

SANTA FE COUNTY

REGULAR MEETING

BOARD OF COUNTY COMMISSIONERS

July 12, 2011

This regular meeting of the Santa Fe Board of County Commissioners was called to order at approximately 2:08 p.m. by Chair Virginia Vigil, in the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

Employees of the Clerk's Office led the Pledge of Allegiance and State Pledge, following roll call by County Clerk Valerie Espinoza and indicated the presence of a quorum as follows:

Members Present:

Commissioner Virginia Vigil, Chair
Commissioner Liz Stefanics Vice Chair
Commissioner Kathy Holian
Commissioner Robert Anaya
Commissioner Danny Mayfield

Members Excused:

[None]

V. INVOCATION

An invocation was given by Ken Vaughn from the Clerk's Office.

VI. APPROVAL OF THE AGENDA

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- B. Tabled or Withdrawn Items**

CHAIR VIGIL: We do have an amended agenda. We'll go on to the next item. That's item VI. Are there any changes or additions? Ms. Miller.

KATHERINE MILLER (County Manager): Madam Chair, yes, there are a few changes. On item X. B, Matters from the Commission, that item is tabled. On item XI. B. under Consent, Miscellaneous, B. 1 is withdrawn. B. 2 was amended. I think just some additional information in the caption. And then under item XII. C. 4, added the audit report. And then under Public Hearings, item XIII. A. 7, the last case, has been tabled.

COMMISSIONER MAYFIELD: Madam Chair.

CHAIR VIGIL: Commissioner.

COMMISSIONER MAYFIELD: Madam Chair, Ms. Miller, did you remove

one from the Consent Calendar?

COMMISSIONER ANAYA: Madam Chair, it was XI. A. 1. I had a question on that point after Commissioner Mayfield.

COMMISSIONER MAYFIELD: So XI. A. 1 is off?

MS. MILLER: Madam Chair, Commissioner Mayfield, XI. B. 1 is withdrawn.

CHAIR VIGIL: Okay. So are there any other changes?

COMMISSIONER HOLIAN: Madam Chair, I move for approval of the agenda as amended.

CHAIR VIGIL: Is there a second?

COMMISSIONER STEFANICS: Second.

CHAIR VIGIL: Any further discussion?

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

VII. APPROVAL OF CONSENT CALENDAR

A. Consent Calendar Withdrawals

CHAIR VIGIL: Commissioner Anaya, you want to look at B. 1?

COMMISSIONER ANAYA: No, Madam Chair. I misheard the Manager. So I'm fine.

COMMISSIONER MAYFIELD: Madam Chair, I would ask to look at XI. A.1 and XI. B. 2 and 3 please.

CHAIR VIGIL: And item B. 1 is withdrawn. Okay. What's the pleasure of the Commission on this?

COMMISSIONER HOLIAN: Madam Chair, I move for approval of the Consent Calendar minus the withdrawn items.

COMMISSIONER STEFANICS: Second.

The motion passed by unanimous [5-0] voice vote. [Subsequent to discussion, Commissioners Anaya and Mayfield voted no on item XI. B. 4. See page 18.]

XI. CONSENT CALENDAR

A. Final Orders

1. BCC Case # MIS 02-4325 La Pradera Master Plat Authorization. Gardner Associates LLC and La Pradera Associates LLC (Alexis Girard), Applicants, Request Authorization to Proceed with a Master Plat for the Creation of 22 Residential (Live/Work) Lots on Approximately 2.27 Acres within the Existing La Pradera Subdivision (Phase I), which is Located within the Community College District. The Property is Located West of Richards Avenue Between I-25 and the Arroyo Hondo, within Sections 17 & 18, Township 16 North,

Range 9 East (Commission District 5). Vicki Lucero, Case Manager
(Approved 3-2) **ISOLATED FOR DISCUSSION**

2. **CDRC CASE # V 11-5010 Bernie Romero Variance. Bernie Romero, Applicant, Requested a Variance of Article V, Section 8.1.3 (Legal Access) of the Land Development Code to Allow an Access Easement of Less Than Twenty Feet (20') in Width and to Allow Grade to Exceed 11%. The property is Located at 11 Caminito Santerra, off County Road 67A, within the Traditional Community of Canada de los Alamos, within Section 27, Township 16 North, Range 10 East, (Commission District 4) Approved 5-0 Wayne Dalton**

