Agreement with NMDOT to Receive SB Funding in the Amount of \$177,737.33 for CR 42 Road Project Phase I – 0.82 Miles (STA 10+00 to STA 53+32.67) – NMDOT Local Government Road Program (Growth Management Department)**
 - 11. Resolution No. 2008-160. A resolution to Enter in an Agreement with NMDOT to Receive CAP Funding in the Amount of \$181,356.67 for CR 42 Road Project Phase II – 0.82 Miles (STA 53+32.67 to STA 96+65.34) – NMDOT Local Government Road Program (Growth Management Department)**
 - 12. Resolution No. 2008-161. A Resolution to Enter in an Agreement with NMDOT to Receive SP Funding in the Amount of \$119,546.67 for CR 42 Road Project Phase III – 0.82 Miles (STA 96+65.34 to STA 139+98) – NMDOT Local Government Road Program (Growth Management Department)**
 - 13. Request Approval of an MOU Between CWA Sheriff's Union and Santa Fe County Regarding Changes to Deputy III Promotions (Human Resources Department)**
 - 14. Consideration and Approval of Amendment No. 1 to the Water Rights Lease Agreement with the Town of Questa (Legal Department)**
 - 15. Consideration and Approval of a Water Rights Purchase Agreement with LL Land and Cattle Co. (Legal Department)**
- ISOLATED FOR DISCUSSION**

VIII. APPROVAL OF MINUTES

A. August 26, 2008

CHAIRMAN CAMPOS: Is there a motion?

COMMISSIONER SULLIVAN: I have some changes, Mr. Chair.

CHAIRMAN CAMPOS: Are they typographical only?

COMMISSIONER SULLIVAN: Yes, mine are typographical.

COMMISSIONER VIGIL: So moved, with the typographical changes.

CHAIRMAN CAMPOS: Commissioner Sullivan, you second that?
COMMISSIONER SULLIVAN: Second.

The motion to approve the minutes passed by unanimous [4-0] voice vote.

VIII. B. September 9, 2008

COMMISSIONER SULLIVAN: Mr. Chair, I have some typographical corrections.

CHAIRMAN CAMPOS: Is there a motion?

COMMISSIONER VIGIL: Move, with the typographical errors included.

CHAIRMAN CAMPOS: Is there a second?

COMMISSIONER SULLIVAN: Second.

CHAIRMAN CAMPOS: Discussion?

The motion passed by unanimous [4-0] voice vote.

IX. MATTERS OF PUBLIC CONCERN – NON-ACTION ITEMS

CHAIRMAN CAMPOS: This is an opportunity for members of the public to come forward and discuss any issue that's on their mind and relative to County business, and that is not on the agenda. Anyone would like to address? Okay, anyone else? Okay, so there's one gentleman. Please state your name and your address. Come forward.

PHIL BINACO: My name is Phil Binaco and I live in Eldorado, 5 Alcalde Loop.

CHAIRMAN CAMPOS: So what issue do you wish to address?

MR. BINACO: I would like to address – speak on behalf of the Eldorado Mobility Committee.

CHAIRMAN CAMPOS: What is that?

MR. BINACO: The committee was formed by the Eldorado Resident Association Board because of the growing concern with the management of the Eldorado Express, the only rural transit service in Santa Fe County. To refresh your memories, I'd like to present to you again a petition first presented to your July 3rd Commission meeting signed by 11 of the passengers who ride the Eldorado Express. *[Exhibit 1]*

CHAIRMAN CAMPOS: Let me ask you a question. Who operate and manages the Eldorado Express?

MR. BINACO: Who operates and manages?

CHAIRMAN CAMPOS: Who owns it? Is this the North Central?

MR. BINACO: It is the NCRTD.

CHAIRMAN CAMPOS: Okay.

MR. BINACO: John Whitbeck, a co-chairman of our committee, addressed the concerns of the citizens of Eldorado again in the August 12th Commission meeting. During that meeting, Phaedra Haywood, a reporter from the *New Mexican*, asked John if she could contact him. Haywood first spent some time visiting NCRTD staff in their offices, then spent 20 minutes with John on the phone and published an article in the *New Mexican* titled "Still Evolving Transit System Angers Some Riders."

In Haywood's article, Josette Lucero, executive director, makes the following statement: NCRTD Josette Lucero said she she's getting a little exasperated by the negativity and complaints. Number two, Lucero said the problems Whitbeck mentioned have all been addressed. Number three, Lucero said she's at a loss as to what the district still needs to do. We've done everything in our power to run a good service, she said. So I mean, what's really going on?

Let's look at what's really going on. NCRTD has an income of \$1,578,175 that is tied to the 5311 federal grant program. There was an additional income from the JARC 5316 federal grant of several hundred thousand dollars. To qualify for these federal grants NCRTD is required to have a formal process for public input. NCRTD held two public meetings in March of 2007. NCRTD held one public meeting 18 months later in September of 2008. In March of 2007, the most common request was for a mid-day bus service. The answer was no. In the September meeting of 2008, the most common request for a mid-day bus service. The answer was no.

In FY 08 and again in FY 09 under the federal 5311 grant program NCRTD has \$658,213.60 in federal and \$164,533.40 in local share for administrative costs for a total of \$822,767 for administrative costs. The same grant program awards \$377,704 in federal money and \$377,704 in matching local share for a total of \$755,408. This provides NCRTD a total income of \$1,578,175 under the federal 5311 grant program. Keep in mind that NCRTD has also income from another federal grant program titled JARC 5316. Other financial information from NCRTD places their income closer to \$1,703,490.73.

According to NCRTD information, \$80,576.60 was spent on the bus service contract, the Eldorado Express in FY 2007 and \$10,108 was spent on advertising for the Eldorado Express in FY 2007. In FY 2008 \$143,098.24 was spent on the bus service contract for the Eldorado Express, and \$5,401.05 was spent on advertising for the Eldorado Express in FY 2008. We know that Santa Fe County contributed \$100,000 in local funding in 2008, and is contributing \$120,000 in FY 2009. We believe Los Alamos County has also contributed \$100,000 in GRT for the Eldorado Express.

On question we have is where is the match of 50 percent from the 5311 federal grant? If Santa Fe County kicked in \$100,000 and Los Alamos kicked in \$100,000 for the Eldorado Express, where is the \$200,000 in 5311 federal grant money? Our committee has also learned recently that the NCRTD board has voted on a new contract for the Eldorado Express. The contract is with the same bus company and it appears that there was no competitive bidding. The bid this year is \$355,782, which is \$212,683 more than the service cost last year. Our understanding is that it's well known that there would be no competitive bidding, even though the price has more than doubled, we are still short \$20,980 to pay for the this service. Of course,

there is still no money for mid-day service because Santa Fe County is not willing to match federal funding.

Incidentally, the current \$330,803 available for the Eldorado Express, \$120,000 is coming from Santa Fe County, \$100,000 is coming from Los Alamos GRT, \$33,000 is coming from 5311 federal grant money, and \$40,000 is coming from the JARC federal grant. Apparently, according to NCRTD math, \$40,000 is the same as \$334,802. Let's see if we can find some more facts about what's really going on.

To quote the exasperated Josette Lucero, who's at a loss as to what NCRTD still needs to do, let's check the NCRTD website. We can look under the documents link. Unfortunately, board agendas, meeting minutes, executive director reports, any public information previously on the site stopped in November or December 2007. Coincidentally, just around the time NCRTD began buying their own buses, hiring their own personnel, all of whom have retirement plans with PERA and state government benefit plans. In fact, if you attempt to look for the latest board meeting you will find the date September 5, place and time to be announced. This is also the same time that we can suddenly afford to have three mid-day routes from Santa Fe, Los Alamos and Española – three mid-day routes from Santa Fe, Los Alamos and Española to the Indian casinos, from the Okey Casino, Big Rock Casino, Cities of Gold, Camel Rock Casino.

According to Mr. Valencia, the employees need a free ride to work. According to Mr. Valencia, we can't have mid-day service to Eldorado because Santa Fe County kicked in one-third as much money as one tribe. Mr. Valencia's salary, excluding benefits, is \$111,000. Okay? Mr. Valencia stated at a City Council meeting on July 8th of this year that he did not know the cost for the Eldorado bus services per person per trip, and that cost is needed in terms of federal funding. Okay? And he did not even know how many bus drivers he had hired, and that was in July 8th of this year.

CHAIRMAN CAMPOS: Mr. Binaco, how much more time do you need?

MR. BINACO: I need about five seconds. The more we learn about NCRTD the more obvious it is that as we are being asked to come up with \$2.5 million a year in a regressive gross receipts tax to move more warn bodies behind more slot machines on Indian reservations that pay no taxes, the more the citizens of Santa Fe County are being thrown under the bus by Lucero, Valencia and their cronies.

And I would like to read a brief statement by Attorney General Gary King committed to protecting New Mexico from abuses in government. One of the top priorities is to prevent public officials from becoming involved in any violations of good government laws and ethical standards. Public corruption poses the greatest single threat to the credibility of government [inaudible] at all levels. It undermines good government, fundamentally distorts public policy and perception, leads to misallocation of resources, fosters unethical behavior and ultimately harms all New Mexicans either directly or indirectly.

We need bus services to get to work, to go to college, okay, and to get to our hospital, and we do not need bus service three times a day to get to casinos. I'd like to thank you all.

CHAIRMAN CAMPOS: Thank you, sir. Okay. Anyone else? That ends the public comment period.

X. MATTERS FROM THE COMMISSION

A. Discussion and Possible Approval for an Expenditure of Community Funds in the Amount of \$1,000 to Semos Unlimited for the Provision of Providing Mathsonic Tutoring Program Materials to the Boys and Girls Club of Pojoaque for Their After School Tutoring Program (Commissioner Montoya)

COMMISSIONER VIGIL: Mr. Chair, Commissioner Montoya has asked me to represent his position on requesting that the Commission support community funds for this particular program. It is going to target 185 students, all residents in Santa Fe County, with the Boys and Girls Club of Pojoaque. The Mathsonic pilot program is an internet software specializing in the creation of innovative education software, web-based tools for students, helps them accelerate in the math skills. It does this by providing a web-based platform that is highly flexible and customizable for all users – students, parents, teachers, principals and school administrators. This can be done across all grade levels and it will target children ages 8 to 13.

And with that, Mr. Chair, I would move we approve, for \$1000.

COMMISSIONER ANAYA: Second.

CHAIRMAN CAMPOS: Motion and second. Discussion?

The motion passed by 3-0 voice vote with Commissioner Campos abstaining.

X. B. Discussion and Possible Approval for an Expenditure of Community Funds in the Amount of \$1,000 to Semos Unlimited for the Provision of Providing Spanish Language Educational Materials to the Pojoaque Schools Bilingual Program (Commissioner Montoya)

COMMISSIONER VIGIL: Thank you. Mr. Chair, Commissioners, this is a Santa Fe County-sponsored plan that will include a monthly CD which includes four levels of the periodical *Amigos*. This is a file with a power point presentation related to periodical articles. This file has an audio for any songs contained in the periodical and an interactive game or lesson promoting bilingual education. With that, Mr. Chair, I move for approval.

COMMISSIONER ANAYA: Second.

The motion passed by 3-0 voice vote with Commissioner Campos abstaining.

X. C. Discussion and Possible Approval for an Expenditure of Community Funds in the Amount of \$7,000 for the Provision of Contracting for Administrative and Government Affairs Consulting Services for the Purpose of Planning Santa Fe County Projects (Commissioner Montoya)

COMMISSIONER VIGIL: Mr. Chair, Commissioner Montoya has requested \$7,000 from community service funds for consulting services to create a database with all relevant information for key stakeholders for proposed future water and road projects. The pros and cons, importance towards the well being of the community and its citizens, this database will include all relevant information for each stakeholder. With that I would move for approval.

CHAIRMAN CAMPOS: I don't have enough information. I don't know if staff's been involved in analyzing this request. Are there any questions from the Commission other than mine?

COMMISSIONER SULLIVAN: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner.

COMMISSIONER SULLIVAN: I was a little concerned about retaining a consultant to create information regarding future water and road projects. I'm not sure whether this is a concern that Commissioner Anaya has for the fact that there's a lot of conflicting and inaccurate information, apparently, floating around in the Pojoaque area regarding the wastewater proposals and the Aamodt proposal or just precisely what this is. Maybe, Mr. Abeyta, you could tell us.

MR. ABEYTA: Mr. Chair, Commissioner Sullivan, that is I think one of the primary drivers behind this. In the Pojoaque area, for example, there was some concern raised that not everybody was for one of the projects we were doing out there and we as the staff, we didn't have the ability to be able to document how many people were indeed for this project, how many were against, how many have participated over the years, and so Commissioner Montoya brought forward this idea to have somebody come in and help us develop a database that we could use when we prioritize projects. And we could enter information such as the number of meetings that we've attended, the number of people that have attended, who they were.

As you know, when we go to these meetings we do have people sign in, give their emails, but then the list just kind of gets put in a file and that's it. Part of this service, we would be able to input this data into this database under a particular project and then when we do need to contact people or we'd like information or statistics regarding a particular project we can then access that. So this is something that staff has spoken with Commissioner Montoya about and if he's willing to put up his community funds towards that staff is willing to accept that.

COMMISSIONER SULLIVAN: Who would be the consultant, Mr. Abeyta?

MR. ABEYTA: It's my understanding it is this Administrative and Government Affairs Consulting Services. I think that is the company's name that provides

this.

COMMISSIONER SULLIVAN: Who is the principal or the primary contact?

MR. ABEYTA: I don't know. I'm not sure.

COMMISSIONER SULLIVAN: And is this for projects just in the Pojoaque area? Is this for all water and road projects?

MR. ABEYTA: This would be countywide and the database would take information from Edgewood to Española. It would contain information countywide on all projects and all citizens.

COMMISSIONER SULLIVAN: I guess, number one, we haven't had a lot of success on creating databases, it seems, particularly with respect to water meters, and I think there's a lot less water meters in Santa Fe County than there are people interested in water and road issues. So I'm wondering if \$7,000 is adequate to do what he's thinking, and whether this is supposed to be a list of people that we would contact to let them know about hearings or whether this is a list of people who just attended so that in case someone asks how many hearings did you have we could provide that documentation. Or is it supposed to do both? Do you know?

MR. ABEYTA: Mr. Chair, Commissioner Sullivan, I would assume it would do both, but I can't say for sure because we haven't sat down as a staff with the consultant and worked out a scope of work. But the way it's been explained to staff is that it would be a tool to help us do both.

COMMISSIONER SULLIVAN: Thank you, Mr. Chair.

CHAIRMAN CAMPOS: My comments would be this is the type of issue that should be staff-driven and not driven by one Commissioner. If staff feels that there is a need for this particular type of data, staff should initiate the process, say we need this data, and if Commissioner Montoya wants to contribute, but it seems that he's contributing and basically deciding on who's going to be doing the study, and it's pretty vague right now, the way it's been stated. We don't know who the principals are; we don't know how much staff time is going to be required. Any time a Commissioner does something like this they never say how much staff time is going to be required. We don't know. We need to know. I don't think this should be Commission-driven. I think – I would move to table this until we have further information from Commissioner Montoya and from staff. That's how this thing should proceed.

COMMISSIONER SULLIVAN: Second.

The motion to table passed by unanimous [4-0] voice vote.

X. D. Discussion and Possible Approval for an Expenditure of Community Funds in the Amount of \$2,500 to Pandemonium Productions, LLC, for After-School Instruction in the Performing Arts, Including Dance, Acting and Music for Youth, Targeting Low-Income Families of Santa Fe County (Commissioner Vigil)

COMMISSIONER VIGIL: Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Pandemonium Productions, they've come before – we've given them money before.

COMMISSIONER VIGIL: I think we have allocated money for them in previous years, and this is for this coming year.

CHAIRMAN CAMPOS: So this is not the second time for this fiscal year.

COMMISSIONER VIGIL: This is the first time for this fiscal year from my allocation. And Mr. Chair, there is no staff time required for this. This is an after-school program that promotes and targets low-income children to participate in Pandemonium Productions, who work in partnership with the Santa Fe Public Schools, the Santa Fe Opera, the College of Santa Fe and El Museo Cultural. This would give low-income children the opportunity, as I said, to participate when Pandemonium Productions presents their productions to the schools in Santa Fe. Many of the students become very actively engaged and want to participate but can't afford to participate. This will supplement that opportunity for them. With that I move to approve.

CHAIRMAN CAMPOS: Is there a second?

COMMISSIONER SULLIVAN: Second.

The motion passed by 3-0 voice vote with Commissioner Campos abstaining.

XI. Appointments/Reappointments/Resignations

- A. Resignation of Rick Adesso and Patricia Sanchez From the Santa Fe County Health Policy and Planning Commission (Community Services Department)**
- B. Resignation of Ruth Luthi and Ellen Feighny From the DWI Planning Council (Community Services Department)**
- C. Resignation of Ubaldo Gallegos As the Alternate Member to Area 1 of the Road Advisory Committee within Commission District 1 (Growth Management Department)**

CHAIRMAN CAMPOS: A, B, and C asks us to accept the resignations from three different groups. I would ask that we make a motion that would encompass A, B, and C.

COMMISSIONER VIGIL: Mr. Chair, I will so move, and I would also like to make sure, and I'm sure we did, that we submit them a letter, a certificate of appreciation,

because I know that this is volunteer work. With that, Mr. Chair, I move that we accept the resignations of community volunteers for resignations on items A, B, and C.

CHAIRMAN CAMPOS: Is there a second?

COMMISSIONER SULLIVAN: Second.

The motion passed by unanimous [4-0] voice vote.

XI. D. Appointment of Edward Medina As the Alternate Member to Area 1 of the Road Advisory Committee within Commission District 1 (Growth Management Department)

CHAIRMAN CAMPOS: Is there a motion to appoint?

COMMISSIONER VIGIL: So moved.

CHAIRMAN CAMPOS: Is there a second?

COMMISSIONER ANAYA: Second.

CHAIRMAN CAMPOS: Okay. Any discussion?

The motion passed by unanimous [4-0] voice vote.

XI. E. Appointment of New Member to the County Development Review Committee (Growth Management Department)

SHELLEY COBAU (Building and Development Services Manager): Mr. Chair, Commissioners, Jack Kolkmeier is going to hand out an amended staff memorandum which includes résumés of three individuals who would like to serve on the CDRC in addition to the three that were included in your original staff report. *[Exhibit 2]* This gives you six individuals to choose from for this vacancy on the CDRC. They include Lelah Larson, Louis Gonzales, Jim Bordegaray, Judith Polich, Frederick Friedman, Ester DeAnda.

Staff recommends that the BCC review the attached résumés of interested individuals and appoint a new CDRC member from one of the six applicants who resides within the city limits as set forth by Article II, Section 1.2.1 of the Code, which requires that one member of the CDRC reside within the limits of the city of Santa Fe. The selected applicants should be appointed for a two-year term ending on December 31, 2011. Thank you.

COMMISSIONER VIGIL: Mr. Chair.

CHAIRMAN CAMPOS: Go ahead.

COMMISSIONER VIGIL: Thank you, Mr. Chair. I'm – there's a little glitch here with regard to the appointment. I think the last time an appointment was made we appointed – I appointed Susan Martin because the vacancy that was left for that appointment was my original appointment, which was Ernestine Hagman who resigned. It's my belief now

that the new appointment has to meet specific criteria that includes a representative from the city. And the one of the appointees that would best meet that is someone who profiles Susan Martin's background and that is Maria.

MS. COBAU: Mr. Chair, Commissioner Vigil, if I could, if you note in your staff report, Susan Fry Martin will still be serving on the CDRC. Her appointment would begin on January 1, 2009 to replace Commissioner Kathleen Holian.

COMMISSIONER VIGIL: Correct. She will be an active and engaged member but in terms of her voting capacity that will not go into effect until January. That's what you're clarifying?

MS. COBAU: That's correct.

COMMISSIONER VIGIL: In the meantime we do need someone who's voting. A voting member, correct?

MS. COBAU: That's correct, Commissioner Vigil.

COMMISSIONER VIGIL: With that, Mr. Chair, I recommend Ester DeAnda who is also an attorney, has extensive community experience and I think would create a huge benefit with that experience to the CDRC.