B. Miscellaneous

2. **Authorize an Indefinite Price Agreement with Cummins Rocky Mountain for 25KW and 30KW Generators. Bid Award 2011-0276-FD/TRV (Community Services Department/Fire Department)[Exhibit 1] ERRONEOUSLY ISOLATED FOR DISCUSSION [See page 17.]**
3. Request Approval of Easement on Santa Fe County Property for Telecommunication Utilities Right of Way in Support of Santa Fe Studios Local Economic Development Act Project (Growth Management/Economic Development) **ISOLATED FOR DISCUSSION**
4. Resolution No. 2011-94, Correcting Typographical Errors in Resolution 2011-79, (a Resolution Adopting Water Service Rate and Fee Schedule) (Utilities Department) **ISOLATED FOR DISCUSSION**

VIII. APPROVAL OF MINUTES

A. Board of County Commissioners Meeting, June 14, 2011

CHAIR VIGIL: Are there any changes? Seeing none, what's the pleasure of the Board?

COMMISSIONER STEFANICS: Madam Chair, I'll move for approval of minutes.

COMMISSIONER HOLIAN: Second.

CHAIR VIGIL: Any discussion?

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

IX. MATTERS OF PUBLIC CONCERN –NON-ACTION ITEMS

CHAIR VIGIL: Now we're under Matters of Public Concern. Ladies and gentlemen, this item on the agenda is for matters of concern to the public that they can bring before the Commission for items that are not on the Consent Calendar. If you are here to speak to an agenda item that is – excuse me. Not on the Consent Calendar, on the entire agenda, please hold off until that agenda item comes before. Other than that is there anybody here who would like to address the Commission on a matter that is not on the agenda? And I reserve the right to listen to your subject matter. If it is not on the agenda would you do us a favor of holding off but please tell us what you're here for. State your name and address for the record.

JAMES MCCRAY: Madam Chairperson, Commissioners, my name is James McCray. My address is 903 West Alameda, Unit 517, 87501. I'm here on a matter that I've seen prevalent throughout the Treasurer's Office as well as the Assessor's Office, and both of them are really an unmitigated disaster. I've had problems with them for years and last year I went to Mr. Victor Montoya and I went over all my taxes, and he spent 45 minutes with me, told me a figure that I had paid on the spot, and then I just went to sell the property and I came in to check the taxes and they told me that I owed \$14,000 from 2007.

In 2007 I went for a tax exclusion because I'm a four-time wounded Marine, which gives you 100 percent disabled and they give you that exclusion for your own personal residence. So in 2007 when I filled out that form, which I brought over the certificate from the Veterans Administration I gave it to the Assessor's Office. They told me I no longer had to pay any tax on that property. When I came back I said, well, how could this happen. They said, oh, well, we sent this information to an address which was the property address, which I've never had anything ever sent there.

And the problem is there's no accountability there because everything works under statute. But the fact is I had about eight or nine different properties that I was paying tax on. I've never, ever used this address for anything. I had no notification. I was told by the Assessor's Office I never had to pay again and when I went before Victor Montoya and told him that – reminded him I was there for 45 minutes last year, and that he told me what I owed and I paid it at the time and I said, well, what about that? The fact that you looked everything up under my name and he shrugged his shoulders and smirked at me.

So there's no accountability. I and my wife have both been into the Assessor's Office numerous times, given misinformation. There's too much personal interpretation. I even two years ago went to the Legal Department to ask how long I had to appeal a piece of property which I had split and they had tripled the value of it on each lot and I was told I had 60 days and then the Legal Department shows up in court and tells me, oh, no, you only had 30 days. It's the same department that told me I had 60. There's just no accountability and I know that the way this system is set up it works in the behalf of the County, because it's your responsibility to find out whether or not you have taxes that are due.

So my suggestion here is one, I'm not done with Victor Montoya and the other thing is there needs to be a document set up where people can come in, fill out that document that that's their address, and if someone inadvertently changes that address without their signature being on that document then it shouldn't be valid. And I want to know if the Commissioners

can do anything on trying to remedy this situation that I have on taxes, and listen, whenever a veteran or someone who's currently in the service or someone who's in the reserves, you know what they do? They give the United States of America a blank check on their health, even to the point if they're wounded or die or whatever. We did our job and we have something – if someone allows us to have a benefit, we want to take advantage of it. I don't need somebody to tell me, oh, you should have did this or you should have did that when I ask them if everything was okay and they said you never have to pay tax on that property again.