CHAIRMAN CAMPOS: What information do you have for Maria Ester DeAnda Hay, an attorney?

COMMISSIONER VIGIL: Actually, her résumé is included in the packet.

CHAIRMAN CAMPOS: I don't have it. Is it this? The email? Do you know this person personally?

COMMISSIONER VIGIL: I do not know this person personally, but in comparison to the others that have been recommended, she of course came highly recommended from community members, but in comparison to other candidates that have been recommended she profiles the legal experience I was looking for and the ability to work with the community. She's also worked on development. She has currently management experience and has been an associate attorney for private firms and for the Attorney General. Actually, she's been deputy county counsel and I think her background profiles very much what Susan Martin's did, which is the kind of candidate I was looking for.

CHAIRMAN CAMPOS: Okay. Any other nominations?

COMMISSIONER SULLIVAN: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Just discussion. I just want to clarify, Shelley, that then Susan Martin is or will be in January the Commission District 4 nominee. Is that correct? Actually, having already been appointed.

MS. COBAU: Mr. Chair, Commissioner Sullivan, Ms. Martin resides in Commission District 2 and Commissioner-elect Holian resides in Commission District 4. So we'll have – currently on the CDRC we have a single Commission District 4, two Commission District 3s, one from Commission District 5, Commission District 2 and Commission District 1. With the replacement of by Susan Fry Martin of Kathleen Holian that would give us two District 2s and no Commission District 4.

COMMISSIONER SULLIVAN: Okay. So then typically the Commission's general policy has been that Commissioners each nominate one from one of their own districts. So what I'm saying is does Ms. Martin then become the nominee, as it were, in January from District 2?

MS. COBAU: Mr. Chair, Commissioner Sullivan, I'm not sure how to answer that question. I know that Commissioner-elect Holian resides in Commission District 4 which would mean her seat in Commission District 4 would be replaced by Susan Fry Martin who resides in Commission District 2.

COMMISSIONER SULLIVAN: I guess my concern is that because she replaced someone in District 4, she was nominated by Commissioner Vigil, indicating that it was her appointment. Then what I want to avoid is that it would seem that in January the Commissioner from District 4 should have the opportunity to nominate someone as should the Commissioner from District 5, because Mr. Dayton's term is expiring in December as well. I don't want to disenfranchise the Commissioner from District 4 in January so what is your understanding of how this is going to work?

MS. COBAU: The applicants that you have in front of you, three are from Commission District 5, two from Commission District 4 and Ms. DeAnda is from Commission District 2. If you wanted to have a Commission District 4 appointee either Judith Polich or Frederick Friedman reside in Commission District 4.

COMMISSIONER SULLIVAN: That wasn't my concern, and I actually think that all three of the new applicants are quite good. Fred Friedman has Highway Department/DOT background, which certainly would be useful to the CDRC in its deliberations. Ms. Polich has a legal background and Ms. DeAnda has a legal background, as does Ms. Martin. So I'm happy with any of those three nominees. My concern is that when we get to January we have already – if Ms. DeAnda was appointed we would already have two CDRC commissioners from CDRC from District 2

MS. COBAU: Actually, you'd have three.

COMMISSIONER SULLIVAN: We'd have three. My concern would be then because the member going off in January would be from Commission District 2, right?

MS. COBAU: That's correct. In January you would have three residing in Commission District 2 if the appointee that you select today is also from Commission District 2. That would be three on the CDRC.

COMMISSIONER SULLIVAN: One of whose terms will have expired, namely Kathleen Holian.

MS. COBAU: Kathleen Holian was from Commission District 4.

COMMISSIONER SULLIVAN: District 4. Okay. I've the districts wrong. Excuse me. Well, I'm still unclear as to what happens in January. It seems that in January – will there be two vacancies in January?

MS. COBAU: Only a single vacancy in January, Commissioner Sullivan, and that will be Mr. Dayton's position would be up for renewal.

COMMISSIONER SULLIVAN: Okay, so that's the only one that would be

vacated in January.

MS. COBAU: That's correct.

COMMISSIONER SULLIVAN: And District 2 has already made their appointment, as it were, and I guess if District 4 wants to make an appointment they need to pipe up now. We already have another person from District 4, correct?

MS. COBAU: No, there's no one currently serving on the CDRC other than Commissioner-elect Holian from Commission District 4.

COMMISSIONER SULLIVAN: Okay, so in January, unless someone is appointed today there would be no one from District 4.

MS. COBAU: That's correct.

CHAIRMAN CAMPOS: Question, Ms. Cobau. As I understand it there's seven members on the CDRC.

MS. COBAU: That's correct.

CHAIRMAN CAMPOS: And two are at large, and each Commissioner can nominate one person?

MS. COBAU: I believe that Committee Member Gonzales resides in Commission District 2 but he is an at-large member. The records that have been kept on the CDRC in past years are not good. So I don't know who the other at-large member is at this time. That's why I just gave a list of the Commission District each one resides in.

COMMISSIONER SULLIVAN: Are there any at-large appointments coming up in January?

CHAIRMAN CAMPOS: We don't even know who the –

MS. COBAU: We don't know. The records have not been kept well for the past eight years. There's no record. We've been keeping a database for about the last two years.

COMMISSIONER SULLIVAN: We know there's seven members. Are there any others coming up in January?

MS. COBAU: The only one whose term ends in January is Don Dayton who resides in Commission District 5.

COMMISSIONER SULLIVAN: Okay. So there's only one appointment to be made in January and that will be in District 5, after today's appointment.

MS. COBAU: That's correct.

COMMISSIONER SULLIVAN: Thank you for clarifying that for me.

CHAIRMAN CAMPOS: Commissioner Vigil is next.

COMMISSIONER VIGIL: I think you've clarified my point. I think we don't want to get confused with the fact that we have seven commissioners from districts because two of them are at large. I do know, however, that this particular appointment is an appointment for District 2 because that is where the original resignee was from. And whether we elected two other commissioners, I do believe Charlie Gonzales is from District 2 as you represented. Not knowing who the other at-large member is I don't know what district. But I don't want to steer us towards districts. We are making a district appointment today; not an

at-large.

CHAIRMAN CAMPOS: Hold on. Last time, Commissioner, you nominated – you already had a nomination last meeting.

COMMISSIONER VIGIL: She was not my appointee, though.

CHAIRMAN CAMPOS: It was your nomination.

COMMISSIONER VIGIL: Yes, it was my nomination.

CHAIRMAN CAMPOS: I think we need to find out who the two at-large are. I think we need to have some clarity before proceeding. I'm fine with Susan Martin in District 4, even though she does not reside in District 4. I always, like Commissioner Vigil, don't appoint someone necessarily from my district unless it is issues that are really peculiar, but these are issues that are broad and we have some good candidates. But I think Commissioner Vigil has made an appointment, so I think we need clarity from the staff as to who the other at-large member is.

MS. COBAU: Many of the members on the CDRC, Mr. Chair, have served in excess of eight years. So I guess we could, at the CDRC meeting, ask them which one was appointed as an at-large member and hope that they can remember from eight years past when they were originally appointed. I would really encourage you to select a committee member today with the important issues on the table. If you would like to state that this person that you're selecting today serves as an at-large member I don't know if there would be a problem with that.

MR. ROSS: Mr. Chair, the County Manager and I were just discussing this matter we both recall that a few years ago, two to three years ago there was a resolution passed by this body that essentially eliminated the at-large position and created the current nomination structure. So maybe the reason we can't find some of those records is because there really haven't been at-large appointments made the past two to three years.

CHAIRMAN CAMPOS: So you don't think we have at-large anymore?

MR. ROSS: Apparently not.

CHAIRMAN CAMPOS: So then we have one nomination from Commissioner Vigil. Any other nominations?

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER ANAYA: I nominate Frederick Friedman.

CHAIRMAN CAMPOS: We have two nominations. Any other nominations? Is there any objection to closing nominations? Okay, we have DeAnda and Frederick Friedman. All in favor of DeAnda? [Commissioners Vigil and Sullivan voted for Ms. DeAnda.]

All those in favor of Mr. Friedman? [Commissioner Anaya voted for Mr. Friedman.] Okay, it looks like Ms. DeAnda has prevailed.

MS. COBAU: Thank you, and I apologize that that was so confusing.

CHAIRMAN CAMPOS: We have clarity today, I hope. Okay, it's 11:00 and I think our agenda moves us to the Growth Management Department.

[Commissioner Montoya joined the proceedings by telephone.]

XIII. D. Growth Management Department

- 1. LCDRC CASE # MP 06-5212 Santa Fe Canyon Ranch. Rosanna Vasquez, Agent for Santa Fe Canyon Ranch, LLC (David Schutz, Jim Borrego). Applicant is Requesting Master Plan Approval for a Residential Subdivision Consisting of 162 Lots with 174 Residential Units on 1,316 Acres to Be Developed in the Three Phases, and a Request for Several Culs-de-Sac to Exceed 500 Feet in Length. The Property Is Located Off Entrada La Cienega Along Interstate 25 in the La Cienega/La Cieneguilla Traditional Historic Community within Sections 1, 2, 10, 12, 13, Township 15 North, Range 7 East and Sections 5, 6, 7, 8, Township 15 North, Range 8 East (Commission District 3) Joe Catanach, Case Manager (VOTE ONLY)**

CHAIRMAN CAMPOS: Mr. Abeyta, who's going to lead for the County?

MR. ABEYTA: Mr. Chair, the Land Use staff will take the lead. The case manager is Joe Catanach.

CHAIRMAN CAMPOS: This is a continuation of the last hearing. Is that correct?

MR. ABEYTA: Mr. Chair, yes. But it's my understanding the public hearing has been closed and therefore unless you have questions for staff there was going to be a vote taken.

CHAIRMAN CAMPOS: Okay. Mr. Catanach.

JOE CATANACH (Technical Director): Mr. Chair, I was just going to state that it was tabled. There was discussion from Steve Ross about an issue that occurred that day regarding public comment that Tina Boradiansky had requested, and so I think there was some consideration to table this and allow Tina Boradiansky to review the minutes of the September BCC meeting.

CHAIRMAN CAMPOS: Okay. So that's the status presently?

MR. CATANACH: Yes, sir.

CHAIRMAN CAMPOS: So is Ms. Boradiansky present? Please come forward. Please state your name and address for the record.

TINA BORADIANSKY: Mr. Chair, Commissioners, Tina Boradiansky.

CHAIRMAN CAMPOS: Your address? Hold on a second. Are we going to have Commissioner Montoya on the telephone?

COMMISSIONER MONTOYA: Hello, Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Montoya, how are you?

COMMISSIONER MONTOYA: Good. How are you doing?

CHAIRMAN CAMPOS: And where are you?

COMMISSIONER MONTOYA: In Rome.

CHAIRMAN CAMPOS: Good. In Rome. Good for you. Can you hear us?

COMMISSIONER MONTOYA: Yes.

CHAIRMAN CAMPOS: Okay. Ms. Boradiansky is now going to speak on the Santa Fe Canyon Ranch. Are you at that place, Commissioner Montoya? You're there?

COMMISSIONER MONTOYA: Yes.

CHAIRMAN CAMPOS: Okay. Ms. Boradiansky.

MS. BORADIANSKY: Mr. Chair, I have copies that might make this a little bit simpler. *[Exhibit 3]* May I approach?

CHAIRMAN CAMPOS: Sure. Ms. Boradiansky, it looks like you have a lengthy statement.

MS. BORADIANSKY: It is not lengthy, your honor. I'll be quick.

CHAIRMAN CAMPOS: Your honor?

MS. BORADIANSKY: Sorry. Old reflexes. Mr. Chair, Commissioners, I believe it's in everyone's interest in this matter, Santa Fe Canyon Ranch, that the procedure be in full compliance with state and federal law. And as you're aware, I have some concerns and I have filed in federal court to preserve those concerns. I'll be very quick, but I believe there's three legal and one public policy reason why the master plan currently before this Commission either must be denied as incomplete, or tabled until it's properly submitted. Otherwise it will not withstand a judicial review.

CHAIRMAN CAMPOS: Let me ask you a question. You were not here at the last meeting?

MS. BORADIANSKY: Excuse me.

CHAIRMAN CAMPOS: You were not present at the last meeting?

MS. BORADIANSKY: I informed the federal judge that I would not be available in the evening.

CHAIRMAN CAMPOS: Did you inform us?

MS. BORADIANSKY: Your counsel was present at the [inaudible] Hearing.

CHAIRMAN CAMPOS: Okay. Did you have an opportunity to review the minutes that were presented to you and preserved for you?

MS. BORADIANSKY: I received a transcript but no exhibits were attached and I consider the transcript to be incomplete.

CHAIRMAN CAMPOS: Okay.

MS. BORADIANSKY: Not because of exhibits but because witnesses were not offered for any of the expert reports and conclusions.

Mr. Chair, the critical distinction I'm making is that this is an adjudication, an administrative adjudication. The Commissioners own rules of evidence and order entitle me as one of the property owners immediately adjacent to cross-examine the applicant and their witnesses. This is a fundamental due process right and I have protected my right to exercise that. I filed a request for ADA accommodation on August 8th asking for daytime

participation. The County has failed to engage in any substantive process of negotiation to either identify the parameters of medical ability or to discuss options of how to proceed. Instead it was scheduled for the agenda without any progress that week.

And basically the process has been trying to force me into simply accepting an offer of accommodation that was factually incorrect. I was told that the hearing would constitute two hours total including cross examine, which we all know to be inaccurate since the review stage was four hours without any cross-examine.

The right to cross-examine inherently includes certain rights. It includes, first of all, knowledge of who the witnesses are going to be so I can prepare. Second, it includes the presence of those witnesses or they cannot be cross-examined. If the witnesses at the adjudication are not there to defend their substantive reports and conclusions, it's impossible for this Commission to give that any evidentiary value.

CHAIRMAN CAMPOS: Would you repeat that?

MS. BORADIANSKY: If the applicant has chosen to not present an offer of witnesses, the authors of all of their substantive reports that are part of this master plan and make them available for cross examine, those reports have no evidentiary value in an adjudication, because I have a right to cross-examine. The witnesses are not being offered. So the transcript is completely incomplete in the sense that the substantive portions of the master plan are being submitted without an opportunity to test the methodology, the assumptions, the bias, the qualifications.

As an adjudication, that's completely improper. And if this goes forward to a decision making based on reports where no authors are being offered by the applicant, I believe that judicial review will find that it's arbitrary and capricious. I did ask for a witness list and I was told by the County Attorney that there was no need to provide me with a witness list.

The BCC I understand was trying to figure out how to accommodate my request, but I believe there's a very serious confusion going on between rule-making and adjudication. The Commission does both functions. Rule-making is coming up with regulations, policies, proposals. Written comment would be appropriate if you were publishing something for comment, like *Federal Register*. Written comment is completely appropriate. It is completely inappropriate to my formal request for cross exam. Cross-exam is a call and response process. It has absolutely nothing to do and is not interchangeable with written comment on a transcript. It is my right to test the facts, the bias, the methodology – everything involved that constitutes hundreds of pages in this master plan.

So the offer of the County was trying to resolve this on short notice and the offer was to comment on a transcript. I would just like to point out that legally we're talking about apples and oranges here. In July I informed the County Attorney that I wanted to cross-examine. He told me it's a public right. It's not because I'm an attorney that I'm allowed to cross exam. Every single person here is entitled to cross exam in a public hearing. But the way that the procedure is playing out, that's getting confused with the rule-making function. So I'd like to back up and see if we can get back on track and begin a sensible conversation about how to make this legally compliant.

I have filed a federal lawsuit as you're aware to protect my rights to accommodation to cross exam at a reasonable hour. At no time has anyone from the County approached me to factually sort out what are the options? I believe there's plenty of options. I also believe that if this goes forward it will not withstand judicial review because the substantive reports that constitute the master plan have not been subject to adjudication scrutiny. It is my right under the rules of order to ask those questions, to find out did the traffic analysis person – what was their methodology? What are their qualifications? What is their bias, possibly? That's inherent in the right to cross exam.

The applicant chose to not bring forward any of those people for public scrutiny, and I believe as a matter of law in an adjudicatory process it means there is essentially no evidentiary value to all of the reports that constitute the master plan and a judge would very likely consider any approval arbitrary and capricious, because there's no factual basis that's been tested. So that's the first reason I believe it must be denied or tabled. Therefore, it is an incomplete submission. It was their choice to not bring forward those people and there is no opportunity to exercise the cross exam.

Second, there is a legal violation – violation is not the right word. Secondly, this application is flawed in the sense that it is taking the position that the La Cienega – what they're calling code, the La Cienega Ordinance, which is our community plan, that it's in compliance with this master plan. And I believe it is the opinion of the staff that it's in compliance. As an attorney I'd like to say that I believe that is in error and I'd like to explain why.

Recently Supreme Court Justice Ruth Ginsberg was speaking in Santa Fe. Apparently she's here for the summer because of the opera. And she reiterated how important it is when you're interpreting a law to look to the intent of that law, not just the language. She said over and over, things are not perfectly written. They're not perfectly articulated. You determine legislative intent; you determine the intent of the authors. And then you reconcile that with the provisions of that law. The La Cienega Community Plan was written by residents; it was not written by attorneys. It was a good-faith effort to achieve a certain type of continuance for a rural lifestyle in a historical community that is agricultural.

Everyone's aware of that. The Commission approved the community plan and it has the weight of ordinance. As such, it's entitled to statutory construction principles. And the La Cienega Community Plan clearly states it is the intention of that plan to preserve and protect a rural, low-density lifestyle. The applicant is taking out of context the provision regarding density transfers and claiming that they're complying with that plan because the language out of context appears to justify density transfers. That cannot be reconciled legally with the intent of the community plan. It's directly opposite. And I believe J.J. Gonzales testified two weeks ago that it's quite clear that the density transfers the authors put in intended to protect the ability to farm by consolidating housing areas on certain parts of the property so as to not impair agricultural function.

It was definitely the intent, and it completely defeats the spirit of the plan, to claim that these density transfers allow high-density, urban housing that does down to a third of an

acre stacked right adjacent to a low-density community. Because this applicant's refusing to legally limit their number of houses basically lower La Cienega probably has -- I don't know, 40 to 50 houses. We're looking at 600 houses adjacent to us, which is a small city. So our community plan -- I believe Supreme Court Justice Ginzberg said it very well. She said you look to the intent and the purpose of the law. Our plan holds the weight of ordinance and it's entitled to statutory construction. So any tortured definition taking that out of context will be subject to judicial review.

Third, we have another legal problem in the case at this time. It's also premature to vote on this submission without allowing the completion of the La Cienega Development Review Committee vote of July 2nd which was not finalized. It was not finalized due to the fact that yet again another lengthy evening four-hour hearing was going on and Santa Fe County Attorney David Stephens apparently left the meeting before the vote was finalized. That left the committee without the legal guidance how to finalize the vote properly. As a result, the vote was 2-3 against approval of this master plan, but it was never procedurally perfected by a subsequent motion to deny.

The committee chairman erroneously believed that the 2-3 vote established the recommendation to deny. It's my understanding that five different people, both committee members and the president of the La Cienega Valley Association has contacted the County to try to ask for assistance to remedy this mistake. Once it became obvious that the absence of the County Attorney at the time of the vote resulted in this limbo various communications were received by different county members. Those include Carl Dickens, Camille Bustamante, Eugene Bostwick and Chairperson Ivan Trujillo, all asking the County for guidance how to complete the vote that was not properly perfected because David Stephens left early.

It's my understanding the County failed to respond to any of those requests and weeks have gone by and this record now fails to show that the review process resulted in a recommendation to you that it be denied. As a resident that's an adjacent property owner whose property will be devastated by this development, my interests will be totally adversely affected if that denial is not in place and I will assert legally the fact that the County created a problem, failed to clean it up, and we ask that we back up and be allowed to complete that vote so your record is accurate.

I believe you received a letter from Mr. Trujillo clarifying that he believed he had gotten it to a proper denial. Procedurally, it was imperfect. That's obvious. Over and over there have been requests to fix it and no response. This is a critical process and many, many people put a lot of time into that review process and it's absolutely unacceptable that it be no recommendation. Because that was not what happened. It was simply not a perfected vote because Mr. Stephens left early. So again, I'd say that it's premature to vote at this time. Either it has to be tabled or denied. If it's approved without that denial, which the community is entitled to, again, we're going to have to clean it up in a lengthy legal procedure which I don't think is anybody's interest. I think it's in everyone's interest that this be done in compliance with state and federal law, and that you have a solid basis before you to vote.

So what you have right now is you have reports that no one has been offered as witnesses for exam. You have a community plan that has the weight of ordinance that is inconsistent with the staff recommendation that's in compliance. And then you have this imperfected vote.

The fourth issue is one of more public policy. This is a massive development proposal which is unusual and should not be treated as some of the smaller projects. There's endangered species on this property. There has been no analysis of what to do about that, how to protect them. The master plan says, well, federal Fish and Wildlife have not written back to us. Well, that's not enough in a property that is one of the last strongholds in New Mexico of wildlife. There's a federally protected wetlands. There's no mention in the master plan what that means. It has been inspected by the Army Corps of Engineers and clarified to be within federal protection. I don't see anything in the master plan acknowledging what the endangered species are entitled to, what the impact will be of noise, light, traffic. All of this will be devastating.

I do believe it's within the authority of this Commission to require a full study of noise and light. We live in an area in the lower valley where you can hear a radio half a mile away. If you put 600 houses a few feet away it's going to destroy our property values. It will destroy our quality of life. It will destroy the lower valley as we know it. And even though the Code may not currently require that I believe it's within the authority of this Commission to recognize that 600 houses next to 40 houses in an agricultural valley presents a problem, a serious problem. The current siting of this places it 30 yards from my fence line. I'd like to hear about the public health issues of flies and manure from the rural neighbors, like myself. We all have a right to have livestock.

How will the Public Health Department consider flies and manure 30 yards from high-density urban housing that's on my property. I have a legal right to have livestock. Nobody's contesting that. They have not even considered the impact on their property value not having a buffer zone. So the siting is disastrous. They've stacked it right behind the community for maximum damage. And it's possible, frankly, that there may be a little retaliatory element to this. I was the person who early on went to State Engineer because I had worked there. Read the file, found a mistake, and their consumptive water rights were reduced from 20 to 14. They have now placed most of – a great deal of the high-density urban housing 30 yards from my fence line. I don't know if it's retaliatory, but they have 1300 acres and the noise and light of this high-density housing will destroy the lower valley.

And I'm asking you to order an analysis of that. It's within your authority to recognize that 600 houses is an unusual impact. And in terms of protecting the community we'd like someone with expertise to look at the noise impact, to work with them to try to figure out how to site this project further south, which would minimize. If they moved this same proposal for Phase I to the southern portion of their property they would solve and minimize light, traffic and noise. If they used the overpass that they're lucky enough to own for traffic, they will remove the community opposition to the traffic problem. They have all kinds of opportunities and they are not using them. They have basically gone through the motions of

acting like they're listening to us and then made contrary decisions.

So I'm asking you today to either table or deny this, because going forward on something this incomplete, and this flawed, will only result in a very long review process. The problems are obvious, and I think it's in everyone's interest to back up and do it right. And I'd like to work with you to do that. I think we can do it right. I think it's pretty clear what state and federal law require in terms of supporting a master plan, in terms of being able to cross exam, get the facts on the table, and we're entitled to that, because this will destroy our community.

There's one additional issue, which I believe J.J. Gonzales is the most qualified to speak to. The State Engineer has reached a tentative settlement regarding the return-flow credits, which also has a number of years built into data collecting and I would ask also that you allow him to explain to you what that process was and the impact so you can consider that.

CHAIRMAN CAMPOS: Mr. Gonzales, very briefly.

MS. BORADIANSKY: Mr. Chair, finally, to just clean up my own procedural issues with the Commission, I would like to back up and get back to substance and figure out a sensible option for participation. I've been willing to do that since August. I'm available to do that, and it's just too important not to.

CHAIRMAN CAMPOS: Thank you very much. Mr. Gonzales.

J. J. GONZALES: Thank you, Mr. Chair, fellow Commissioners. My name is J.J. Gonzales, 54 Entrada La Cienega. And as you know, there was an application pending before the State Engineer and that hearing took place September 23rd, 24th, and 25th. I just have the highlights of what was discussed.

Number one, there was a proposed settlement agreement reached by the protesting parties and the applicant, Santa Fe Canyon Ranch. There was conditions of approval submitted by the State Engineer for a partial approval of their permit. The hearing itself was left open pending a return-flow credit plan. And some of the conditions were that the pumping would be limited to 14.55 acre-feet. Once they start using water for domestic use they cannot use water for their agricultural use, so their water drops to 14.55 acre-feet. Any other pumping, like what they wanted was 32 acre-feet, that is contingent on the return-flow credit plan. And that was delayed for approximately three years.

They have conditions to meet. First of all is they have to be able to demonstrate that they can use two acre-feet of water per year in their treatment plant. That is – and have to demonstrate that amount of water for a period of one year. So they have to have a certain number of houses to use that amount of water. And then they can submit their application for a return-flow credit plan. So the minimum time for that is three years from the date the document was signed on last Thursday. The protest will be started when they reach that amount, when they do an application for return-flow credit, then all parties are allowed to comment on that. There will be a published application and then published flier file protest and then the State Engineer will have a hearing on the return-flow credit plan.

The other important thing is that east of Alamo Creek, which is the water source that

they describe towards the center of the ranch, they cannot drill any more wells east of Alamo Creek. They have one proposed well which will be limited to .5 acre-feet. So that's one-half acre-foot east of Alamo Canyon, and that was a well that the State Engineer felt that would impair the springs in La Cienega. So they're limited to one well and no other wells east of Alamo Creek.

The other thing is even with – if their return-flow credit plan is not approved that means that the Phase II and Phase III can be considered. The original application for 14.55 acre-feet doesn't allow for any water for reserve, like fire protection. They don't have water for outdoor landscaping that presently exists on the property. And I believe those are the major points in this agreement that was signed last week. Thank you very much.

CHAIRMAN CAMPOS: Thank you, Mr. Gonzales. Ms. Vazquez, as attorney for the applicant, you're up. And what issues do you intend to address?

ROSANNA VAZQUEZ: Mr. Chair, Commissioners, I want to address a couple of the comments made by Ms. Boradiansky, and clarify a couple of issues on the stipulated order that's been submitted to the Office of the State Engineer.

CHAIRMAN CAMPOS: It's 11:30 so let's be brief.

MS. VAZQUEZ: Commissioner Campos, I would ask on the stipulated order that you – that our hydrologist specifically discuss the details that Mr. Gonzales has raised. We do have copies of the stipulated order, however, they are not signed by the judge yet, but it was the order that was agreed to by all the parties. And I would ask you to give him five minutes to get that into the record.

CHAIRMAN CAMPOS: I'd like to address the legal issues. You don't want to address any of the procedural issues?

MS. VAZQUEZ: No, your honor. Those are the issues raised by Ms. Boradiansky.

CHAIRMAN CAMPOS: Does the Commission wish to hear the testimony for the hydrologist for the applicant?

COMMISSIONER ANAYA: Mr. Chair, a question. Are you going to allow any other people to speak?

CHAIRMAN CAMPOS: I don't think so.

COMMISSIONER ANAYA: Okay. I'd like to hear it.

CHAIRMAN CAMPOS: Okay, is there any objection to having the hydrologist for the applicant speak? He can – he'll be able to address the Commission for a couple minutes.

MS. VAZQUEZ: Thank you, your honor. With respect to a couple of issues, Ms. Boradiansky raised the right to cross-examination. She's right that the rules of order allow that possibility, but she's wrong in a fundamental issue in that she didn't have the right to cross-examine the authors of all of the different reports that were submitted. Mr. Chair, the reports were submitted back in 2006. The TIA was submitted, which is one of the issues of concern, in December of 2007, there were final updates. There was a TIA December of 2006, April of 2007, and the final was done in December of 2007. It has been sitting as public

record for everyone's review since that time in Land Use. The geohydrology report is the same. It was last updated in April of 2007, the report, and it was a two-page update. The entire report was submitted to the County in December of 2006. Same with the environmental, same with the archeological report.

At that point, every person here has the right to submit a letter to Steve or to Land Use saying we have questions with regards to these reports, and judiciously, the staff has always provided those to the applicant for us to review, make comments, answer questions if need be. The other point I do want to make is this is not the first public hearing that we have had on this case. We have had numerous community meetings with questions raised specifically on the TIA, specifically on the geohydro. In fact we made available the geohydrology report on-line and at the La Cienega Community Center for everyone's review, and we sent specifically to Ms. Boradiansky because she asked for it, the geohydrology report.

This case has been going on since 2006, Commissioners. There has been an incredible amount of participation and communication amongst the parties. The statement that there wasn't a time to review and a right to cross-examine is not true, your honor, because she could have at that point raised an issue and said, I want Craig Watts here. I want Craig Watts because I've got specific questions with regards to the TIA. That was not done. We do not – we had no intention of having to bring Craig Watts, of having to bring any of our specialists because we had a recommendation for approval. We had worked out all of the issues with County staff. Every question that was raised with regard to the TIA, we updated pursuant to the County staff's request.

Any questions on the geohydro we updated pursuant to County staff. And every single update was in the record for review. Had there been a question by anybody they could have raised it and we would have made people available as we've done the last three years.

With regards to her issue about the application is flawed. Ms. Boradiansky is correct; there was a La Cienega plan and it was put together by the citizens of that – of La Cienega. If you'll note, the ordinance, which is 2002-9 and the plan, which was adopted via Resolution 2001-117 says exactly the same thing. The language with regards to density transfer that Mr. Gonzales quoted is specifically in the ordinance word by word, and it goes far beyond protecting, using density transfers solely for the protection of agricultural lands. If that had been the intent, Commissioners, then it should have been limited. There should have been limiting language in that ordinance saying density transfers are only for the protection of agricultural lands but it does not say that. The plan specifically says exactly as the ordinance reads, and that is to protect community assets, including but not limited wetlands, open spaces, springs, water courses, riparian areas, agricultural lands, acequias, traditional community centers, archeological sites, historic and cultural sites, and multi-generational family housing compounds. It was not limited to agricultural.

What we've done here is we have clustered the area to keep it away from the sensitive areas such as the Alamo Creek, from the canyon area. As you see, the larger lots are on the end and that's all volcanic land on the eastern side – on the southern side there. The plan is the ordinance and the ordinance is being abided to by this development.

Her third point, that the La Cienega Development Review Committee vote was not final. Mr. Chair, Commissioners, I would submit to you that the La Cienega Development Review Committee is a recommending body only. They have the right or the ability to send up a case without a recommendation, and if you'll recall, there have been several cases that have come up from CDRC or some of the local planning commissions that come up with no recommendation. They can either submit with no recommendation, they can submit with a denial or they can submit a case to you with an affirmative, an approval. This case was voted on for approval and the motion for approval did not go through 2-3. She is correct. And the case came up. Whether it's a denial, whether it's a no-recommendation, it doesn't matter because they are solely a recommending body. And I would like to point out that we had at that point a condition, a recommendation from County staff of approval before the LCDRC.

The public policy arguments, Commissioners, the issue of endangered species is an important issue. We were required as is required under the plan, under the ordinance to do an environmental study. We did. That environmental study did – is going to require us to protect the mountain plover and the willow flycatcher, and to protect the wetlands. And the plans for having to protect that are required to be reviewed by state agencies and will be submitted at preliminary. We're not disregarding this issue. But master plan is conceptual. Master plan is a submittal for review. We cannot go past preliminary unless we meet all of the requirements by state and federal officials with regards to the wetland. In fact, there's a condition of approval on this case that we need to comply with the requirements of both those agencies. So those areas will be protected, Commissioners and it is something that you will be able to look at at preliminary when we come forward to see whether we've met the standards that the federal and the state government would like us to meet on that.

Commissioners, with regards to the decision, the stipulated order by the State Engineer, as I stated to you, we have a stipulated order. There is an agreement in place with all of the parties that were protestants that stayed in the case. It is not signed at this point but it is very specific with regards to what was decided. And I'm going to allow Jay, who was in the negotiations with regards to the stipulated order to give you the fundamentals of that order, and I stand for questions if you have any.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner.

COMMISSIONER ANAYA: She mentioned 30 feet. Is that true? Or is it 150 feet that I thought I was told? The setback.

MS. VAZQUEZ: Mr. Chair, she mentioned 30 yards and we've presented as evidence and we submitted as part of the record and I can give this back to you – we have minimum distances from the lot line to the lot line of 120 feet up to 159 feet from the property line. That is from these property lines here to the property line here where the property would meet. And then what we did, and we did this for the community as well and we actually did a site visit so people could walk it. We put together housing envelopes, and you'll see those little pink dots in there? We specifically created housing envelopes in order to push the housing site farther from the property line and increase that setback. We also did

it in order to show how much private open space there would be.

If you look at the housing envelopes, you increase the setback to the property line. And we're not talking to the house, because we're just talking straight to the property line, you increase the density – the setback from 170 feet at the minimal to 315 feet.

COMMISSIONER ANAYA: Thank you, Mr. Chair.

MS. VAZQUEZ: And if I just may clarify the record, there are not 600 homes; there are only 174 homes on this master plan.

CHAIRMAN CAMPOS: But the potential is 600 homes?

MS. VAZQUEZ: No, Commissioner. That number comes from an earlier master plan, and it was an earlier design. We did discuss with the community a development of 605 units. We have reduced that and that's why we've been working on this for three years. The 600 units was opposed to by the community.

CHAIRMAN CAMPOS: What's the number now?

MS. VAZQUEZ: 174.

CHAIRMAN CAMPOS: Total.

MS. VAZQUEZ: Yes.

CHAIRMAN CAMPOS: For the whole development, all phases, including those beyond this one.

MS. VAZQUEZ: 174 units is what's included in phases I through III for this master plan, yes.

CHAIRMAN CAMPOS: And I through III are all the phases you have.

MS. VAZQUEZ: At this time, yes.

CHAIRMAN CAMPOS: Okay. At this time. Okay. Sir. Please state your name and your address?

JAY LAZARUS: Jay Lazarus, Glorieta Geoscience, Inc. 1723 Second Street, Santa Fe, New Mexico. If this is a continuation, I was already sworn in. I would just like to address a few of the issues brought up by Mr. Gonzales. I'm not here to argue; I'm here to clarify.

CHAIRMAN CAMPOS: Very briefly. Just give us the concepts of what the agreement's about.

MR. LAZARUS: Yes, sir. First of all, we have an approved geohydrology report from Santa Fe County for Phase I of 14.55 acre-feet. In terms of the subsequent phases beyond the 14.55 acre-feet, this is subject to State Engineer approval of the return-flow credit plan. We have agreed with four remaining protestants with the Acequia de la Cienega, the Guicu Ditch, La Bajada Community Ditch, Inc. and Eugene and Holly Bostwick. We've agreed with all four protestants that any of the data that we collect for the return-flow plan to be submitted to the State Engineer will be submitted to and shared with all four of these settlement protestants.

We've additionally agreed that we will collect a minimum of 2 ½ years worth of data prior to applying for return-flow credit and that we will not apply for a return-flow credit any sooner than three years, basically, from today. Additionally, to clarify what Mr. Gonzales

stated earlier, we've also agreed that we will not be submitting and data or collecting any data for submission to support the return-flow credit until at least two acre-feet per year are run through the sewage treatment plant, to be able to give us some real, live, real world data on what's coming through and discharging from the plant. And just to clarify what Mr. Gonzales said, when it comes time to apply for the return-flow credit plan, we are not required by the State Engineer to republish this as a legal notice, but the four settlement protestants do have the right to ask for, request a public hearing with the State Engineer Office on the return-flow credit plan, once they've analyzed all the data that we've provided to them also. And I'll answer any questions.

CHAIRMAN CAMPOS: Okay.

MR. LAZARUS: One additional thing is that three of the four protestants waived their right to claiming any impairment due to the 14.55 or 32.33 with return-flow credit, if we agree with the State Engineer and settlement protestants that the return-flow credit data is accurate. The last protestant did not use the word "waive" but they agreed to set aside any issue related to impairment.

CHAIRMAN CAMPOS: Okay. Is that it?

MR. LAZARUS: Yes, sir.

XIII. C. Matters from the County Attorney

5. Executive Session

1. Pending and Threatening Litigation

CHAIRMAN CAMPOS: Okay. Thank you very much. At this point I'm going to ask that we go into executive session where we talk about pending and threatened litigation, and I'll ask for a motion.

COMMISSIONER SULLIVAN: So moved.

CHAIRMAN CAMPOS: Is there a second?

COMMISSIONER VIGIL: Second.

The motion passed to go into closed executive session passed by unanimous [5-0] roll call vote with Commissioners Anaya, Montoya, Sullivan, Vigil and Campos all voting in the affirmative.

CHAIRMAN CAMPOS: We're in executive session. Mr. Ross, how much time do you think we'll need? It's 15 till 12:00, and we have a major 2:00 hearing.

MR. ROSS: Just half an hour, tops.

CHAIRMAN CAMPOS: Okay, so we'll plan to be back here about 12:15.
Thank you very much.

[The Commission met in closed session from 11:45 to 12:10.]

CHAIRMAN CAMPOS: Okay, we're back in session. Is there a motion to come out of executive session where we only discussed pending and threatened litigation.

COMMISSIONER VIGIL: So moved.

CHAIRMAN CAMPOS: Is that your motion? Is there a second?

COMMISSIONER ANAYA: Second.

The motion passed by unanimous [5-0] voice vote.

CHAIRMAN CAMPOS: We're out of executive session and we're back at item D. Growth Management Department, Santa Fe Canyon Ranch. Commissioners, is there any action you'd like to take at this point?

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Montoya.

COMMISSIONER MONTOYA: Mr. Chair, I just wanted to say, over the last three years there hasn't really been anything new that I've heard in terms of the opponents from the very beginning of this case, in terms of I've heard about them, the developers refusing to limit the size of the development, that nothing has changed, that there's still concern about culture, preserving the culture and the water rights, and I think we've worked with the developers over the last three years, and what I have – the thing that has changed has been the position that was mentioned by the first witness that there were 600 homes. Well, that's not the case at all. In fact that's changed to I believe 162 lots and 174 homes total, which is a significant change in terms of the original proposal and what's being proposed now.

The other thing, Mr. Chair, is that the one thing that at master plan approval, and it is a conceptual approval and water rights aren't necessarily something that has to be done at the conceptual approval stage, so I think that's something that the developers will still have to work on in terms of providing that for the overall project. So Mr. Chair, I would just – and I guess the other thing that has changed and that is a significant change also is that we have a staff recommendation for approval. That's the first time that we've had that during the time that we've been hearing this case and with that, Mr. Chair, I would move for approval based on staff recommendation on this project, with conditions.

CHAIRMAN CAMPOS: With all conditions?

COMMISSIONER ANAYA: Second.

CHAIRMAN CAMPOS: Is there a second? There's a motion to approve by Commissioner Montoya, with all conditions, and there's a second by Commissioner Anaya. Discussion?

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Anaya.

COMMISSIONER ANAYA: I also agree with what Commissioner Montoya said. This – the developers did follow the community plan that was proposed in La Cienega.

These developers have jumped through all the hoops and I think even more than other developers. They've incorporated affordable housing in this development, open space and trails. They have brought water availability to this subdivision which they didn't have to at this point, as Commissioner Montoya alluded to.

This development is going to have a wastewater disposal system. We have development throughout Santa Fe County, not only in the La Cienega area. We have development happening in the Galisteo area, the Galisteo Basin Preserve. We have development expanding in the Edgewood area, Stanley, Eldorado, Tesuque, it's happening through the Santa Fe County. I sit on the Agricultural and Rural Affairs Committee for the national level, the National Association of Counties, and I'm very concerned about the acequias. I do not want to lose the acequias in our communities. I know that in the Village of Galisteo they had the acequias a long time ago and they lost them and I don't want that to happen to La Cienega.