CHAIR VIGIL: Okay, James. Thank you so much for bringing this to our attention. Katherine, I'm just going to suggest that perhaps – and I'm not sure how much other staff support either constituency services or otherwise the gentleman has received. We would need to trace your experience and see where we could help and if we could follow up with that we'll be happy to.

MR. MCCRAY: All right. Thank you, Madam Chair. Who would I follow up with that?

CHAIR VIGIL: We will have somebody follow up with you. We have your name here and your address and if we can follow up with you on that. Our County Manager is Katherine Miller. You can contact that office also.

MR. MCCRAY: Thank you very much. Appreciate it.

CHAIR VIGIL: Thank you. Okay. Any other items that is not a part of the agenda? Sir, please state your name and address.

ELIJAH NASH: Elijah Nash, 544 ½ Franklin Avenue. I'm not sure exactly where this is on your agenda but I wanted to address an issue regarding the UDV's land use.

CHAIR VIGIL: That's the first item on the agenda under Land Use, and you will be given an opportunity to address it at that time.

MR. NASH: Okay.

CHAIR VIGIL: Thank you very much. Anyone else who is not on the agenda to address us? Okay.

X. MATTERS FROM THE COMMISSION

A. Update on Santa Fe County Fair (Commissioner Anaya)

COMMISSIONER ANAYA: Thank you, Madam Chair. We have a lot of very, very valuable guests here with us. I'm going to allow Mr. Pat Torres, our County Extension Agent and our chair, Mr. Shawn Thompson, to come forward, provide some remarks and allow the kids to say a few words. Thank you, Madam Chair. Thank you, Mr. Torres.

PATRICK TORRES (County Extension Agent): Thank you, Madam Chair, Commissioner Anaya, other members of the Board of County Commission. My name is Patrick Torres, County Extension Agent. I thought I better re-introduce myself since we don't see each other too often, but anyway, appreciate this opportunity to come in and visit with you all briefly about the Santa Fe County Fair.

The Fair Board has been meeting on a regular basis to plan the annual County Fair and you will get a more detailed report on this toward the end of the month, but anyway, we thought we'd take this opportunity to bring a few individuals in and let them share with you what they're doing to prepare for the upcoming County Fair, and then we will let the president of the Fair Board wrap up this little discussion.

CHAIR VIGIL: Do you know how much time each one of them needs?

MR. TORRES: it's going to be very brief.

CHAIR VIGIL: Okay. Thank you. Please step forward and state your name and highlight what you're doing at the fair and thank you for being here today and being a part of our fair.

ASHLEY TOMPSON: I'm Ashley Thompson. I've been in 4-H for 12 years. I show goats. I've been working with these animals ever since about August of last year. So I'm excited.

CHAIR VIGIL: So you'll be doing that again. Thank you, Ashley, and thank you for participating in that way. Next. Good morning, young man. Welcome. What's your name.

ERIC: Eric.

CHAIR VIGIL: Eric, what are you going to be doing at the fair?

ERIC: A goat.

CHAIR VIGIL: You're going to bring a goat to the fair. Well, good luck. We hope you win. Thank you for being with us today.

ERIC: Thank you.

CHAIR VIGIL: Next.

SAMANTHA: My name is Samantha and I'm five star 4-H. I will be doing a goat and this is my third year being in 4-H.

CHAIR VIGIL: Samantha, thank you so much and good luck with you. You did a nice job.

MARISA: I'm Marisa, and I'm doing the indoor exhibits. I'm doing all kinds of stuff like baking, welding, woodwork. All kinds of stuff like that. I can't name them all.

CHAIR VIGIL: Well, Alisa, thank you so much, and we really love to sample baked good here at the Commission. Okay. Next.

JULIA BACA: Hello, ma'am. My name is Julia Baca and I have been in 4-H for eight years. This year at County fair my projects will be included of indoor exhibits, small animals, and also livestock and also including the horse project. I really do believe that 4-H is a great opportunity to meet new people and participate in new things and get a handle on what it is out there in real life. Thank you.

CHAIR VIGIL: Thank you. Very good, Julia. Next.

LEILA BACA: I'm Leila Baca and I'm 11 years old and I've been in 4-H for six years. This year I'm showing rabbits and chickens and goats and lambs and I'm also entering artwork in the indoor exhibits and baking also.

CHAIR VIGIL: Thank you. Nice job. Next.

KATEY HOUSE: My name is Katey House and I've been in 4-H for eight years and this year I'm going to enter in indoor exhibits, I hope, with my watercolor

paintings. I will be going to the dog show and showing my border collie. I will be going to the horse show as well as being Santa Fe County Fair Princess which is very exciting.

CHAIR VIGIL: Congratulations. Thank you. Next.

SHAWN THOMPSON: Madam Chair and Commission, I just wanted to allow everybody to hear what the kids have been up to all summer long and also give you guys a brief update on the fairgrounds and the facilities. We've been trying to address a lot of safety issues and improve the grounds for all the daily uses that go on throughout the year and also during the fair and try to get as much publicity as we can and get as many people interested in coming out to the fair this year for the salsa contest and the chile challenge that we're going to have and all the 4-H kids and their projects and there's a lot of other community activities that cost a little bit of money. This is a free event for anybody. I just want to get everybody to come out and enjoy it. So thank you guys for all your support and everything that you guys have done for the fairgrounds.

COMMISSIONER ANAYA: Madam Chair.

CHAIR VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, Mr. Chairman, could you give the dates of the fair?

MR. THOMPSON: Sure. I don't have the actual schedule of all the events going on but the kids will check in indoor exhibits and animals starting Monday the 1st and then the actual judging and the shows will start Thursday and Friday of that week and then we have a bunch of activities going on Saturday and Sunday as well.

COMMISSIONER ANAYA: Thank you, Madam Chair, and Mr. Chairman and I just want to congratulate all of these young future professionals and future leaders of our country for coming today and for the work that you've done on your both indoor and outdoor exhibits and the animals. Thank you all very much. You did a great job on your presentation and we look forward to seeing you at the fair.

CHAIR VIGIL: Good job. Thank you.

COMMISSIONER STEFANICS: Madam Chair.

CHAIR VIGIL: Commissioner Stefanics.

COMMISSIONER STEFANICS: General comment while everybody's going back to their seat. I am really thankful that people participate in 4-H and you can tell by the young people that are here today that have been involved for many years how their leadership is coming out in their speaking skills to the public. And I think that if you have not noticed, or no one has told you, every time you come in front of the County Commission and you speak to us you're getting stronger and we really appreciate. We see the skills that are being developed. So thank you so much for participating and everything as Commissioner Anaya indicated.

CHAIR VIGIL: Okay.

X. OTHER MATTERS FROM THE COMMISSION

CHAIR VIGIL: Are there any matters from you, Commissioner Stefanics?

COMMISSIONER STEFANICS: Thank you, Madam Chair. Before it becomes any kind of scandal in the newspaper I'd like to let the Commission and the public

know I am attending the National Association of Counties meeting starting in Portland, Oregon this Friday. The New Mexico Association of Counties is paying the registration. The County is paying my lodging and I'm taking care of my airfare and food, so I'd like the public to understand that this is a cost-sharing exercise, but I believe that I'm going to be able to come back with several new ideas for the County to implement. Thank you.

CHAIR VIGIL: Thank you. Matters from the Commission, Commissioner Anaya.

COMMISSIONER ANAYA: Thank you, Madam Chair. A couple of items, and I think I see Mr. Kolkmeier in the back. He might want to come up and address this item. I know there's going to be a meeting. I believe he's the one that suggested it. But I recently had a tour of the Santa Fe River adjacent to the airport and there was a lot of trees planted I believe through a collaborative effort through City and County and other resources. And what's happened in that area is there's a lot of those trees that have been cut down by the beavers and there's a beaver issue that's happening in that watershed area and what's happening is the water's not able to make its way all the way down to La Bajada area where they do their traditional acequia and agricultural watering down in the community of La Bajada.

So, Jack, I know there's going to be some discussions on it but the communities of La Cieneguilla and La Bajada are going to be visiting with our staff as well as staff with the City to try and figure out what we can do to improve that situation. The water is holding and ponding in many areas and it's creating some drainage issues associated with our roads that are in the immediate area, so I'd like to make it public that I've looked into the situation and spoken with those community leaders and that we're going to be having more discussions, but I'd like to get some brief feedback from you, Mr. Kolkmeier on that item and your familiarity with the issue that I'm specifically referring to.