So I hold that close to my heart and we're going to do everything we can to preserve that. And I would like to see that this development come back and possibly go under County water, and that's one way we can preserve the water, the groundwater in La Cienega. And another thing I'd like to see happen, and we're working on it through the leadership with Roman and that is provide water down County Road 54 to the racetrack, to get those people off of the groundwater and onto County water, and that is going to happen. That's all I had, Mr. Chair.

CHAIRMAN CAMPOS: Any other comments? Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Chair, I feel the issue here is we still don't have a master plan that's truly a master plan. We have an unknown area there you see in the map in the white, as opposed to the yellow and the green, that has a very general plan of large lots and the applicant has indicated that they may well be back for an amended master plan to provide additional density in that area. I believe the community has talked to the applicant with regards to limiting the number of units and the applicant doesn't want to make that commitment at this time.

So we have kind of a Catch-22 here and I think that if we stay with the plan as it is that there will be a community water system and a community sewer system. We need to have a master plan that relates to that and that does in fact provide some specificity as to what the balance of the development is all about. So at this point in time, unless there's some other mechanism to provide that concept of what is the total development going to be, I'd have to say that I think the master plan is still not complete for final vote.

CHAIRMAN CAMPOS: Is that it?

COMMISSIONER SULLIVAN: That's all.

CHAIRMAN CAMPOS: Just a comment is that the idea of a public water system, an extension of the service area is a bad idea from a planning perspective. Right now, we've spent a lot of time as a County to define growth areas, areas where we want infrastructure. What some Commissioners are suggesting is that we be reactive as we've always been. A developer comes out there, we extend our service area. They run the whole

show as to where growth is going to occur. It's a bad idea here and I hope the residents of La Cienega do not get behind that bandwagon. It's bad for the county. Thank you.

COMMISSIONER VIGIL: Mr. Chair. Thank you. There have been some other conditions of approval that have been mentioned here so I want clarification on the record before any vote is taken. That is to be placed on the County water system, and unlike Commissioner Campos, I do not believe that the aquifers should be tapped into in this area, and this development is close enough to extend their water delivery system to the Las Lagunitas area. Would the applicant be in agreement with placing – let me finish, there's another condition with this – placing this development – and I want it clarified for the record that master plan is only conceptual. But I think this needs to be a part of the conceptual plan. Placing this development on the County water system and transferring those water rights to the County. Do I have a yes or a no on that?

MS. VAZQUEZ: Mr. Chair, Commissioners, Santa Fe Canyon Ranch would be in agreement with a condition that would require us to hook into the County water system, which, just for the record is actually within the property boundaries of the development. And transferring the 14.55 acre-feet of water to the County.

COMMISSIONER VIGIL: Okay. The other issue and you may want to – I'll wait until you speak to your client.

MS. VAZQUEZ: Mr. Chair, Commissioners, I just also want to clarify that there is water that we've already transferred, that Santa Fe Canyon Ranch has transferred into the diversion as well.

COMMISSIONER VIGIL: Okay. Then the next request that I would have, and I appreciate the comments that have been made about the developer working with this but by the same token, here is a community who did not anticipate what was coming forth with this and probably to some extent, based on the arguments that I've heard, there was an intention never to have this area developed. We have nothing that keeps us or prohibits us from doing that, so we have to be Code-compliant with regard to this. But in the master plan development one of the concerns that has been brought forth through previous testimony is the density. I need one question answered because this has not been testified to but it is something that I understand is a new development and that is there has been a proposal, either from one of the public land trusts or something of that nature to purchase Phase III of this development. Can you clarify that?

MS. VAZQUEZ: Mr. Chair, Commissioners, I will. It's not entirely Phase III. We do have a proposal. I can't go into all of the details with regards to that because it is conceptual at this point, but we have a proposal for the purchase of land, most of it around the Santa Fe Canyon area.

COMMISSIONER VIGIL: Okay, so that would be the land that would abut the canyon itself.

MS. VAZQUEZ: It is the pristine area, yes, that they would want to protect, and I believe includes portions of the wetlands.

COMMISSIONER VIGIL: I see Mr. Schutz creating a circle around Phase III.

Can you clarify that for me? Is the proposal just around the canyon or does it include Phase III?

MS. VAZQUEZ: Mr. Chair, Commissioners, it is just – it is this area here. It is not the full – all the acreage within Phase III at all. It's a large chunk of it. Approximately about 400 acres, but it is not the entire Phase III.

COMMISSIONER VIGIL: Okay. The density issue has been a high concern to this community. And I thoroughly understand that and I have to protect their concerns with regard to that. While I can appreciate you've come down from 600 to 174, there has to be a commitment to the density issue on this. 174 units in and of itself is still not agreeable to many of the community members. It still creates an inordinate amount of density in an area that never had it. And so my request to you is a condition of approval of limiting this to 174 units. Would you agree to that?

MS. VAZQUEZ: Mr. Chair, Commissioners, two points with regards to that. First of all, we believe that this master plan is already capped at 174 units. We cannot go beyond 174 units without coming back to you. An amended master plan would require public notice. It would require a submittal and most importantly, a public hearing process, but more important than any of those things it would require us to show that we have water availability. So at this point we believe we are capped at 174 units, Commissioners and we would not be agreeable to making a commitment that would nullify the Santa Fe Canyon Ranch's ability under the Code at this point.

And I want to make one other point. When we submitted this master plan originally it was 605 units. We had an interpretation of the ordinance that was different than the public's. We worked with the public; we went down to 174 units. When we submitted the master plan we put specific language in the development plan, written on the plat and in the plan itself, and it was really a notice issue. And what we put in there was we reserve the right to come back in for an amended master plan.

In retrospect, maybe that caused a lot of unnecessary hardship on everybody, because frankly, every developer has that right to come in. It was put in there as an issue of notice so it wouldn't come as a surprise to anybody if in 15 or 20 years this development came back in for that. I also want to point out, Commissioners, that we have publicly testified to the fact that Phase I and Phase II will take – Phase I will take approximately 15 years for build-out, just Phase I alone. At that point, Commissioner, your growth management plan will be in place, the utility boundaries may be different, the whole area of Santa Fe is going to be different at that point, and we don't know what that issue raises. We believe that we're capped at this point, but we would not agree to waive our rights under the Code.

COMMISSIONER VIGIL: Okay, another condition of approval. We've heard testimony today that the current design is too close to some of the residents in that area. Would the applicant be willing to consider distancing themselves more from those residents that they are currently too close to? In other terms, relooking at the design to address some of the residents' concerns?

MS. VAZQUEZ: Mr. Chair, Commissioners, may I have a moment to speak

to my client on that?

CHAIRMAN CAMPOS: We've got to move on, Commissioner. We've got one hearing at 1:30 and then at 2:00 that's very important.

MS. VAZQUEZ: Mr. Chair, Commissioners, what we did in this design is we created it in a way that's actually required by the La Cienega Ordinance, is that if you're going to cluster, you need to cluster in such a way to respect the natural landscape of the area. So if you'll notice in Phases I and II we have some long cul-de-sacs, and we've got some roads that aren't on a grid pattern specifically to conform with the landscape. And we have already pushed the homes at a distance and created the building setbacks. What Santa Fe Canyon Ranch is, however, willing to do is take a look at trying to move some of them on a case by case basis and that would probably require us to do a movement of the building envelopes a little bit more if we could. But it would be very difficult to meet the Code in terms of creating a subdivision that meets the natural landscape, as well as clustering and move that setback any farther. But we would be willing to look at individual lots. I believe this is the closest lot here, and it's Lot 25. I believe it's the closest lot to the property. And that's the one I believe is 132 feet from the property line.

COMMISSIONER VIGIL: So, am I understanding the applicant to say they would consider a reconfiguration at some level to meet the requests of the community?

MS. VAZQUEZ: We would consider a reconfiguration of certain lots, but not the entire subdivision.

COMMISSIONER VIGIL: And in effect, it may impact the entire subdivision to some extent.

MS. VAZQUEZ: Yes, Commissioner, either through movement of that lot or movement of the building envelope within that lot to create a bigger setback.

COMMISSIONER VIGIL: Okay. Then Mr. Chair, I would just ask Commissioner Montoya and Commissioner Anaya if they would be willing to accept these amendments and agreements by the developer in their motion – that would be that they would extend the water service to serve the development with the County utility water delivery system, that they will transfer water rights, that the applicant will reconfigure submitted master plan to meet the community's request.

MS. VAZQUEZ: May I clarify that last condition, Commissioner? On a lot-by-lot basis and possibly by moving within the lot the building envelope. Was that your understanding?

COMMISSIONER VIGIL: Yes, if that's the limitation of it. But I'm also thinking you may be impacted –

MS. VAZQUEZ: And we may have to, but we'd like to explore those. We would like to have the ability under this condition to explore those options.

COMMISSIONER VIGIL: Okay.

COMMISSIONER MONTROYA: I would agree to the first two, because I think the applicant sounds agreeable to it, and I think to explore that other option that Commissioner Vigil was suggesting might be something, rather than placing a condition on it

if it's possible to explore that, at least put it in that way so it's not something that's necessarily binding. Because quite frankly, I like the configuration of the development now as opposed to the way it was when it was so spread out and had a bunch of lots all over the place. Now, it's much more with I think what our Native American brothers and sisters were doing when they had the pueblo idea and I think they had it right in terms of the living and that sort of thing. So I think that's – if it's not going to impact it in a significant way I would probably be okay with at least the exploration of it.

COMMISSIONER VIGIL: Okay. Is Commissioner Anaya in agreement with it?

COMMISSIONER ANAYA: Mr. Chair, Commissioner Vigil, I got the water service transfer and the water service. And then the second one – what was the second one?

CHAIRMAN CAMPOS: Water rights.

COMMISSIONER VIGIL: Water rights.

CHAIRMAN CAMPOS: Transfer the water rights to the County.

COMMISSIONER ANAYA: Yes, but did you mention anything about units?

COMMISSIONER VIGIL: The 174 density, they have not agreed to that.

COMMISSIONER ANAYA: Okay. So the one thing was the water service – extending the water and transferring the water.

COMMISSIONER VIGIL: And the third thing, Commissioner Montoya has said he, rather than include it in the conditions of approval would request that the applicants work to reconfigure the lots, or perhaps the master plan to accommodate the proximity of its design to other residents in the community.

COMMISSIONER ANAYA: I believe he used the word explore so I'll go ahead and agree to that.

COMMISSIONER VIGIL: Okay.

MS. VAZQUEZ: But, Mr. Chair, I have a clarification question.

CHAIRMAN CAMPOS: Briefly. We're running out of time.

MS. VAZQUEZ: Okay. With regards to the water rights, in terms of transferring either the 14.55 or the water rights that are used in the diversion, correct? Whatever water rights that we have that are acceptable to the County for the 14.55. Is that correct?

COMMISSIONER VIGIL: Yes.

MS. VAZQUEZ: Okay. And my second clarification is, if we end up working with the community on moving some of the lots, we could submit that with preliminary and not have to come in for an amended master plan? Given that it is a condition of approval to explore that option, and if we come to a resolution, would we be able to come in at preliminary instead of an amended master plan?

COMMISSIONER ANAYA: I don't have a problem with it.

CHAIRMAN CAMPOS: Counselor Ross, could you assist us?

MR. ROSS: Mr. Chair, I just consulted with Land Use staff and they seem to think it's okay.

CHAIRMAN CAMPOS: They seem to say it's okay?

MR. ROSS: They seem to think it's okay to do that.

COMMISSIONER SULLIVAN: Mr. Chair.

CHAIRMAN CAMPOS: Hold on. Commissioner Vigil has the floor still.

COMMISSIONER VIGIL: I've gotten my questions answered. I'm prepared to vote.

CHAIRMAN CAMPOS: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Chair, I've felt that subdivisions of this size are ready candidates for tying into the County water system, but I don't think that it's good decision making or land use planning to open up the floodgates as we're doing here. If we provide the applicant with that benefit of the County water system, which is a major benefit, not having to go through additional water rights hearings and having that water available, we need something in return and we're not getting that here. What we're getting is vague assurances that maybe in 15 years they'll come back for an amended master plan, but maybe in two years they'll come back for an amended master plan.

So I don't think the County needs or should make that big a commitment without some equally substantive commitment from the developer, and that substantive commitment would be that this project limits would be 174 units. Now, they can continue to develop with the well system and go through the process of the protests and the impairment of wells and so forth, and that's fine. I'm not objecting to the master plan based on the water component of it as it currently stands, but rather based on the pure planning component of it that's incomplete. It's an incomplete master plan.

So, if we're going to make that big a commitment, which I would support, to put this entity on public water, we need an equally substantive commitment back from the developer, and that is to limit the size of this development that's more in harmony with the rural nature of the community. So I feel we're giving the developer way too much here. We're opening the floodgates with this type of an approval. I would rather see them proceed with the wells and rely on the State Engineer and their expertise what the level of impairment would be and what the conditions on those wells would be. I think they would be more able to do that, or qualified to do that than we are. Thank you.

COMMISSIONER VIGIL: Mr. Chair, I have to agree to that, and I'd like to just make a recommendation. Perhaps this is something that needs to be discussed between our counsel and their client. It makes more sense to me that we have further clarification on what this development is going to look like. So I'd really like a response from that. That's what I'd really like to vote for.

CHAIRMAN CAMPOS: Yes or no? Will you limit to 174?

MS. VAZQUEZ: Mr. Chair, if I may have a moment with my client.

Mr. Chair, Commissioners, we thank you for the ability to get on the County water system. It is good public policy because the major concern that the neighbors have had is with regards to the mining of the aquifer in that area, but we are not at this point willing to waive our right under the County Code to come in, if need be, for an amended master plan. The

issue of County water is an issue that is a benefit to everybody. Commissioner Sullivan, it is not just a benefit to this development, and in fact these developers have planned for a community water system. We've already gone before the State Engineer. There has been an agreement by all of the protestants as to the impairment.

CHAIRMAN CAMPOS: The answer is no, right? Is that it?

MS. VAZQUEZ: Yes.

CHAIRMAN CAMPOS: Okay. So I have a couple of comments for the community. I think having this community become public water under the County is creating a growth area without telling you that in La Cienega. You've said that they're destroying your community today. Well, let them create a service area and see what happens there. If they don't totally destroy your community as a rural community. That's what's going to happen and it's certainly an easy political decision here. Yes, okay, we give the developer a yes, but we're going to give you the water system, but it doesn't work out that way. It's really going to just create a growth area in a very bad way. Right now we're trying to create growth areas in a rational way, the County staff is, and create a new plan that makes sense where we put water and infrastructure. This negates that. So I'm voting no if those conditions are on.

COMMISSIONER SULLIVAN: Mr. Chair, I would say that if Commissioners Montoya and Anaya and Vigil feel that we should move forward with this that it's far more beneficial to move forward as a pure community water system for those controls, the reasons of those controls that I just mentioned regarding the protests that are allowed when you get into impairment of nearby wells, than it would be to say, yes, let's give them the best of both worlds. Let's give them a Santa Fe County water connection hook-up, and they still retain their right to come back and further densify the development. I think we're way in the wrong direction there. That if you feel you need to approve this, that it's appropriate to approve this, I would approve it as it is, not add the County water system into that, and then when they come back later for preliminary or final, if they want to rediscuss that we can rediscuss it. But I see what's currently being talked about as the worst of both worlds for the community. Thank you.

COMMISSIONER VIGIL: I agree. I withdraw my request for the conditions of approval and it should remain on a community well system.

CHAIRMAN CAMPOS: I agree.

COMMISSIONER SULLIVAN: So, Mr. Chair, can I clarify, the motion is to approve with conditions as presented.

The motion passed by 3-2 voice vote with Commissioners Anaya, Montoya and Vigil voting in favor and Commissioners Campos and Sullivan voting against.

[The Commission recessed from 12:38 -1:40 and Commissioner Montoya was excused from the remainder of the meeting.]

XII. B. 5. Request for Approval and Consent for the Santa Fe Solid Waste Management Agency to Accept Waste From Los Alamos County and the North Central Solid Waste Authority (SFSWMA)

RANDALL KIPPENBROCK (SWMA Executive Director): I have placed on your desk basically a power point presentation there that's in blue, and I'm willing to answer any questions that you have. Just a few statements. As you're probably aware of, the agency is jointly owned by the City and the County through a joint powers agreement. Section 2.3 of the JPA requires prior approval and consent of the City and the County for the agency to accept solid waste outside the geographical area of Santa Fe.

This month alone the joint powers approved to come forward to the City and the County on September 3rd. The City of Santa Fe held two committees, one being the Public Utilities on the 17th and one being last night, the City Finance. Both committees approved it to move it forward to the City Council meeting October 6th.

In your packet there is a financial model showing that additional revenues of \$31 million over the next ten years will be needed. That \$31 million is basically \$3.1 million per year to fund the daily operation and maintenance needs, as well as the four reserves that we have. And those reserves are equipment replacement, cell development, land fill gas collection system, closure or post-closure.

On page 2 you will notice I've put asterisks on the equipment replacement and cell development. Essentially in the past equipment replacement we've been putting in \$500,000 per year. The model shows that it needs to be closer to \$925,000 per year. Likewise for cell development, we've been placing about \$1 million per year. The model shows that it should be closer to \$2.55 million per year.

If you look on page 3 on the top there is a chart showing that if we do not add additional revenues, either from the outside source or increasing tipping fees, then we will continue to go below, into the red over the next ten years. The bottom of page 3 shows a compactor. Generally you replace those types of equipment every five years based on the number of machine hours, etc. We were very fortunate to get a certified rebuilt this past fiscal year. I left you a blue booklet showing that Wagner Caterpillar did it for us for about half the cost. Generally, when you get a frame hours of about 20,000 or so you would like to go ahead and go with a new piece of equipment. The suggested cost in about five years is \$900,000.

The next three slides on page 4 and 5 are typical cell development where we do the rock removal as well as the liner installation. The bottom of page five is showing that as I mentioned, additional revenue is needed basically for the expenditures that are projected for the next ten years, and necessary rate increases from the current \$25 per ton, which has been the same since the opening of the Caja del Rio landfill in 1997. The County should consider accepting solid waste from Los Alamos County North Central Solid Waste Authority.

By doing this we can minimize rate increases for the City and the County residential rates, as well as the commercial haulers inside the County area. Basically, \$30 per ton for Santa Fe residential waste and \$33 per ton for all the types of other waste.

On the top of page 6, additional revenues, if you only accept waste from North Central Solid Waste Authority, then the required rates will be \$30 to \$36 per ton. Again, \$30 refers to the Santa Fe residential waste only which comprises about 25 percent of the 200,000 tons of waste we process at the landfill. The remainder will rise up to \$36 per ton. Not accepting either Los Alamos or North Central will require an across the board \$41 per ton for all current incoming waste generated. Currently it's from \$25 to \$41 a ton.

To give you a background, who is Los Alamos County – in the audience I have Regina Wheeler. She is the manager for their solid waste facility. Currently Los Alamos generates about 20,000 tons per year. That's for disposal. They actually do about 40,000 tons. My understanding is about half of that, 50 percent more or less, they recycle. They have a concrete project, asphalt. They try to remove as much scrap metal as they can and they sell that. They pull out tires. They basically do a lot of recycling. But of the 20,000 tons they do dispose of at their landfill, which is subject to close at the end of this year, approximately 2,100 tons comes from the Los Alamos National Lab. Keep in mind that these type of wastes are office, restaurant wastes and construction/demolition waste. The way the waste comes in, first of all, it's managed by LANL under strict disposal procedure. The procedure calls for when the truck comes from the lab it has a pass. It identifies the Los Alamos County Landfill personnel that is there. They have a detection monitoring system to detect for radioactivity. My understanding from Los Alamos County, the system has been in place for about ten years and never has been set off. My understanding is also that the LANL personnel do daily tests. They monitor, calibrate on a regular basis, and they maintain it. Los Alamos County is building – currently under construction is a county transfer station or they call it Eco-station. Essentially, they're going to close their landfill and use that.