JACK KOLKMEYER (Land Use Administrator): Madam Chair, Commissioner Anaya, I'm sorry. I don't have any information for you on that at the moment. I'd have to get back to you on that.

COMMISSIONER ANAYA: Maybe Mr. Guerrerortiz, do you have any familiarity with the issue that I just brought up?

MR. KOLKMEYER: It also may have something to do with floodplain issues and Ms. Cobau can talk to you about that.

COMMISSIONER ANAYA: That's part of the reason that I'm bringing it up publicly because when we have these discussions I want to make sure that all staff in the county are, number one, aware of the issue and the concern, and that we have all the right people in the room, including the Manager as well. So Mr. Guerrerortiz, are you familiar with the issue?

PATRICIO GUERRERORTIZ (Utilities Director): Madam Chair, Commissioners, good afternoon. The familiarity that I have with that issue, Commissioner Anaya, comes from my original involvement in the reforestation of that area back in the mid-1990s when the City was involved in an effort to reforest the floodplain so the temperature in the water would be lowered. The river has been classified for a long time as a coldwater fishery, and we all know that the river is primarily effluent from the wastewater treatment plant, so it was difficult to equate those two, the coldwater fishery and the effluent from the

wastewater treatment plant. And one of the avenues that we had to help in that situation was to reforest that portion or segment of the river.

CHAIR VIGIL: Commissioner Anaya, let me just state at this point in time, I'm not hearing at this point in time a response to your immediate question which is about coordinating efforts between staff to coordinate with other resources available to assist this community. So my suggestion is that you consult with the County Manager to create a meeting with the appropriate staff on this, because we have as a Commission gotten some information from the community also and I know the Mayor has spoken to me about it also. So I think in terms of in-house response that needs to be as you requested, a coordinate effort, maybe talking to the County Manager in terms of how to address this.

COMMISSIONER ANAYA: If I could respond, Madam Chair, this sits in the hub of District 3. I've had several meetings and I will sit down with you because I would like to know what it is the Mayor's thoughts were as well as yours and the other Commissioners. But I actually appreciated the summary that you were providing. We can get into more detail. I'll put an agenda item on this future. But I would appreciate you communicating closely with Land Use staff, Open Space staff and in coordination with our Manager on the issue. It's an issue that also involves the Army Corps of Engineers. It's an issue that our congressional delegation has begun to get involved in and my interest is to make sure that we have a coordinate effort of communication of all parties that were involved so we can figure out what the highest and best solution is to address the issue.

Another item I wanted to bring up associated with La Bajada. I did have a conversation with our Manager on various issues and the potential for continuing to try and help that community as a mutual domestic. I know the Manager is looking at options and alternatives with our staff and I appreciate that effort and want to make that public statement because that community is still in dire straits associated with their water source and we're working collectively to try and address that issue.

Those were the two proposals I had or requests for additional work from staff.

Another item I want to bring up is – I don't want to get into the details as why the resources were lost, but we did lose resources prior to my coming to the Commission for various reasons, but there was a facility in southern Santa Fe County, the Youth Agricultural Facility, that I want to bring back and make sure remains a priority for my area. I know we're going to have more discussions under ICIP but I do want to put that forward as an item that I'm going to request additional capital resources. And not just for the Youth Ag Facility purposes but for wellness purposes. There's no facilities in the southern part of Santa Fe County that address wellness for all ages – children through our seniors. And so I want to bring that up as an item for continued work and efforts to bring resources. We already have acquired the land associated with that particular project so now we're looking to find resources for the facility. So thank you, Madam Chair. Appreciate it.

CHAIR VIGIL: Thank you, Commissioner Anaya. Commissioner Mayfield.

COMMISSIONER MAYFIELD: Thank you, Madam Chair. I just want to thank staff, Public Work staff in particular for people may believe it or not but there was some significant flooding that occurred over the Fourth of July weekend in the northern part of Santa Fe County that included Cundiyo, Chimayo, Cuarteles, Santa Cruz, that whole basin down La Puebla. That whole area. And it was significant flooding. I went out and did a few

assessments. Also was out there this morning and what we're told as far as what was metered was over three inches of rainfall in two hours. So it was significant. And our Public Works Department has been out there working tirelessly. They were out there Saturday, Sunday. I believe they were even out there on the Fourth of July. But there was significant damage done to a lot of County roads, a lot of local acequias.