North Central Solid Waste Authority is 30,000 tons and is comprised of Rio Arriba County, City of Española, San Juan Pueblo and Santa Clara Pueblo. On the bottom of page 7 there's a comparison of facilities comparing our landfill with Los Alamos, North Central and the Buckman Road Recycling. Essentially, we have 200,000 tons per year that we process, or it takes about 140 vehicles per day to do that. Los Alamos County, if they were to enter the landfill it would be four transfer trailers per day or about a three percent increase in vehicle count. Likewise for North Central, 30,000 tons per year or six transfer trailers per day for a four percent increase.

And if you look at the Buckman Road Recycling, we process 20,000 tons per year at the transfer stations and take three transfer trailers to come to the landfill. Just to give you a sense of what 140 vehicles is, we have a traffic count annually of about 43,000. The Buckman Road Recycling is 94,000 vehicle counts. So back in January of 2006, when we elected to open the transfer station and divert all the small vehicles we took some of that load off, that 94,000 going over to the transfer station.

On the top of page 1 I mention about the additional \$3.1 million of revenue that will be needed annually. By accepting Los Alamos and North Central we can generate \$1.5 million for the first fiscal year and \$1.65 million annually thereafter, as opposed to trying to come up with the entire \$3.1 million from the city and county only.

The bottom of page is probably the most important slide for the Commissioners because it shows the impact on the Santa Fe County only. The first line of the first row is the residential transfer station with the seven transfer stations that the County runs. Currently you are paying – well, I don't have the current figure but basically if it goes up to \$30 per ton then that fee would go up to \$66,125. That's the additional amount, from \$25 to \$30. Then you have \$33 per ton, \$36 per ton. The residential trash will remain the same no matter what. However, if you go to the last column, \$41 per ton, if you do not accept any outside waste, then the County will be facing a \$211,600 additional disposal fee for the seven transfer stations.

Other county departments, referring to Public Works, etc. And you see the last row is the annual increases. The impact on the landfill on page 9, essentially we're saying, yes, we are increasing the tonnages by 25 percent from 200,000 to 250,000, and it could decrease the available air space by 20 percent. For example, if you have a cell of four years, for that life it could reduce by eight months or 3.2 years. Essentially, we require more frequent cell development. However, if you look on the bottom of page 9 I put in an economy of scale at landfills. We are currently at 550 tons per day. That's stating that we're still a small to medium-sized landfill. By adding Los Alamos County and North Central, we're allowed to achieve more economy of scale by reaching towards the 1,000 tons per day. With them it would be at 700 tons. You're essentially driving down your costs.

There's fixed operating costs that you have at any given landfill. Anything greater than 1,000 and it levels off, etc.

One thing I want to point out on the operation of the landfill. You have the operations, then you also have what I call capital outlay and capital improvements, which essentially is cell development. If you look at the operation itself, the operation will not change at all. We're not adding more personnel; we're not adding more equipment. Rather, we're using the same equipment to compact the additional ten trucks per day, Monday through Friday, into the landfill. If you just look at the operation cost, currently it's about \$16.50 per ton on the current 200,000 tons. If you bring in an additional 50,000 tons that would lower the operations costs to \$13.20 per ton. The \$3.1 million is really designed for the equipment replacement as well as cell development.

On page 10 there were some issues about LANL waste. Again, I mentioned it's primarily from offices. It's not near any facilities, rather it's offices and restaurants and some construction and demolition. As I mentioned earlier, it's maintained by professionals, the radiation detector system. It's tested daily, calibrated regularly, and maintenance is performed as needed. No detection has been detected over the ten years.

Whether it's Caja del Rio, Buckman Road, Los Alamos County, transfer stations or other landfills, or North Central as their citizens and the three transfer stations that they have, all of us are regulated by the same entity, the New Mexico Environment Department, Solid Waste Bureau. And all of us are required to do what's called waste-screening. Basically, one percent of all loads must be screened for any regulated hazardous waste, any PCBs, special waste, prohibited waste or problem waste that we may consider. Waste-screening ultimately

is the responsibility of the generator and it goes down to the hauler and the landfill itself. Although we identify that we go back to the generator to make them responsible for the cleanup costs, etc.

On page 11 at the bottom is the beginning of the MOUs. These are some of the bullet points. Los Alamos County and North Central will be responsible for the transportation from the point of collection to the landfill. They certify that all waste for disposal is not hazardous, prohibited or unauthorized and meets all federal and state regulations, and making separate arrangements for disposal of any hazardous, unauthorized special waste, prohibited waste. Paying the agency for the set fees agreed to be delivered to the landfill.

The next page, 12, on MOUs also states that any adjustment made by the agency, we would notify Los Alamos and North Central at least six months in advance, in January if there were any price adjustments. And the agreement is for five years. It can be renewed for an additional five years upon written notice one year in advance. And it can be terminated by either party with one year notice.

The MOUs will be beefed up according to the MOUs that you have in there. It's a graph. It's basically going to address the travel to 599 route, obey all County and City ordinances, such as speed limits, weight limits, secure loads, bringing in conventional recyclables to BuRRT, such as old newspapers, magazines, other paper, aluminum cans, number 1 and number 2 plastics. And we do have an MOU with Los Alamos to bring their conventional recyclables to BuRRT. Just to give you an idea, I looked up this morning that Los Alamos is currently bringing in 1,350 tons last fiscal year. The county brought in 1,200. So they are helping themselves tremendously on that.

North Central just started recently bringing in recyclables to our facility. And of course the largest player being the city, 4,000 tons, 1,700 of that being glass. Waste Management also, a private hauler for the county areas, in their commercial account, 766 tons. Thank you.

COMMISSIONER VIGIL: Mr. Chair. I have a question that is ancillary, not to you; it goes to James. There has been a request, I do represent constituents in that district. Part of the problem that the constituents have in that district is the overspill from non-compliant trucks. So we've addressed this through the agreement. They do have to comply with ordinances. One of the requests was that the speed limit from the frontage road to the turnoff point be considered for 35 miles per hour. Is that something you can study and bring forth a recommendation on?

JAMES LUJAN (Growth Management Director): Mr. Chair, Commissioner Vigil, yes, that is something we can look into.

COMMISSIONER VIGIL: Okay. I would look forward to that recommendation before we enter into this agreement, hopefully. Okay?

MR. LUJAN: So do a traffic study before this agreement is approved?

COMMISSIONER VIGIL: If it's possible. Is that possible?

MR. LUJAN: I don't think we can get a traffic study done that soon. I don't know what the time line is to get the MOU done.

COMMISSIONER VIGIL: Okay. And I really don't have a problem because the agreement specifically states all rules and regulations and ordinances must be complied with, and if we do have cause to lower the speed limit that would need to be complied with. So really that timeline may not be necessary, if you could just get back with us on that.

MR. LUJAN: Mr. Chair, Commissioner Vigil, what we've currently got going at Public Works is redevelopment of that whole road. We know it's in dire repair, in need of dire repair. Right now, they're currently adding utilities, a water line, so that's formulating. We haven't planned it yet. We don't have the funding, but we are looking at it. We've got it on our ICIP plan to seek funding to make left turn lanes and I think the design – the speed is a major factor right now, but it's designed at 45. I don't know that we're going to change it much by going to 35. What we need to do is make some safety improvements.

COMMISSIONER VIGIL: Are you talking speed humps?

MR. LUJAN: No, I'm talking about left turn lanes. That's the major problem right now.

COMMISSIONER VIGIL: Okay. I would like for you to look at the considerations and come forth. I do think it makes sense to reduce the speed limit because in fact part of the problem is these trucks are moving fast and that's what's causing the debris fallout. Despite the fact that they have covered tarps or whatever, lowering the speed limit may or may not make a difference. I hope your study will bring forth that recommendation. That's all I have.

MR. LUJAN: We'll look into it. No problem.

COMMISSIONER VIGIL: And I know Commissioner Sullivan had some question about this.

CHAIRMAN CAMPOS: Are you done, Mr. Kippenbrock?

MR. KIPPENBROCK: I'm finished.

CHAIRMAN CAMPOS: Okay. Any questions from the Commission?
Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Kippenbrock, in your report you say the staff prefers option 4, which I believe would raise the cost of the tipping fee from \$25 to \$30 a ton. Is that correct?

MR. KIPPENBROCK: Yes.

COMMISSIONER SULLIVAN: For residential waste. You also say that that option, that Los Alamos and the North Central would agree to that because they wouldn't agree to any differential pricing, they wouldn't agree to any type of what you call "predatory pricing". Now, I guess I find that a little interesting because my recollection is from some years ago on the Solid Waste Management Authority that both the County and the City each put \$10 million in to develop the initial cell construction. Is that right?

MR. KIPPENBROCK: Actually, it's \$6, \$6 \$6. Six million dollars by each entity, County, City and agency. There was \$18 million total.

COMMISSIONER SULLIVAN: County, City and who?

MR. KIPPENBROCK: Agency.

COMMISSIONER SULLIVAN: What agency?

MR. KIPPENBROCK: The Caja del Rio SWMA. The City borrowed money, \$6-point some million. The County, \$6-something million, and the agency borrowed \$6-point something.

COMMISSIONER SULLIVAN: Okay, so \$18 million not \$20 million. Okay. And so we have a six million dollar investment, the County does, in this. And so I guess I don't see how these latecomers, why, unless they're going to come up with \$6 million as well, capital infusion into the project, should be accorded the same rate. How do you justify that?

MR. KIPPENBROCK: I'm looking at – my justification, Commissioner Sullivan, is by going with what I need to do starting next fiscal year. I need to come up with an additional \$3.1 million by bringing North Central and Los Alamos on board there's a potentially \$1.65 million of \$3.1 that's projected, that would be needed each year thereafter over the next ten years.

COMMISSIONER SULLIVAN: Well, I understand you're looking for more money, but I'm looking for equity in the ratepayers in Santa Fe who have already put in \$6 million of tax money into this landfill, and have a certain rate that they're charged, a tipping fee, and now we say, okay, let's bring in some others. We'll charge you the same rate. Yet they don't have to pay \$6 million. That doesn't seem equitable to me.

MR. KIPPENBROCK: Commissioner Sullivan, I totally agree with you on that, but I also have to realize that we're not the only landfill in this area. Los Alamos and North Central could go to another facility if the County and the City elected not to do so. I just want to bring forward if you don't have these players, or these additional wastes, I would call it, then we could foresee up to \$41 per ton. I do know that the more or less rate for the Rio Rancho landfill is approximately \$25. Why? Because they're basically doing a vertical expansion, etc.

They also opened up a brand new facility south of Albuquerque. They're trying to attract more incoming waste as well. They have a lower tipping fee. The advantage that we have, we have to look at the transportation costs and the tipping fee, and you combine that total disposal cost. I have to – if I had my choice, I would rather raise it up as much as I could and still invite them in while reducing our costs, the amount of income that we need to bring in over the next ten years. But if I say \$38 or \$39, then it almost makes more economic sense for North Central and Los Alamos to choose other locations for disposal.

COMMISSIONER SULLIVAN: What's hard for me to understand – you say, for example, that “historically adequate funding for the equipment replacement and cell development were not met. So obviously, as we bring in more trucks and more tonnage, we're going to have to develop, as you say, 20 percent more cell construction, since the cell life is going to be reduced from four to three years. And if we're charging the same amount of money to dump as we are now, and you're projecting that we're going to go in the red, it seems to me all we're doing is accelerating that projection of going in the red, because we're just dumping more trash into the cells, thus requiring that they be built more frequently, and

we're not getting more money out of it. It would just be the same thing as if Santa Fe City and Santa Fe County just dumped more trash, which they will do of course over the years.

I don't see in the analysis anything that tells me what this is saving us money, particularly in terms of cell development because we're going to have to develop cells on a more frequent basis. Now, I realize cell development is not the only component. Operations, as you've mentioned is a component as well. And I didn't see any analysis of that break-even point or that cost/benefit of the cell development. It just seems like we're saying if we're going to go in the red, let's do the same thing that we're doing except faster, and then we won't go in the red. Is that the economies of scale that you're alluding to?

MR. KIPPENBROCK: The economy of scale is the most trash you're bringing in the less it costs per ton of trash. But we're going in the red because not enough revenues will be needed in the future. Basically, I've been on board for four years. What we have been doing is managing our budget, using the excess from certain funds, moving it to cell development or equipment replacement, etc. This past year – actually earlier this year we went ahead and borrowed \$3 million from two sources, the NMMFA and NMED for that cell construction that we have, \$5.1 million.

That will get us over for the next few years but you've got to start building up your reserves, cell development reserves, for the next one. Whether we're bringing in additional revenues through additional tonnages or we raise the rates. There's basically two ways of looking at it – increase the rates overall so the rate is \$41 per ton, or bring in additional tonnages and maintain the \$30 per ton for the seven transfer stations in the county and \$33 for the rest of the commercial haulers. That's one way of looking at it. It's the rates.

COMMISSIONER SULLIVAN: Well – what will this do to the projected life of the landfill? It will reduce its projected life, correct?

MR. KIPPENBROCK: Yes.

COMMISSIONER SULLIVAN: By how much?

MR. KIPPENBROCK: Well, the original 100-year plan, it would be down to an 80-year plan if you reduce it by 20 percent. But –

COMMISSIONER SULLIVAN: Do we still have 100 years left on the landfill?

MR. KIPPENBROCK: It's all about economics. There's plenty of land out there to do it, but it's about economics. Rock removal, permitting, design, everything that goes. We have 640 acres, 430 acres permitted. Currently, within the 430 acres 76 acres is for disposal. From 1997 to today we impacted 45 acres. Starting January 09 we'll impact the next 15 acres for over the next three years. By 2015 or sooner we'll impact the entire 76 acres that have trash on it. We'll basically get another 20-year permit. Every 20 years you have to deal with the state, move over to another area, about 90 acres, start the process all over again. And eventually you build building blocks, one after another, every 20 years, within each 20 years there are cells. My goal is to go over to unconsolidated areas where we have already identified through previous soil borings to reduce that cost by \$20 million over that 20-year period, by excavating soil instead of [inaudible]

Another thing I wanted to do is to be able to do vertical expansion. Whoever did the conceptual design – it's not really cost-effective the way they did it for those landfills, especially this one here. It's only 50 feet above grade in certain areas, and as you go west towards the Caja del Rio Plateau, it's only 20 feet above ground. You can typically raise that up to an acceptable level and still get more life out of it. The key is to put more trash over a lined area to keep the costs down. That's your development cost, your lined area.

COMMISSIONER SULLIVAN: These are all good ideas and I think they would apply whether Santa Fe City and County were the only users or whether we had other users and I'm glad to see you thinking of these things. I just find it difficult to conceptualize that we're going to reduce the life of the landfill by 20 percent, and yet we're not requiring either of these participants to pay into that reserve. In other words, we need to have not only a reserve for cells, we need to have a reserve for what are we going to do when the landfill is full. We're going to have to have a great expense to close the landfill and to start one up somewhere else. And it seems that these major users should be asked to participate in that ultimate reserve too, because they're reducing the life, and they could allocate \$2 a ton or something and they could set that off to the side as a reserve for future expansion or for a new landfill, which would be similar to the \$6 million that the County paid in when we started this.

It seems like they have a civic obligation here as well, not just to come in as Johnny-come-latelies. Has that been discussed with them?

MR. KIPPENBROCK: I actually went to the board and asked if I could approach Los Alamos and North Central for bringing in additional waste for additional revenues as one way of raising the additional revenue that is needed

COMMISSIONER SULLIVAN: I mean is the issue of them participating in some type of capital reserve been discussed with that?

MR. KIPPENBROCK: Commissioner Sullivan, no, I have not brought that up to their attention.

COMMISSIONER SULLIVAN: Okay. Thank you.

CHAIRMAN CAMPOS: Any other questions, comments, speeches?

COMMISSIONER VIGIL: I move to approve.

COMMISSIONER ANAYA: Second.

CHAIRMAN CAMPOS: Discussion?

The motion passed by majority 3-1 voice vote with Commissioner Sullivan casting the dissenting vote.

[The Commission recessed from 2:12 to 2:25.]

XIII. STAFF AND ELECTED OFFICIAL ITEMS

C. Matters from the County Attorney

1. Presentation of a Proposed General Plan Amendment, Oil and Gas Element (Planning Works, Robert Freilich)

MR. ROSS: Mr. Chair, we are here to present a number of items, three items in particular. The first of the three is the draft amendment to the County's general plan, particular to oil and gas, and the second item is the draft oil and gas ordinance, oil and gas regulatory ordinance. Those two items go together, the plan and the ordinance. The third item is a proposal that we undertake, or that obtain from you title and general summary of the proposed ordinance so we can get the public hearing process underway and get some comments on these documents. All these documents are going to be uploaded to our website later today, as well as the power point presentation that we're about to see Dr. Freilich and Mr. Peshoff present. A fourth item that we'll post up to the website today also is a document that describes the next steps in this process. We're about, I'd say, half-way through the oil and gas project.

It began when we enacted the interim development ordinance earlier this year on February 26th. That project will conclude as of the expiration of the current one-year moratorium ordinance in February of 2009. Since we started this project we've also hitched a couple of other projects to this project and that's the growth management project that our own Growth Management Department and our Planning staff have been working on for about a year or so, as well as the Code rewrite project, which staff has been working on for probably close to five years. All those projects we plan to process as a group and get them done within the next calendar year, by December of 2009, if everything goes according to plan. We lay all this out in the schedule that will be uploaded to the website later on today.

Where we go in the immediate future with the oil and gas project is to the County Development Review Committee/County Planning Commission. The ordinance and the general plan amendment will be on their agendas for October and November. Once they have vetted those documents during that process the same two documents will come back to you, the Board of County Commissioners, beginning your meeting in late November and we'll see how things go, see how well developed we are at that point and fine-tune a schedule for adoption of these regulations.

I think you've heard enough from me. Right now what I think you need to hear now from our consultant team. Two members of our consultant team are here to present the oil and gas element proposed to amend the County general plan and the oil and gas regulations. They will present through a power point these two documents to you, I think as a tag-team effort. It's Bruce Peshoff from Planning Works and of course Dr. Robert Freilich from Miller Barondess in Los Angeles. Gentlemen.

ROBERT FREILICH: It's a pleasure to be here again on such a beautiful day. Let me just say to you that we're really very, very pleased that we're right on target time-wise

for the project dealing with the oil and gas regulatory process. As your County counselor has pointed out, on February 27th of this year you adopted an interim development ordinance, which called for a one-year study and development of a new general plan element, an oil and gas element to the general plan, and basically, an oil and gas regulatory ordinance to control the zoning, subdivision, financing, infrastructure, environmental assessment, all of those factors, to govern applications for oil and gas facilities.

We're pleased to tell you that before you you have an 87-page oil and gas element with a whole series of maps. That is this large document that you see, and basically with detailed maps and analysis which Bruce Peshoff of Planning Works is going to present first, ahead of the ordinance. Then there is a 126-page regulatory ordinance for controlling oil and gas activities in the county, and I will tell you right off hand that this is the most comprehensive, and I believe innovative ordinance dealing with oil and gas regulation in the United States.

We want to thank, before we begin, we want to thank everybody. We want to thank the County Manager, we want to the Planning – Jack's staff. We want to thank the Fire Department, the Sheriff, all of the providers, Public Works, Mr. Martinez, just everybody who's cooperated so well, including the tremendous response we received from the public and the meetings that we had and the input that we received from groups, foundations, from Pueblos. We visited, we were able to visit three times with state agencies to deal with the progress that they were making on oil and gas regulation.

So what you have before you we believe is the first draft of a very completed document. Right now, as it stands, these documents could be adopted. Of course, they will go through a vetting process. The public and the oil and gas industry, other governmental agencies, the City of Santa Fe, other counties, the state agencies are going to be very interested in this process and I'm sure there are going to be many, many comments, suggestions, critiques, etc. to follow through.

So without any further ado I'm going to ask Bruce Peshoff to come up. He and I have prepared a power point presentation that covers both documents. We'll actually go perhaps into a little more detail than what the power point has. We expect that this presentation will take about an hour and then we should be at your disposal to answer any questions. You can ask questions, discussion among yourselves what you've heard, and it's up to the chair to decide whether you want to open up the floor to comment. That's not our prerogative to suggest or recommend. But we do wish to tell you that this is the first reading of these documents and we would hope that you would approve the first reading and send it – both documents to the CDRC for their review and recommendation to come back to you.

It's our judgment that with two hearings at the CDRC and two hearings before the Board of County Commissioners that this ordinance and general plan oil and gas element could be adopted before the end of this calendar year, in December. Again, the schedule is up to you and how you wish to proceed. So I'll turn this over now to Bruce Peshoff for him to begin any discussion. Unless you have any questions now that you'd like to ask before we start.

CHAIRMAN CAMPOS: Any opening questions from the Commission?

Thank you, Dr. Freilich. Mr. Peshoff.

BRUCE PESHOFF: Thank you. I'll start with just a brief overview of the agenda, what the topics are that we're going to include in the presentation for this afternoon. First up will be the oil and gas element. I'm going to talk primarily about two issues: the suitability model, the oil suitability model that we've used, as well as capital improvement planning. We'll switch over and Dr. Freilich will talk about the ordinance in some detail. The purpose, findings, the three-stage process that has been identified as well as some special provisions. And then he'll close with what some of the next steps are in the process.

We'll start with the oil and gas element. The first three slides are the table of contents, and I just wanted to put this out there as an introduction in terms of how this has been structured. We structured the document to start with the vision, the goals, the objectives, the policies and the strategies. We wanted it to be right up front – this is the direction that the document is taking. Immediately going through that vision section, we focused on oil and gas suitability factors. I feature some detailed information as well as a description of the model. We also then go into a pretty detailed section dealing with facilities and services, what facilities and services would be required if oil and gas, as oil and gas comes forward. We then have a natural resources section as well as some next steps, a detailed capital improvements program, and then a series, as you'll note, of maps, tables, graphs, as well as technical addenda as well. This is a feature-rich document and that was another reason we wanted to start with the vision first. We didn't want someone to get lost in the forest because of the trees.

So let's start from square one. We started with a defined boundary that has been refined, for the Galisteo Basin. This has been the focal point. This is also the component in the county that has the best available data to be able to move forward with a land use model, with a suitability model. We also had some data that shows where the existing wells are to see what the distribution is, what the relationship is to highways, to the developed areas, to the natural resources. We also started out with the Governor's report that came forward, and it made some very important statements that we think are worth calling out in this document and in this presentation. One, that there ought to be a comprehensive resource-based process. The report stated that Santa Fe County should, ought to adopt ordinances to address concerns, that the process, the plan and the regulations ought to consider the cumulative effect and recognize that natural resources are at risk. These are the same resources that the county does depend upon, as well as the complexity that we're facing.

There is no good, defined data set that answers all the questions. There are pieces of puzzles within the Galisteo Basin. We've assembled those pieces into a very comprehensive model and one that we actually look forward to seeing built on in the coming months and even years.

So why don't we start with the oil and gas suitability model. We'll start with what this model was based on and what a model is. The model is supposed to be a series of inputs, a series of factors that relate to different values, sensitivity values on the ground –

environmental, cultural, the built environment. So it is clearly based on data, data and more data. Some of the data you have seen in the GWCI model that was circulated a few months ago. This took that GWCI model and built on that.

There are also presumptions that are a common theme throughout the model. And the presumptions mean that we haven't said specifically, definitively, this area is X, because that data doesn't exist in the form of being able to have that type of precision. And that's just the nature of any type of environmental land use model. We look to predictors, we look to factors that point to some type of a finding. So for this model we've got a couple of terms that I want to make sure that we're clear about. One is low suitability is the equivalent to high sensitivity. What that means is that if it has low suitability for oil and gas, it's probably because it has high sensitivity for environmental and cultural factors. Moderate suitability is equivalent to moderate sensitivity. Again, moderate meaning some – that there's not a presumption that is absolutely as sensitive but there is a tendency that it could be. And then high suitability for oil and gas is roughly equivalent to a low sensitivity for environmental or cultural features.

Ideally, in a perfect world, we would only want the most intensive uses to be in the low sensitivity areas to preserve farms, ranches, agricultural resources, natural resources, cultural resources. This is part of the balancing act that the model helps unlock. It's also a model with factors that are weighted, meaning that some factors clearly are more important than other factors, and that's something that the data in the report identifies as well – which factors were given emphasis.

So let's run through what those factors are. First, we started off with identifying the farms and ranches in the county, primarily in the basin, and we're basing it based on size. I won't go into what each of the factors – how they were defined. That's the data that's in the plan element. I just want to call out what types of factors we looked at.

The second set of factors dealt with land suitable for protecting native plants and animal species. So all of these factors, 2.1, looking at the appropriateness, the availability of what's the amphibian species, reptilian species, bird species, mammalian species. Where are the undisturbed natural grasslands, the woodlands, as well as the undisturbed forested areas.

The third set of factors, identifying lands that are suitable for protecting the surface and groundwater quality. Where is the proximity to natural springs, permanent water bodies, drainage buffers, the wetlands and riparian inventory. The DRASTIC model, that the County's hydrologist has put together, along with the geologist that's on the team as well. The aquifer sensitivity and susceptibility to contamination.

The fourth set of factors, identifying lands within a 100-year floodplain, steep slopes, fault zones as well.

A fifth set of factors, identifying areas of cultural, historical and archeological importance. A series of factors trying to identify again where are the important sites that we need to preserve, and laying the groundwork that not all of them are known and perhaps only as few as five or ten percent of the sites have actually been inventoried.

A sixth set of factors, identifying lands with scenic value. The scenic highways, the

scenic dirt roads, and lands that have just been identified and being important – good viewsheds from specific locations.

A seventh set of factors, identifying lands that are close to community or public water systems, paved highways, paved roadways, fire stations.

Land use compatibility brings up the eighth list of factors in identifying lands that are close to designated conservation areas.

And I'll jump right to the chase. We put all of that data together and this is the composite map. This is where we ended up. This is the map that identifies in the dark green shading the areas of high sensitivity, meaning low suitability for oil and gas. That's the presumption that's being made. The light green, the next shade down, moderate sensitivity. And then the lightest color, the cream or the very, very light green, that would be the low sensitivity areas. And what this map does, this model actually, it's identified based on all of those factors that I just listed where the areas are that are the most sensitive, the areas that are the most critical, and that's what we see in green.

If we take those layer by layer, factor by factor, the next set of maps do precisely that – identifying again within the same framework of where is the high sensitivity, the moderate sensitivity, the low sensitivity for the ranch constraints, for the amphibian richness, reptilian richness – and again, we're looking at the dark green as meaning it's the most sensitive land. Bird richness, mammal richness, grasslands constraints, woodland areas, pinon juniper constraints, forest constraints, natural springs, water bodies, drainage buffers, riparian wetlands constraints, groundwater sensitivity constraints, aquifer susceptibility constraints, floodplains, slope, fault lines. This map obviously is black because we can't and we shouldn't be showing where the locations are of the archeological sites, but what I can say is that those sites are in the model. This is the way the model works. We want to know where they are for purposes of being able to establish that they are high sensitivity areas. We don't want them shown on the map for distribution to become potential treasure zones for someone so inclined. But the data was used. Scenic highways, scenic dirt roads, scenic areas, public water systems, paved highways, paved roads, fire stations, and then the conservation areas.

So we put all of those 30 approximately factors, one on top of another, and that's really what the model does, it lays a feature on top of a feature on top of a feature, and we get to that composite model that we started with. So this wasn't, by any scope of the imagination, someone drawing a line on a map and saying this is where I don't want oil and gas to go. Or this is the area that I think needs to be protected. This is a map that was created based entirely on data and on that I think is perhaps – I think I could also say this – this is the most detailed land suitability model that has been done. I can also add that as we get into the growth management element over the next two months that will be even more feature-rich, because we will be looking at even more built environment features in order to find land use suitability.

So this is on the cutting edge land use suitability model that we think is going to provide you with some very good information. And this is the starting point. Because after we've identified, based on these presumptions of areas that have high, moderate, or low

sensitivity, we still need to be able to identify, well, now that we know that this area may have high sensitivity, environmental sensitivity, that there's a presumption, for example, that it is, the first application or any application that comes forward for this model for oil and gas well, or later, as we do the growth management element and we're doing the land suitability model, we need to make sure that it is adequately separated, buffered, from those same features.

And now on a parcel by parcel, on a site-specific methodology, we can identify the applicants' engineers, the County's engineers, and identify where are those factors in relation to a specific development proposal, in relation to a specific oil or gas well.

And the plan element and the ordinance both identify what those buffers are. And for each of these factors we've identified how many feet away from those features the oil and gas well ought to be located, so that we're effectively excluding areas within a tract, within a parcel, if they happen to have values of any of these factors. Because what we don't want is – we look at, for example, the first factor in the second set, the high amphibian species, if there's evidence of high sensitivity for amphibian species, the well pad can't be any closer than 750 feet away. And all of these buffers are cumulative; they add onto one another. It doesn't mean, and we don't think it's going to create a complete unbuildable area, and that's one of the reasons that you go through this on a case-by-case basis with each application that goes forward. It's also why the model is based on a presumption rather than an outright you can't drill here; you can't build here.

And you can see the range of buffers are reasonable. They're consistent with how other communities, other counties regulate oil and gas wells across the county, in New Mexico, in Colorado, Texas, Oklahoma. We looked at lots of different programs and we talked with scientists, petroleum engineers, environmentalists, to make sure that we were being reasonable. And again, you see a bias towards a greater buffer on some of these features because they just are more important. Such as, for example, the natural springs, the water bodies, the drainage buffers. So these are the buffers that would be applied against any project that does come forward.

Where we're going with this is a capital improvements plan. The purpose of the capital improvements plan and the facilities and services section in the plan element are to identify if oil and gas do occur, what are the facilities and the services that the County needs to be able to provide, not just for oil and gas but for its own residents as well. And this was an interesting anecdotal conversation I had with the County's petroleum engineer, is that Santa Fe County really is unique. There are many rural areas across the West, the Midwest, that have a lot of oil and gas well activity. Most of those tend to be very rural areas. They tend to be rural areas that aren't even close to urbanized areas, let alone centers such as the City of Santa Fe.

The uniqueness comes from having a distributed development pattern throughout the basin of some upscale homes. It's a different demographic than you would find in a typical rural area that's typified by working farms and ranches. There are those. But there's also these large-lot suburban-type homes on fairly large acreages, and that's what makes it unique.

It's because the conflicts are potentially greater. People that may not be expecting or expected there to be oil and gas development to occur, because that wasn't consistent with what was happening on the environment. This isn't trying to preclude that but pointing out that there are some unique factors here.

Going through the capital facilities plan meant as much about how do we make sure that the oil and gas operations are safe for the operators, for the employees, for the workers on the oil pads, as it is for the people that live there now. That as they're driving down a road and they come up against a truck for one of the wells, that's there's going to be adequate access for them, that it's going to be a safe environment.

So we started with the premise that there be concurrency, that public facilities and services that are needed to maintain the adopted level of service. And we've talked with County staff. This is a public safety and roads perspective that we're taking here. That that adopted level of service needs to be maintained. That means that new development that comes in has to be able to provide or wait until there is adequate levels of service for public safety and for roads. It also means that the existing residents shouldn't have their level of service that they now enjoy reduced because of new development.

So it's a balancing act that tries to guarantee what people have now doesn't decrease and that the new development that comes in have the same protections. And we do that by requiring that they be adequate public facilities, that that adequacy, that level of service, does not decrease as new demands come on line throughout the basin.

Let me go back to this slide here for a moment. One of the things that we did, we talked with the Sheriff. We talked with the Fire Chief. Talked with Public Works Director for Santa Fe County. We've also talked with similar titled individuals at other counties in New Mexico, counties that have experienced significant amounts of oil and gas activity. We wanted to find out from them, what have their experiences been. How have they been able to provide services? What are the unique needs that oil and gas has brought them, in terms of, again, public safety and roads. That has been our focal point.

So for roads, what we started with then is what are the needs to be able to accommodate the truck traffic? And there are really two different types of traffic that we projected and that are in the plan. One is dealing with exploration. When the trucks are out there, when the operators are at the outset, what types of roads do they need? We wouldn't expect them to have paved, asphalt roads when they're just doing an exploratory well, and so after talking with Public Works Directors, some type of a chip-seal would be the way to go. It creates an all-weather surface, it's wide enough and it has a sufficient base that it can accommodate the large trucks as well as accommodate the residential traffic in the area.

But then as the production kicks in, during the extraction-production phase those roads will need to be improved as well. And at this point you go to a thicker base, perhaps wider paving, and now you're using asphalt. And the idea is these roads are going to be permanent. They're going to be handling residential traffic and truck traffic for a number of years potentially to come. It needs to be safe, it needs to be adequate, and they need to be in the areas and the locations that are consistent with moving traffic throughout the basin.

Up to this point, having a rural road level of service has been more than adequate to accommodate people living in the Galisteo Basin. It's what was expected, it's what they wanted, and it was something the County could afford. But now with an escalation in the intensity of traffic and the demand on the roadway system it means that we need to take a look. The County needs to take another look at how do we accommodate the new development and keep a safe network that can accommodate all traffic.

So this is the map that we created. And there are a couple of themes here. One is, this is a long-range transportation improvement map. You'll notice that there are two east-west corridors along the north side of the basin and towards the south side, just south of the basin. And those are intended to be able to move traffic from the interior to the interstate and to the state highway. That's in the purple. In the pinkish-purple – and those in the purple, let me jump back again, those would be the extraction-production grade roads. Those are the paved roads. Those are the roads that the trucks need to get to in order to get to the highways. They pink roads, lines on the map are actually the exploration-grade roads. Those are the chip-seal. What those are supposed to be are the collectors, getting close to the oil and gas activity that has occurred and possibly the same areas that may see new activity.

The intent there again is to get some kind of a paving, even a temporary paving material on the ground to accommodate the heavy truck traffic that's going to happen at the outset, to be able to accommodate the number of employees that will be moving through the area, and to be able to accommodate any emergency vehicles as well. Having large trucks, employees, and heavy-duty pickup trucks as well as potential for any emergency vehicles on dirt roads, just would not be acceptable. It would not be a way to do business.

Now it doesn't mean that all of this happens at one time and that's part of what a capital improvements plan does – identifies what types of capital improvements are needed, and then what's the timing and phasing – when do we need to get those in place? When does the new development need to fund that? Because that's the other side of APF, adequate public facilities and concurrency, is requiring that new development, the oil and gas development, to pay for the facilities, the capital improvements that it's going to require. Whether we're talking oil and gas, whether we're talking suburban subdivisions, and we will in a couple of months with the growth management element, new development should pay its own way. It's the equitable way to finance facilities and services. It's a pay as you grow system.

This is the same, exact same concept and argument. This just happens to be directed towards oil and gas because that's what's on the table. But it is the same concept, that if oil and gas is going to require these roads, and they will, then the funding needs to come from oil and gas and it's not something that should be subsidized by the existing taxpayers.

Fire and EMS – again, what we've done, talked with the Fire Chief in Santa Fe County as well as other counties, identified what specific needs are they likely to face with any significant oil and gas activity. And we've got some additional vehicles. You'll also see at the very top of the line a public safety civic center. We're going to look at a map here in just one second that's going to show that the existing fire stations in the basin, in the central

part of the county are largely based on fire volunteers, not a paid force, and that's not unusual in rural areas. But again, Santa Fe is a unique county. It's not your typical rural county.

So what we noted and we'll look at is that much of the oil and gas, existing oil and gas wells, are outside of the service areas of the existing fire stations. Additional activity is going to put even more of a strain on the existing fire stations. We need to ensure that there is, again, a level of service, because we're talking adequate public facilities, that that level of service, that response time occurs within the same response time for the rural area as before the oil and gas came in, so we're looking at about a four- to five-minute response time.

Let's take a look at that map. In the orange circles, that is a two-mile service area. And that equates to about four minutes at 35 miles an hour. The yellow, going out yellow around each of the fire stations is a four-mile service area which equates to somewhere, eight to ten minutes of response time. And all of these blue dots, and a couple of these green – these blue dots are existing oil wells, and the green dots are pending applications. And as you can see, much of the oil activity is taking place outside of the service areas. And that again calls for a need for additional fire facilities to be able to accommodate any emergencies that could arise, that may arise in this area.

So as we go back to the fire, EMS, CIP slide, we have 12,000 square feet that's been identified for this new facility, to provide services throughout the Galisteo Basin, throughout the center of the county, but clearly with a bias towards being able to accommodate any emergencies that arise because of oil and gas development.

We spoke with the Sheriff, and that civic center is a multi-use facility that we think would be the most cost-effective way to provide additional capabilities without creating multiple locations. The Sheriff could use a portion of that. We've set aside 2,000 square feet. That may be a place that is just a supply haven, a place to stop, a place for emergencies that are taking place at the moment. Nonetheless, some type of a substation that would be within the same facility. Additional vehicles, patrol cars and equipment as well.

We also looked at what the administrative needs would be. There'd need to be some type of an oil and gas coordinator, and that person ought to have some space that's in the heart of the oil and gas country. So some amount of space set aside for administrative uses, set aside for elected, appointed decision makers to be able to have access there as well to meet with the community, to meet with that growth management area, and a vehicle. And then community services generally. We've got this structure, assigning/allocating an additional 3,000 square feet is a way to use that for public open space. To be able to use it for community meetings, use it for training. Whether it's training for volunteers in the Fire Department or firefighters, or sheriffs, or emergency technicians. Having that little bit of extra space is going to provide you with a lot of flexibility. And that gets us to a 20,000 square foot facility, which is not out of bounds at all with what communities typically do when they try and co-locate services, then they try to create multi-use safety centers.

So as we add up what those capital costs are for roads, for fire, for sheriff, for administration, community services, we see that the capital costs, 61 ¼ million dollars, \$61.2 million, in just being able to provide the capital facilities to maintain the level of service and

be able to accommodate oil and gas activity throughout the basin.

But that's not the only cost and we aren't looking at this, as I mentioned earlier, as being a lump-sum up-front payment that would need to be somehow levied against oil and gas. We've got annual costs that are going to occur each year as well, because along with that facility space and the additional vehicles, having a paid, permanent, 24/7 fire and EMS force is going to be critical. Staffing costs. And that's primarily what this \$1.6 million per year is comprised of is staffing costs. Additional firefighters, additional sheriff's deputies, staffing for administration. But that is a recurring cost and it's likely a cost that would occur almost entirely at the outset of any kind of development. We couldn't very well recommend that the County would construct a public safety center and then not have the manpower that would be in there, or have vehicles that someone wasn't there to be able to take to a site. So in addition to the capital \$61.2 million cost, there's the recurring annual almost \$1.7 million.

Now looking at how to allocate those capital costs goes to again what a CIP is supposed to do. So we've estimated, based on for years one through five, what are the most needed items that would have to occur and this is in the plan element for roads, fire, sheriff, administration as well – that would be about \$33.8 million. That's the cost of just getting up and running. To be able to provide service almost on day-one, within a very short time of any significant oil and gas development occurring. And then the longer range CIP, those capital costs that would occur from years six through twenty would be over \$27 million. We still get to the \$61 million cost. It doesn't account for the time value of money or any type of interest, this is just outright costs in today's dollars. And with that, I come to a close of the description of what is in the plan element. The land use model that identifies where can we make some presumptions about environmental sensitivity and cultural sensitivity, where can we make assumptions about where areas are appropriate or not as appropriate for oil and gas, and then if oil and gas does come forward, what are the safeguards that we need to have to maintain the level of service for existing residents and provide it for the new oil and gas development as well. How much is it going to cost, and how do we allocate that cost then to the new development, to the oil and gas coming on line?

If there are any questions, I will turn it over to Dr. Freilich.

CHAIRMAN CAMPOS: Questions from the Commission? Okay.

MR. PESHOFF: Thank you.

CHAIRMAN CAMPOS: Thank you, Mr. Peshoff.

**XIII. C. 2. Presentation of a Proposed Oil and Gas Regulatory Ordinance
(Robert Freilich)**

DR. FREILICH: All right. Now, I think you can see the outline of the environmental, facility, historical/cultural, all of these factors that went into analyzing where, if at all, oil and gas projects can locate. And what is really important about this is – just to give you a couple of examples before I get into the ordinance, as Bruce Peshoff told you,

before we can have oil and gas development in the county we need to have \$33 million upfronted by the oil and gas projects for capital facilities in order to meet the needs for truck roads or for fire, police, for explosions, for safety, for toxic service, for accidents, for spills, for all of these things that occur.