And my thoughts, Manager Miller on this is, my understanding though is that right now with our Public Works Department, they have to pull resources or money from their base budget. Does the County have or can we potentially start thinking of having an emergency budget set up just for this type of devastation that could happen anywhere in the county where these folks wouldn't have to be pulling from other resources from their department to mitigate the problem. So that's just one thought out there. I would love to get behind that and assist wherever we can.

Also on that vein, yesterday I met with Governor Perry Martinez of San Ildefonso, and I know staff has also been in contact with the pueblo governors from Santa Clara. Right now there is a bare team that's put together with Los Alamos. We had that presentation that was given to us at the Buckman Direct meeting that we had, assessing or trying to mitigate potential flood damage that could be coming from these fires, both sides of the valley that we're on, from Los Alamos to the Pacheco Canyon fire.

My thoughts, Commissioners: I don't know if we have a representative, and maybe Mr. Vigil is sitting in these meetings. If not, I would like to suggest maybe Hvtce Miller. Also somebody from our Fire team to attend these meetings, just to see what resources we can do to prepare. I know out Public Works – and Katherine, thank you. You have sent some services to help out with Santa Clara. My worry right now, after meeting with the governor from San Ildefonso is all that water is going to come down Pueblo Canyon and Los Alamos Canyon and could have some serious impact even on our BDD.

And then on the side of the Pacheco Canyon, all of that water is going to be washing into the Nambe Watershed. And if we don't get in front of it now that's when our departments are going to be out there having to address and rectify the situation after. So whatever we can do post to help mitigate this potential flooding I would certainly appreciate it. Any education we can get out there. I know the County has been great in following the law and assisting where we can in our government to government relationships, and I sincerely appreciate that.

Also, I just want to thank our firefighters, our first responders that are on the line doing the work, our volunteers and our paid staff. You all do a phenomenal job and the public really appreciates what you're doing. I hear that every day. There was one thing though that did come to me, caused me a little concern. It's a financial issue, is our volunteer department not receiving a paycheck for when they're called out. I've heard some inquiries that they have been on back pay for about two months. And I don't know if that's something, Ms. Miller, that you can address, or Chief Sperling, if you can address that. And if there's something this Commission needs to do to help you address that, so they can get paid.

DAVE SPERLING (Interim Fire Chief): Madam Chair, Commissioner Mayfield, we did this past year come to the top of our budget for volunteer reimbursement so what we did was postpone payment until the new fiscal year kicked in for one month. So the volunteer reimbursement is one month behind. We will catch up here in the month of July

and August, and our plan is to come forward in mid-year requesting perhaps a budget adjustment to increase that fund. It's been a very popular approach. This was our second year of volunteer reimbursement and it sort of exceeded our expectations.

COMMISSIONER MAYFIELD: Because then it could be a problem for next year if we're paying it with this year's funds. So you're going to come to us mid-year and ask for an increase?

CHIEF SPERLING: Madam Chair, Commissioner Mayfield, that's correct. That was our intention, mid-year.

COMMISSIONER MAYFIELD: Thank you. And Madam Chair, Ms. Miller, on this vein, our intergovernmental summit, is that like what's going on right now? As a matter of fact this packet that I'm looking on – just so everybody knows it just came to my attention. I think there's an issue right now with our transfer station in the Tesuque area. When are we proposing to have our intergovernmental summit? Is there a plan going forward of when that will happen? I know we might need to postpone it now with what's going on with our wildfires and the potential flooding, but that's something I would really like to get moving on and we could probably broach a lot of this with our neighboring pueblos.

MS. MILLER: Madam Chair, Commissioner Mayfield, we are planning on doing an intergovernmental summit again this year. We were planning on doing it a little bit later. We've done it like in the July-August timeframe, but we also want to do the Board retreat so we're going to do the intergovernmental summit a little later and Hvtce is trying to come up with some dates for that. So we'll be bringing some proposed dates to you for that.

COMMISSIONER MAYFIELD: And then we are the ones who set that agenda? Working with the pueblos, with the other counties and cities where we could bring up some of these discussions for mitigation?

MS. MILLER: Madam Chair, Commissioner Mayfield, yes. We'll also get items from you that you want to have on the agenda.

COMMISSIONER MAYFIELD: Good. Thank you. That's all I had, Madam Chair.

CHAIR VIGIL: Thank you. Commissioner Holian.