There are a number of areas in the United States that just don't pay any attention to these. One of the nice things in dealing with all the groups sitting out in the audience and so forth is they've been helpful in providing numerous examples of health and safety factors from all over the United States. They watch, they gather data, they look at all of these things and many of these things have been integrated into what we're doing.

So when we talk about a capital budget and an ongoing \$1.6 million annual cost, that's something that before you get any oil and gas permit in this county. That money has to be upfronted. Now that can be done through some improvement districts, it can be done through various techniques of how we're going to do it. I'm going to run through these things, but that's point one.

Point two is you see all of these environmental, historical, cultural features, hillsides, steep slopes, in these high sensitivity areas, moderate and low, the ordinance has set a maximum number, legislatively set. So it's not for any subsequent permit approval or anything. There's a maximum number of oil wells that can be built in those high sensitivity, moderate sensitivity or low sensitivity areas. And all of the other tests that we're going to go into are to determine whether or not there's even further restrictions that should be imposed on these facilities.

So one of the important things of this model is to set very, very strenuous limitations on what can be built in the first place. Now, to understand New Mexico law, you have to understand that when you apply for a permit or when an individual property applies for rezoning, that is considered to be quasi-judicial or an administrative proceeding, until 44 states in the United States which treat rezonings as legislative, New Mexico treats all rezonings of specific property as administrative or quasi-judicial approvals. Therefore there's a great burden placed on the County to come up with substantial evidence at administrative hearings to deal with the issues of approval.

But if your ordinance establishes a specific legislative constraint right up front that applies across the board to all development in this area, based on these high, moderate and low sensitivity areas, that's not quasi-judicial or administrative. That is legislative, because these are criteria that apply to multiple properties across the county. And therefore there is not going to be review of the substantial evidence of these suitability constraints, because they are supported and will be constitutionally permissible as long as there is any rational or conceivable basis that supports the nature of these constraints. And you can see the amount of data and the amount of health and safety, environmental, floodplain, hillsides, everything that's gone into the creation of these sensitivity areas. So I want to point out to you.

Then number three: In order to go through the process, and I'll lay out this process for you, we require that every application for an oil or gas permit go through eight specific assessments, reports, or studies, ranging from consistency with the general plan oil and gas

element and the general plan, fiscal impact analysis, traffic impact analysis, adequate public facilities, water availability, an environmental impact report, an emergency response plan and geohydrologic assessment. In order for them to go through the process they will have to pay up front, as part of an administrative fee, for consultants that will be hired by the County, not for oil and gas industry consultants. They will pay the fees, but the consultants will be hired by the County and all of these assessments will be done, and as I'll go through it they will be done at – also we'll have public hearings for public participation and input. And if any of these studies show that there are adverse effects or impacts beyond what the sensitivity zone classification already provides, they must be fully mitigated. Because if they're not fully mitigated the basis of that application will be denial.

So to understand this process and to see how it works you can see the different requirements that are here to deal with these circumstances.

So let's go into the ordinance. First of all, if you look at Section 2 of the ordinance – and I don't think I'm going to follow the overhead. I'm just going to talk about this. Section 2 of the ordinance basically says that the ordinance constitutes an independent and separate but related police, zoning, planning and public nuisance powers. Now I want you to understand that. Separate. Not just zoning. Not just health. Not just safety, but public nuisance powers as well. And so this ordinance is not just a zoning ordinance. It's also a public nuisance ordinance. And if in fact the adverse effects and impacts from oil and gas activity constitute adverse public nuisance effects or impacts, no taking litigation can be brought even if the application is denied and there is no viable use or value left to the mineral subsurface or oil or gas lease.

I want to explain that. If there are public nuisance adverse impacts and effects that are found, that is a defense to any taking litigation that can be brought. So to understand the ordinance, that's number one. These are separate powers that are being exercised.

Secondly, it also is exercised to every area of the exterior boundaries of the county, including state and federal lands. So if there are leases, oil and gas leases on state or federal lands, those leases are also subject to the requirements of this ordinance. That was something that was extremely important to a number of the groups that were represented here and also something that has been done across the country as well.

So the ordinance is addressing oil and gas exploration, drilling, production, transportation, abandonment and remediation. It doesn't deal with the drilling of coalbed methane, and that's not permitted anywhere in the county. Period. Of course the production of coalbed methane is a highly toxic air pollution substance that basically involves public nuisance effects.

And then we deal with the question of state and federal pre-emption. And you'll notice that I've listed a through p, all of the federal and state laws that are applicable to oil and gas drilling in the state of New Mexico. And one of the things that you'll note is that as Bruce Peshoff pointed out, the July 2008 report of the Governor's committee of all the state agencies to review the Galisteo Basin, recommended that the County have an important role in dealing with land use, nuisance prevention, and other factors. So there is no basis for

argument that the state has pre-empted activity by the County from regulation. So it is important to understand that.

In addition, the purposes of the ordinance on page 3 say that no oil and gas project is permitted as of right in the county. There is no as-of-right permissibility for oil and gas. The owner is required to go through three specific and separate processes. The first one is to obtain an overlay oil and gas zoning district classification. This is a classification that is not mapped anywhere in the county but its text is contained in this ordinance. And in order for any oil or gas activity to occur, the owner or applicant must apply for an oil and gas overlay zoning district classification. Now, in order to obtain that classification, they must then go through all of the reports, studies assessments and plans that are laid out. A general and area plan consistency report. An environmental impact report that analyzes oil and gas adverse effects and impacts to wildlife and vegetation, natural habitats and corridors, floodplains, floodways, stream corridors and wetlands, steep slopes and hillsides, which, by the way, are defined as 11 percent or greater slopes or hillsides, to air and water pollution, global warming, traffic safety and congestion, excessive energy consumption from vehicle miles traveled, priceless archeological, historical and cultural artifacts and resources reflecting Hispanic, Anglo and Indian Pueblo civilizations, toxic chemical pollution and related diseases and conditions affecting the health and safety of current and future residents, open space and scenic vistas.

So this is a comprehensive environmental impact report. It is the first comprehensive environmental impact report required in the state of New Mexico. As you know, California, New York, Georgia, Oregon, Washington, Colorado have the requirements for environmental impact review, but this is the first time this is really brought into full focus in the state of New Mexico.

Thirdly, a fiscal impact analysis. If oil and gas is produced, what are the additional public facility and service costs generated and how is the industry going to finance such facility and service costs, which is their responsibility. That will be laid out and determined. And that will be up front as a condition of getting the over zoning classification, that they make assurances to a development agreement that I will go through, that in fact those facilities and services are bonded and supported by letters of credit that they will go forward with that information – I mean with those resources.

Then there will be a water availability assessment, because no fracking, no fracturing of any subsurface geological formations will be allowed without only using fresh water. There will be no brine allowed, no mixed chemicals allowed, that could in fact interface with water aquifers, wells or subsurface water. In order then for them to have the water availability to produce the pressure down into the well site, there will have to be a 50-year water availability assessment to determine where those supplies are coming from, that those supplies are assured, and those supplies have been entitled.

Then there will be an emergency service and preparedness report identifying the name, location and description of all potentially dangerous facilities and material safety data sheets, describing all additives, chemicals and organics that will be used on the site. One of

the things the ordinance does is, as you know, there's a trade secrets, proprietary act that makes it confidential what chemical materials are used by oil facilities when they're drilling for oil or exploring for oil or extracting it. We will have and have the petroleum engineer establishing a list of safe materials, chemicals and other materials that can be used on well sites. The applicant will have to certify that they are using only those materials. We don't make them disclose what their trade secrets are; they just can't use chemicals or toxics or materials that aren't on the approved list.

The emergency services and preparedness report will require fire prevention, health and safety for all and any potential emergencies – explosions, fires, gas or water pipeline leaks or ruptures, hydrogen sulfide, methane or other toxic gas emissions, or hazardous material spills or vehicle accidents.

Next will be a traffic impact assessment. What will be the adverse transportation effects and impacts of traffic generated by oil and gas projects? Including isolated and cumulative adverse effects and impacts of the traffic shed and traffic capacity, the passage of public safety and emergency response vehicles, and any contribution to hazardous traffic conditions by heavily laden vehicles carrying the oil going to and from the site.

Then there will be a geohydrological report describing the adverse effects and impacts of oil and gas development with respect to subsurface and groundwater resources. Geological formations in sufficient proximity to oil and gas projects. Fractured formations that would permit extraneous oil, gas, dirty or graywater, mud or other chemicals, toxic materials or pollutants, to degrade the ground or surface water resources, or to allow a reduction in the availability of subsurface water resources, or polluted or there being unavailable for public or private water supplies.

So when you understand that all of these assessments and reports will identify the full impacts and effects of oil and gas development, which will have to be mitigated by special mitigative processes, so you can begin to see the process through which oil and gas approval will have to go forward in this county.

Now, in addition to that, once that rezoning is obtained, that overlay zoning is applied and mapped to this property, then they have to go to the state to get their ADP from the oil and gas commission and through the oil and gas division. They cannot come for the second process in the County, which is a special use and development permit, which will look exhaustively at the well site, supplementary to whatever the state is requiring in terms of buffers, in terms of fencing, screening, coloration, noise, odor – all of the factors that will be looked at through the special use and development plan process.

Now, at the overlay zoning process there will be a concept plan prepared, together with a detailed application of all the information required for those assessments, reports, studies, etc. At the special use and development permit level, there will be a detailed development plan showing exactly how each well site will be controlled. But you have to understand that at the overlay zoning level, a concept plan will have to show where the well sites are being proposed. It's not just a general rezoning application.

And finally, after they get their special use and development permit approval for the

specific site, all grading and building permits will have to be obtained, and there will be a certificate of completion assuring that all requirements of all development orders from the overlay zoning, from the special use permit, from grading and building permits, have been complied with before any oil and gas activity, exploration or drilling can occur. Now, these are the processes.

And finally, if an oil or gas applicant believes that there has been a taking of their property, which is a deprivation of substantially all use and value of the property, by reason of these regulations, and absent of course any public nuisance impacts, which take a taking out of question, the applicant will have to go for what we call a beneficial use and value assessment, which will basically require them to furnish all of the financial information, not just of the site where they're proposing these wells, but of all land in the same ownership, whether it be the same shareholder in multiple corporations or anyone else, so we see the totality of the property and how much oil and gas activity is permitted on the totality of that property in order for their to be an assessment of whether any relief could be granted.

Now, I won't go through the findings, but the findings are extensive in here, and they're in Section 6, but in addition to the findings, we list all of the findings contained in the July 2008 gubernatorial executive report, which basically states that there are significant elevated rates of asthma, respiratory illness, cardiovascular diseases in existing settlements and residences affected by oil and gas. We can go on and on and on.

There are over – there are approximately 22 specific findings made by the Board in adopting this ordinance. Then there are detailed definitions, which go on in Section 7, which interpret every single phase and document and so forth in order so that the document will be legally sustainable.

Moving on from the definitions then we get to the overlay zoning district classification. Now, I think it's important for you to understand that the importance of these assessments or reports first comes with the land and environmental suitability analysis or oil and gas suitability analysis that is basically provided by the oil and gas element to the general plan. Look on page 43. This is the first part of the zoning of this ordinance. It lists all of the factors that Bruce Peshoff talked about that went into the creation of that map, and those maps are then attached to the ordinance as exhibits.

Now the important thing about this is that on page 44 at the bottom, notice the effect of that map, that high suitability, moderate suitability and low suitability. If you are in a high suitability zone, you may not develop a greater number of oil and gas wells than ten percent of the total land area in the same ownership. That means any combination of partnerships, shareholders, trusts – no games, no playing around with the fact that we've assigned certain portions to our uncle or our brother-in-law or to different corporations with the same shareholders or to different partnerships. All of that is going to be out in that application.

So ten percent of that land are in the same ownership, divided by 40-acre well sites. So for example, every square miles, 640 acres of oil and gas project land in the same ownership would normally contain a maximum 16 oil and gas well sites at the state level, because the state permits minimum 40-acre well sites. Dividing that by 40 is 16. But if

located within a high sensitivity area, they will be permitted only 1.6 well sites per square mile. In addition, each well site must be co-located with eight other well sites, so that a maximum one well site alone will be drilled per eight authorized well sites. So if we take a property with ten square miles there will only be 1.77 wells drilled per ten square miles, in the high sensitivity areas.

The number of well sites permitted under this LDSA map is a maximum number, and every specific assessment study, report or plan may require that fewer or no oil and gas wells be authorized based upon unique requirements of the project areas mitigation requirements to avoid further specific adverse public nuisance effects and impacts from oil and gas drilling. And notice that if you go into the moderate it would be permitted 4.8 well sites per square mile, but once you co-locate with eight there will be a maximum on ten square miles of 5.3 oil wells allowed, And in the low sensitivity area there will be a maximum of all together, once you co-locate, of seven wells per ten square miles.

So you can see the extent of these provisions in order to get this overlay zoning ordinance through. And then we go into the detailed applications that's required for this overlay and everything has to be provided in terms of wells, the location of wells on neighboring development areas, traditional communities, everything within five miles of the concept plan site perimeter, the location of all fire, police, emergency service, all the environmental areas, floodways, floodplains, slopes with 11 percent within five miles, and how the proposed overlay complies with the vision, goals and objectives of the oil and gas element and any Galisteo Area Basin Plan if adopted.

Now all of that then goes to consultants, fees are paid by the applicant. The consultants then do these eight reports to see how these assessments work out. And if I told you on page 49 through page 60, 61 is the whole section dealing with the environmental impact report, it is detailed, it goes through every single potential or cumulative impact. It requires alternatives to the project including no oil or gas drilling as an alternative. It considers all the environmental effects on every type of environmental consideration, including historical, cultural and archeological resources, then it discusses these alternatives and it discusses the no-project alternatives, and then basically the draft EIR is then submitted to the Board.

Now, at the EIR level, the hearings on the EIR will be held by two hearings by a hearing officer appointed by the County. Those hearings will first be a hearing to gather information and data from the public and from specific consultants, other governmental agencies, and then the second hearing will be on the range of alternatives and the environmental effects. The hearing officer will then prepare findings and make a recommendation to the Board with respect to what the environmental impact report contains.

The ultimate decision on the overlay zone approval is the Board's, all right? So also, there's a provision in here that prior to any application for an oil or gas overlay zone, any group that is in the county, any group, association, etc., that registers with the administrator of this ordinance will be entitled to public notice of all proceedings, all hearings, all meetings, everything else. So once they register, they will get direct notice. Nobody has to

look in maps or newspapers or listings; they will get notice. Every individual that's within a mile of the project site will also get notice.

Now, the important thing is, prior to any submission of the oil and gas application is the required meeting with the administrator to go over what is required. When that application comes in, if it's not complete, the ordinance provides that it goes back. And if it comes back incomplete a second time the administrator will recommend to the Board that the project be denied. The second pre-application meeting is with the public. Those people that have registered, associations and groups and so forth, and all landowners, mineral owners, etc. within that mile of the site will have an opportunity to have a meeting, a mediation meeting. No record, no findings, no nothing, in which issues can be discussed. The hearing officer will preside over that meeting simply to keep it cordial and friendly and make sure that it's not dominated by any given group or individual. But otherwise, it's an exchange of ideas, it's a narrowing of issues, it's the type of thing that we think the public should have the opportunity and other people in the vicinity before they have to go to formal hearings on applications.

All right. So from that of course a final environmental impact report will be adopted by the Board at the time of their decision on whether or not the overlay zone gets approved or not. In addition to the environmental impact there is this adequate public facilities and services assessment. And let me explain to you the difference between an adequate public facilities assessment and impact fees or other conditions requiring applicants to pay for facilities or services. When you do an adequate public facilities assessment it means that if the applicant does not have adequate fire, police, emergency service, roads at adopted levels of service in that capital improvement program available to that site, the project will be denied, unless that applicant enters into an agreement with the County, unless there's an advancement of those facilities necessary for that development to occur.

If other oil and gas projects come on board subsequently they will be reimbursed pro rata for the share that the other oil and gas projects will have to pay. But before one project goes forward there will have to be adequate fire, adequate police, adequate emergency response, and adequate roads to handle those trucks, the oil-laden trucks on these dangerous roads if they're not paved and not provided for according to the capital improvement program. So to understand, an adequate public facilities assessment means that you can deny an application or you can phase it. You can say for the capital improvement program will be built, one to five years, or five to twenty, and you then can use your oil or gas facilities when those facilities are available. That's your choice. That can be phased by the Board to the availability of those public facilities.

Moving on. In addition to those facilities and services, we then get to specific requirements for all the capital improvements things, on page 70 is the water availability assessment. Do you have a 50-year water supply available for the drilling and exploration, etc. and all of that is contained on pages 70 to 71. Then there's the traffic impact assessment that goes through all of the roads, the conditions of the roads – Can they handle? Are they safe? Etc. And then what are the traffic impact assessment findings? You may have to reduce

the number of well sites to reduce traffic generation. You may have to divide the project into phases and built only one phase at a time. You may have to dedicate rights-of-way for street improvements, construct new roads, expand the capacity of existing roads. Redesign ingress and egress to reduce traffic conflicts, reduce background traffic, eliminate the potential for different traffic generation from undeveloped oil and gas properties in the vicinity. Etc., etc. Use traffic demand management schedules, flex time, carpools, staggered work hours to reduce vehicular trip generation.

And then there's a geohydrological report, which goes into detail where the water tables are, where those underground aquifers are, is there any danger that there will be any pollution or merger of drilling water and materials and materials being extracted with underground resources or wells.

And then there is an emergency response and preparedness plan. You have to do certain things on site, but there has to be a plan by the County, and that plan has to be in existence to deal with how you're going to deal with fires, explosions, what kind of equipment you're going to have at the fire department to deal with chemical fires, to deal with these types of explosions or other factors, etc. How do you deal with pollution or how do you deal with specific intake of pollutant materials, airborne materials, etc.

Now, when all of that is done, on page 83, the County will enter into a development agreement with the applicant. Development agreement is something that is rarely used in New Mexico. It's an agreement in which we don't have to worry about simply putting conditions on an approval and worrying about who knows about those conditions? Where are they? Are they recorded? Who enforces them? This will be a development agreement between the owners and lessees of subsurface mineral estates and the County and any other jurisdiction. The state may want to join that agreement. Water suppliers may want to join that agreement. It may also involve an independent district that's used to fund assessments or taxes or rates, road improvements or other factors for these public facility requirements, including fire and police.

And of course you can't establish a police improvement district in New Mexico, which is why a development agreement is critical to make sure that the facilities for the police and the ongoing operation and maintenance of the Sheriff's Department is maintained. That development agreement is detailed, a reiteration. It may be cancelled by the consent of all parties, but if the County finds after a public hearing with notice that there's a hazard that was unknown to the County at the time the development agreement was adopted, or exists on or near the property that would endanger the public health, it may basically cancel or revoke the agreement after a public hearing, and revoke the permission to use that.

Now, there's a section here on transfers of development rights. There are going to be a number of oil and gas sites, ranging anywhere from 40 acres upwards owned by individuals who may not get approvals for overlay zoning or special use and development permits. But that doesn't mean then that they're going to have a taking, because we're going to allow for those properties that may basically not build only if it's not built because of public nuisance, to ensure that they can transfer development rights to other properties in which overlay

zoning has been granted. So that in effect, they get an economic use and value return and there is no taking of those individual properties. And the ordinance specifies how many development rights can be transferred and how much additional development can occur on a receiving zone from the development areas. All of this is located at pages 85 through page 88.

Now, then we get into – all right, you go to the state, you come back, here's your special use and development permit, and from pages 88 on we go into all of the detailed reclamation sites, fencing, screening, provision for there must be closed loop systems. There cannot be any open pits. There cannot be anything. You'll notice all of these standards have been drawn, a lot from public interaction, a lot from other ordinances around the country, a lot from the work that your County Attorney did in late fall of 2007 and early 2008.

You'll notice that if there's any change in operators there's specific requirements. There have to be financial assurances, bonding requirements. It's very, very exhaustive.

Now, one of the things that's important here is that we're proposing the creation of a Planning Commission. The current CDRC is basically a review or recommendatory body. We're recommending that the special use and development permit be reviewed and granted by the Planning Commission after public hearing. But of course there would be an appeal by any aggrieved party. The applicant, the County itself, the Board or any agency of the County, or any official, or any aggrieved party – that's an adjoining party or association or so forth – could appeal the findings to the Board. So you're not removed from any of these permits, but we think it's appropriate that those hearings on the special details are going to take days. And I think it's not the appropriate function of the Board of Commissioners to basically sit for days and listen to specific testimony about the color of the walls or anything else. You can review all of that. You can have a public hearing. The issues can come up. You look at the findings and the development order of the Planning Commission.

And finally, if you go through you'll see that there's a process for the beneficial use and value determination. It begins on page 107. What has to be done and how that will be determined. That hearing will be run by the hearing officer. That beneficial use and determination will – there will be findings made on value, on use, on all of these things. There will be assessments, there will be evidence of value, etc. The hearing officer will then make a recommendation to the Board of County Commissioners; not to the Planning Commission, and you will have the final authority, the only authority as to how you will either approve a beneficial use and value determination, what relief you'll grant.

If you turn to page 112 you'll see that you may grant certain forms of relief if you find that there would be a taking of the property. You can, in order to avoid that, you may allow for certain additional uses or density or maybe a well site. You may give real property tax relief or reduction of property assessment, or adequate public facility incentives. You may authorize some additional oil or gas well sites or further co-location of oil and gas wells. You may grant an overlay zoning district classification for a future time or phase when adequacy of facilities are not fully available for the project at time of overlay zone approval. You may grant that property transfers of development rights. You may make it eligible for charitable

donations. You may repeal any Code regulation or general plan or area policy as applied to the subject property.

But whatever you do can only be the minimum – the minimum – which would give some economic use or value to that property. It's not a free-for-all variance that basically says we set aside everything that has been done. And it will be rarely – rarely – utilized if you understand how this ordinance works.

Now, because this ordinance is so long and has so many different innovative provisions in it – the EIR, the adequate public facilities, the use of the land use classification system with sensitive zones, the legislative model, the beneficial use determination, the transfers of development rights, we want you to have a table of contents. And so it appears on pages 113 through page 116. So you can find whatever you want in the ordinance through the table of contents.

And finally, we recommend that this be adopted in late December with an effective date of February 27, 2009. We think it's possible for you to do that because there will be hearings in October before the CDRC, and then there will be hearings before you in late November, early December, and it's feasible that you could adopt it. If you can't come to any agreement of course it can go forward. But remember, you may have to extend the interim development ordinance beyond February 27th if the effective date of the permanent ordinance goes beyond that date. So I just simply want to give you an awareness of that.

I'm really proud of what we've done. I'm proud to be associated with this County, with the people in this county, with the Board, with everybody that's helped us, and particularly the County Attorney's office and the planning staff. We want to basically suggest to you that we think you have a methodology here that will truly safeguard the interests of the public and the County, at the same time give opportunities to oil and gas exploration where it can show that it will not destroy or impair the environment on your strategic, historic, cultural resources, and they will in fact be able to respond with proper facilities and services. And I thank you very much. I don't have much of a voice left, but I'll certainly be happy to answer any questions that you have. And of course any questions for Mr. Peshoff; he's here as well.

CHAIRMAN CAMPOS: Questions or comments? Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, I just want to thank Bob and Bruce for presenting this to the Board and to the public. And I believe that they'll have an opportunity to comment on it. If we could just go over the dates again to when we're going to have this ordinance heard again.

MR. ROSS: Mr. Chair, Commissioner Anaya, the plan – general plan amendment – and the ordinance, both go to the CDRC next for their October and November meetings. Now, let me just give the dates of those. October 16, 2008. I believe that's in the convention center, and November 13, 2008. We haven't found a location for that meeting yet. And then it comes back to the Board of County Commissioners on the 18th of November and then the December meeting of the Board of County Commissioners is I believe the 13th – it's the 9th of December.

DR. FREILICH: It's the second Tuesday?

MR. ROSS: Second Tuesday.

COMMISSIONER ANAYA: So the public will have an opportunity to comment at the CDRC hearing, BCC on the 18th, and then BCC in December.

DR. FREILICH: Right. Two hearings before the CDRC. There will one on October 16th and one on November 13th, and then two before the Board. So there will be four public hearings on the ordinance and the plan. So a lot of public hearings. And then of course this is on the website as of today. We left 50 copies here for the audience here today. We're going to have a meeting. There'll be a press conference after this session is over. And we ask you to take this as a first reading. I'll leave that up to the County Attorney and basically authorize that this ordinance and general plan element go forward to the CDRC for hearings, and then back to the Board.

COMMISSIONER ANAYA: Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Questions, comments?

COMMISSIONER VIGIL: I have a question.

CHAIRMAN CAMPOS: Commissioner Vigil.

COMMISSIONER VIGIL: Dr. Freilich, which we have your expertise here, could you explain to me what your discussions have been with regard to proof of water for any project? And this is hypothetical, because we don't have anything in front of us with regard to an application. But would you just kind of summarize what your discussions have been?

DR. FREILICH: Well, basically, we've met with the state officials. As you know, the State Engineer is the one that certifies water rights and wells. One of the things that's important is the State Engineer's jurisdiction, however, terminates at 2,500 feet below surface. So of these wells may be drawing down a lot deeper than 2,500 feet. Also because we banned brine, saltwater, from going down, there will need to be an assured supply of freshwater, and one of the things that's important is are those supplies of freshwater committed to other critical priorities in the county, or otherwise? Is there actually available freshwater for oil and gas drilling that will not otherwise interfere with other significant priorities that the County may have, to serve residential developments, to serve County institutions, industry, locations, shops, restaurants, cultural facilities.

So it's very important, because what we don't want to have happen is for water to be taken away from those uses and therefore major constraints placed on how people can use water in their homes, or otherwise, etc., etc. in order to have this oil and gas activity go forward. So we want to make sure that there is an available water supply, freshwater supply, that can be used for this drilling. So that's the basis of the availability assessment.

COMMISSIONER VIGIL: Thank you.

CHAIRMAN CAMPOS: Are there any members of the public that would like to make any comments this afternoon? Okay. Anybody else? Just one person? Two persons? Okay. Let's take a five-minute break.

DR. FREILICH: Thank you very much.

CHAIRMAN CAMPOS: Thank you.

[The Commission recessed from 3:55 to 4:07.]

CHAIRMAN CAMPOS: We're going to start with comments from the public. Brief comments, whoever wants to come forward, please come forward now. State your name and address.

KIM SORVIG: Mr. Chair, Commissioners, my name is Kim Sorvig. I gather that Frank Herdman who also put his hand up has had his questions answered already, so I may be the only person coming up. This is definitely a historic moment in this County's timeline. I'm very pleased that we have gotten an ordinance and a plan this far and since I was one of the ones that pushed for the use of this suitability analysis method I'm very pleased to see it incorporated in the result.

I do have one concern that I hope is an oversight and that can be corrected. We understand this is a draft. There is no reference in any of the maps to the locations or density of existing homes. And while we're all very concerned with the environmental aspects, the water and so on, many of these have been taken care of very well. The location of people's homes is of critical importance to all of us and skimming through this it appears to me that the setbacks, the distances around occupied buildings, have actually shrunk from the draft that we had a year ago. I can't believe that that is intended and I do hope that that will be fixed.

One other thing that I would like to point out, and this is just from a quick read, is that there's a proposal to create a rural crimes unit that is involved in this ordinance. I can't remember if I saw that in the growth management part or the ordinance, but I really would suggest that that language be revisited, because right now it implies that the only crimes that are going to happen is the citizens going out stealing and vandalizing the oil equipment. That I'm sure is not intentional, but we would like to have that changed to reflect the fact that oil workers could commit crimes in the community, and so on and so forth. If we're going to be explicit about what type of crime might result from this we should at least respect the community as well.

Overall, again, thank you very much for authorizing this, for making it possible to get good consultants to work on it and we hope that the process continues with public input and serious consideration of the revisions that do come out of that process. Thank you.

CHAIRMAN CAMPOS: Thank you, sir. Next. Any other speakers? Sir you said you wanted to speak? You have? Okay. Dr. Freilich, Mr. Peshoff, any comments on what Mr. Sorvig had to say?

DR. FREILICH: We just want to make it clear that around the country the reports are very clear that the crimes on oil and gas facility sites are common. We don't necessarily want to have security fences built and locked and everything around certain units, but it's not necessarily from the residents. We don't think it's a slur, but we're happy to take a look at that section and revise it. But it comes from people traveling interstate, from other counties, from along the highways, from everywhere. A lot of the materials that go into this are valuable materials and chemicals and other things. It's not necessarily vandalism, so it's just something that we wanted to make sure that the fire and safety are aware of and are

keeping an eye out for. That's also to protect the oil and gas industry as well, to make sure that there's adequate police surveillance and coverage. But now, it was not meant as a slur on the rural residents of Santa Fe County and we will certainly amend that provision to make clear that that's not what it's directed towards.

CHAIRMAN CAMPOS: The other question was locations and density of residential structures, homes, setbacks.

DR. FREILICH: Well, I can't off-hand recall whether we've diminished the setbacks that were in the original draft. I don't believe so, but then we'll take a look at that. These are very large setbacks and we have to be very careful about not making these setbacks so large that no area can actually be ever eligible for oil and gas drilling because on its face the ordinance then would be unconstitutional. So we have to be very careful how we deal with setbacks. We'll take a look at that. We'll be happy to. And we will receive, of course, all the public comment about things. We'll be listening and we'll take it into account.

CHAIRMAN CAMPOS: Thank you, Dr. Freilich, Mr. Peshoff.

MR. PESHOFF: One more comment about the rural crimes unit. That was actually modeled after a rural crimes unit in San Juan County, New Mexico. And the vehicle that we included in the CIP was actually similar to what they've used, actually painted to look like an oil vehicle. And it wasn't geared towards action against the property owners, the residents in the area. It was to be able to get to an oil site without being spotted. They had probably more problems with oil workers taking parts, pieces of the equipment, trying to sell them, pawn them, whatever. So it by no means was intended to be protecting the oil wells from the public, but actually a rural crimes unit similar to what San Juan County has been doing.

XII. A. 4. Resolution No. 2008-162. A Resolution Requesting a Budget Decrease to the State Special Appropriations Fund (318)/Eldorado Senior Center to Realign the Fiscal Year 2009 Budget with the Fiscal Year 2008 Available Grant Balance <\$64,946> (Community Services Department)

COMMISSIONER SULLIVAN: Mr. Chair, I met with staff about this item and unless any other Commissioner has a question I move for approval.

COMMISSIONER ANAYA: Second.

The motion passed by unanimous [4-0] voice vote.

- XIII. C. 3. Consideration of Authorization to Publish Title and General Summary of Ordinance No. 2008 - ____, an Ordinance Amending the Santa Fe County Land Development Code for the Unincorporated Area of the County Enacting an Ordinance Establishing an Oil and Gas Overlay Zoning District Governing Oil and Gas Exploration, Drilling, Transportation, Production, Abandonment and Remediation; Providing for a Two Step Zoning Approval Process Involving Approval of Applications for Overlay Zoning and Subsequent Special Use and Development Permits; Providing for Consistency with State Statutes and Regulations and with the General Plan and Applicable Area Plans; Establishing a Land Environmental and Sustainability Assessment Matrix for the Galisteo Basin; Establishing Requirements for: (1) a Land Use and General/Area Plan Consistency Report; (2) Environmental Impact Report for Wetlands, Stream Corridors, Floodways and Flood Plains, Steep Slopes, Protection of Aquifers and Groundwater Supplies, Noise, Light, Odors, Scenic Vistas, Cultural, Historical and Archaeological Resources, Air Pollution and Related Disease and Health Problems; (3) Fiscal Impact Report; (4) Water Availability Assessments; and (5) Transportation Impact Assessments; Beneficial Use Determinations; Development Agreements; Transfer of Development Rights, Capital Improvement and Service Programs for Roads, Water, Fire, Police and Emergency Services; Financing of Public Facilities and Services; Creation of Improvement Districts; Providing for Bonding and Insurance Requirements; Standards for Equipment, Operations, Emergency Plans; Site Remediation; Grading and Soil Disturbance, Spills and Leaks; Special Use and Development Permit Site Plans for Structures, Lighting, Buffers, Landscaping and Screening, Closed Loop Systems; Operating Hours; Temporary and Permanent Abandonment; Application and Permit Fees; Amending a Portion of Santa Fe County Ordinance 1996-1, Article III, Section 5.2 Defining “Mineral,” Amending Article X of the Land Development Code to Add New Definitions (Legal Department)**

CHAIRMAN CAMPOS: Okay. Thank you. Is there a motion to adopt an amendment to the Santa Fe County Land Development Code for the unincorporated area of the county, enacting an ordinance establishing and oil and gas – would it be fair to say, Mr. Ross, the development regulations and other issues noted in the draft ordinance? Is that –

MR. ROSS: Yes. That would be acceptable. All we're doing is authorizing the publication of title and general summary, so that would be perfectly adequate for that. We don't necessarily need to authorize that for publication. It hasn't been advertised for that, but it's part and parcel of this whole thing.

CHAIRMAN CAMPOS: Okay, is there such a motion?

COMMISSIONER SULLIVAN: So moved.

COMMISSIONER ANAYA: Second.

CHAIRMAN CAMPOS: Any discussion? Any comments?

COMMISSIONER VIGIL: I just really want to thank the consultants. It's far more comprehensive than I actually even anticipated. I'm sure other issues will come back, but this is a lot of work and I appreciate it.

CHAIRMAN CAMPOS: I think it's very impressive. It's rational and I think it's fair, and I think those are the key elements that we need to stick to.

The motion passed by unanimous [4-0] voice vote.

XII. B. 15. Consideration and Approval of a Water Rights Purchase Agreement with LL Land and Cattle Co. (Legal Department)

COMMISSIONER SULLIVAN: Mr. Chair, I tried to read this document briefly and to the best of my legal judgment it seems to be okay. So I would move for approval, unless there's other questions.

COMMISSIONER ANAYA: Second.

The motion passed by unanimous [4-0] voice vote.

XIII. A. Corrections Department
1. Update Regarding Youth Development Program and the Adult Detention Facility

MR. ABEYTA: Yes, Mr. Chair. We'll provide an update in October to the Board.

XIII. B. Matters from the County Manager
1. Update on Various Issues

MR. ABEYTA: Nothing at this time, Mr. Chair.

CHAIRMAN CAMPOS: Except that the Cowboys lost to the Washington

Redskins and you're very annoyed about that, aren't you? It's getting to you.

XIII. C. Matters from the County Attorney
5. Executive Session

CHAIRMAN CAMPOS: Matters from the County Attorney. We were at executive session, I believe.

MR. ROSS: Mr. Chair, we've already done that. We don't have anything else for you in executive session tonight.

CHAIRMAN CAMPOS: Okay. That takes us to adjournment.

COMMISSIONER ANAYA: No, Commissioners. Matters from the Commission. I have about ten. It'll an hour and a half.

X. OTHER MATTERS FROM THE COMMISSION

CHAIRMAN CAMPOS: Go ahead.

COMMISSIONER ANAYA: Thank you, Mr. Chair. One issue, Roman, remember when we dealt with the – when we were dealing with the RTD and this body recommended the RTD do a study session with Carl Moore. Carl Moore still hasn't been paid, and I would be under the assumption that since this body recommended the RTD have meetings that this body should pay for Carl Moore. I don't know how the other Commissioners feel but that's the way I feel. And I don't even know how much it is.

COMMISSIONER VIGIL: What's the issue? We didn't pay for what?

COMMISSIONER ANAYA: Well, remember when this body was talking about doing a study with the RTD and the DOT? This body recommended that. Carl Moore has sent a bill to the RTD and the RTD has sent it to us. So my assumption –

CHAIRMAN CAMPOS: Let's have staff look into that and see if they can do a recommendation on that.

COMMISSIONER ANAYA: Okay. And then the other issue –

COMMISSIONER SULLIVAN: Mr. Chair, on that.

COMMISSIONER ANAYA: Go ahead.

CHAIRMAN CAMPOS: On the same issue?

COMMISSIONER SULLIVAN: Same issue. I attended three of those meetings and the agendas and the arrangements and the times and everything with regard to those meetings was under the auspices of the NCRTD. It never even occurred to me that that wasn't anything but an NCRTD meeting and it certainly benefited them to conduct that meeting. It benefited the DOT as well, because they got a recommendation for half the gross receipts tax to fund the operation and maintenance of the Rail Runner, which is a major concession. So I would certainly look hard at the record and recommending getting together and then the next thing we saw was a series of meetings scheduled by the NCRTD. I wasn't consulted on when

those meetings weren't going to be and I wasn't even invited to them. I just showed up.

CHAIRMAN CAMPOS: Wonder why, Jack?

COMMISSIONER SULLIVAN: So I never got any feeling whatsoever that paying for that consultant – and we didn't get an opportunity to select the consultant either, the mediator. It was a function of Santa Fe County. So I would look hard and long at that.

CHAIRMAN CAMPOS: Do you want to punt to Rhonda Faught?

COMMISSIONER SULLIVAN: I think DOT should pay for it.

COMMISSIONER ANAYA: And Mr. Chair, my concern is getting Carl Moore paid. So if we decide we're not paying we need to figure out who's going to pay so we can get him paid. Thank you, Mr. Chair. My second – I have one more after this. There was a gentleman here this morning, Phil Binaco. He had questions concerning the RTD in terms of funding for the Eldorado service. I would like to know, and maybe Jack you can carry this to the RTD, the concerns that he had. And if we could get back with me or the Commission and let us know what – if these are true or false statement.

My last issue, Mr. Chair, is that yesterday, going through Galisteo, the Village of Galisteo, I noticed a Meals on Wheels van there. I just want to thank you and whoever it was, because I've been wanting Meals on Wheels for the last 4 ½ years. Unfortunately, the people that asked for it have already passed on, but at least we have the service there now for the people that need it. Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Thank you, Commissioner. Commissioner Vigil.

COMMISSIONER VIGIL: Thank you. And Dr. Freilich, I'm going to probably interrupt your conversation. I'm sorry to do that, but this is really important. I have a really high public safety issue concern on the constraints and the criteria. And I think I have a resolution. I just need you to affirm it. We have reptilian assessments. If Commissioner Campos lived in that area, the massive kind of assessment of his reptilianness it would prohibit oil and gas drilling, wouldn't it? Okay. I recommend that we consider that option.

CHAIRMAN CAMPOS: You're protecting my turf. Okay. Is that it?

COMMISSIONER VIGIL: I just wanted to thank Public Works who have been working overtime with regard to all of the issues we've had on many of our roads and our arroyos, and we've received a lot of request for immediate response to some really high safety issues and I think Public Works has done their best to address those, and I want Roman to let James and Robert and their entire department know it's really appreciated. Thank you, Mr. Chair. That's it.

CHAIRMAN CAMPOS: Okay. Jack.

COMMISSIONER SULLIVAN: Mr. Chair, I would just reiterate what Commissioner Anaya said that we're really glad to see the Meals on Wheels get going. That has come out of the Ken and Patty Adam Senior Center, and we've got that center established. We're still trying to employ someone there full time, which we don't have on board yet, but they do have the Meals on Wheels program going. They were using volunteers in the general Eldorado/285 area. They were able to purchase a van with County funds and now with that van they're able to increase their outreach to Galisteo and other areas. So, it's taken some time, but

the center is operating at almost capacity and now there's outreach activities that are beginning to bear fruit, so that's really great. And I would like to thank the staff for pursuing that. That's all I had. Thank you.

XIV. ADJOURNMENT

Chairman Campos declared this meeting adjourned at 4:30 p.m.

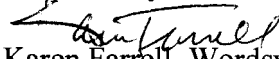
Approved by:

Board of County Commissioners
Paul Campos, Chairman

ATTEST TO:

VALERIE ESPINOZA
SANTA FE COUNTY CLERK

Respectfully submitted:


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