COMMISSIONER HOLIAN: Thank you, Madam Chair. I wanted to give an update on the Animal Focus Group since I've been participating in that since its inception. It really started going at the beginning of the year even though it was officially formed last year and the initial idea was to bring together people from the animal rescue community with staff from our animal control Division to work on the problem of animal abuse in the county. Now this all stemmed from an incident that happened last year in which there was a little dog that was kidnapped by a representative of the animal rescue community and it turned out that the little dog actually was in a happy home and was well loved and well cared for, but it caused a lot of friction between our animal control Department and the animal rescue community.

So I had hoped that bringing together representatives from both of these communities would improve communication. Now, it turned out that at our first meeting that Audrey Velasco, who is our Animal Control Officer was working on rewriting the Animal Control Ordinance for Santa Fe County. And it seemed like that would be a good thing for us to work on first because it would sort of help us improve our communication skills plus it would be – it's something that we actually need to do anyway. And so I want to report that we have been

working on that for the last six months and we've made good progress. The people who participated in the focus group had been, for example, Mary Martin and Bill Hutchison from the animal shelter. There's a fellow who rides bicycles and had had run-ins with dogs that were not under complete voice control of their owner, so he was representing that part of our community. Also there have other citizens who were concerned about animals and that they have proper treatment.

So I think that we have brought a lot of really good ideas to this ordinance. At our next meeting I think we will see the final draft of the Animal Control Ordinance and it will be coming in front of the County Commission shortly thereafter. I wanted to also mention that Ana Marie Ortiz of our Legal Department has been working on it from their side of things, just in order to make sure that everything fits in legally speaking.

COMMISSIONER STEFANICS: On this point.

COMMISSIONER HOLIAN: Are there any questions?

CHAIR VIGIL: Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you, Madam Chair, and thank you, Commissioner. Is the task force discussing anything regarding pet licenses? Because since the City and the County have contracted with the Santa Fe Animal Shelter to take over some services, I thought there was going to be a concerted drive or some kind of campaign to register pets and animals and I haven't seen anything come forward.

COMMISSIONER HOLIAN: No, nothing has come forward yet but that's been discussed and I think the idea is to figure out a procedure whereby we get all the animals registered in the county. That is part of what the Animal Control Ordinance is going to be setting out.

COMMISSIONER STEFANICS: Well, the reason I bring this up, Madam Chair and Commissioner, is that when I had my first meet-and-greet with the animal shelter I indicated to them that years ago all of our veterinary offices in town had the paperwork to hand to people once their animals received rabies shots to pursue that. And they were not going to utilize that as a venue. So I'm just concerned that we as a County do some outreach and I would just make that recommendation. Thank you.

COMMISSIONER HOLIAN: Thank you, Commissioner Stefanics. I think that is the intention. First, we're going to get the Animal Control Ordinance in place and then really work on making sure that every animal is registered. And we're also bringing forward and interesting concept of being able to register feral cat colonies, so that's going to be an interesting discussion as well.

So one other thing is I really wanted to ask our representatives from the Buckman Board about what happens if there is a huge release of silt into the Rio Grande? Does the water treatment plant shut down? Or can it handle it?

CHAIR VIGIL: There are three points of diversion where it can be shut down. It would be immediately shut down at the first point of diversion.

COMMISSIONER HOLIAN: Okay.

CHAIR VIGIL: And they're called Early Warning Systems.

COMMISSIONER MAYFIELD: Madam Chair, Commissioner Holian, on that point, they're also monitoring any potential contaminants that could be coming off of Los Alamos Canyon.

COMMISSIONER HOLIAN: Yes, I saw that in the paper. Thank you, Commissioner.

CHAIR VIGIL: Just a couple of points. I wanted to thank everyone who was involved in the emergency response for the recent fires. I want to thank our community as a whole. We had a lot of outreach with regard to holding back on fireworks that we had no control over since our authority is limited in what kind of fireworks we can prohibit. There were retail outlets who took fireworks off their shelves and there were pueblos who voluntarily did that. Katherine, you in your leadership role, our Fire Department, Chief Sperling and our emergency response team. I think the lessons we learned from the Cerro Grande fire really got implemented because what we were really doing was just trying to be available to respond in accordance to what was needed.

Actually, I was at a community meeting last night and somebody who has two radio frequency and can listen to a lot of the communications that are going on made the statement, and Chief Sperling was there, that he was very, very impressed how the communications were free-flowing and so Santa Fe County did a wonderful job, and Santa Fe County employees, you are to be commended.

I think the other thing I just want to mention is that we have been meeting with the City and there are going to be meetings. Again, I want to thank – tomorrow and the day after, Commissioner Holian, on behalf of the RPA and those of us who have been meeting with the City on the Rail Runner and the cutback that's been recommended by MRCOG. Commissioner Holian will be there with the Mayor and others to represent our position in looking at alternatives before further cutbacks are made. The current cutbacks that have been recommended will not go into effect until after August, so the Rail Runner is still running through the weekends, but we do believe very strongly that other alternatives have not been reviewed before this decision was made and MRCOG is willing to listen to us and reconsider their motion to cut back the Rail Runner on weekends. So we're hoping to create a strong advocacy role for northern New Mexico at keeping that going. Katherine, do you have anything to add to that? You may have more updates than I do.

MS. MILLER: Madam Chair, not on that issue but I do have a little on the fire assistance we were giving, but if you had any more on that –

CHAIR VIGIL: I'm done, so you can do the fire.

MS. MILLER: I just wanted to give the Commission an update from the briefings this morning. The Las Conchas fire is at 147,642 acres. It's 50 percent contained. The total personnel is 1796 with 17 helicopters, 68 engines, 33 water tenders, 11 dozers. These are resources supplied by or contracted through the Forest Service. 63 residences and 44 outbuildings have been destroyed to date and the fire is currently being managed by two incident management teams. Most active burning continues in the south zone with fire backing along the south edge but less aggressively than in the previous days and the fire teams continue to do back-burns or may continue to complete the fire line.

Flooding is a major threat as Commissioner Mayfield had mentioned, especially in light of fire impacts to Bandelier, Santa Clara Pueblo and its watershed and the Cochiti, Jemez and San Ildefonso watersheds as well as Valles Caldera. The flash flooding almost always follows large, intense landscape fires. For flash flooding and evacuation information people are directed to call the New Mexico Department of Homeland Security and the

Emergency Management at 505-476-9600, or to visit their website which is www.nmdhsem.org. And then on Friday members of the County wildland team and a couple of command officers assisted with moving and setting up sandbags at Santa Clara Pueblo. Also last Friday, Robert Martinez, our roads manager was contacted by Santa Clara Pueblo and we provided assistance with a bulldozer transferred to Santa Clara Canyon and one of our foremen operated that and assisted the pueblo with clearing debris from the watershed channel on Saturday, Sunday and Monday.

Our assistance is not needed at this time but we will have our dozer back today at the County and then we're also – we've communicated to the pueblo that we're available if they need additional assistance. And then also as of today Santa Fe County Fire Department resources have been released from both the Las Conchas fire and the Pacheco fire. And the Pacheco fire is in a monitor status. So I just wanted to give you that update. That was from today's briefing.

CHAIR VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, Ms. Miller, thank you for the update. I did have a brief conversation with Commissioner Mayfield and also extended a call to Governor Dasheno in particular from Santa Clara. They're going to be going, as Commissioner Mayfield intimately knows, through a process of trying to restore those watershed areas and hard-hit areas. They're going to be applying for a lot of different resources and Commissioner Mayfield, whatever we can do to assist in helping them through those processes I'm very supportive of that for not only Santa Clara but all those other hard-hit areas that were struck by the fires. Thank you, Madam Chair.

CHAIR VIGIL: Thank you. Commissioner Mayfield.

COMMISSIONER MAYFIELD: Thank you, Madam Chair. Katherine, thank you for that update. Katherine, now that Governor Martinez has issued a state of emergency, are there any funds that we can tap into to help with this mitigation of potential – it always seems like we're reactive and not post-active and we're not anticipating the flood that's coming on on the onset where we can help do something to hopefully mitigate that. Is there any dollars we can ask for for that?

MS. MILLER: Madam Chair, Commissioner Mayfield, the way those emergency funds work when the governor declares and emergency like that, they're done on a reimbursement basis to the entities that would actually qualify. First the entity affected is the one that gets to qualify. That's determined by Homeland Security. They'll go through a process. They go out. They do the evaluations. They determine what qualifies, what does not qualify. Then they go through a financial evaluation process. DFA determines whether that entity would fiscally qualify for them. Santa Fe County basically never does because it has reserves and under this circumstance, because Santa Fe County is not directly affected, we would not qualify for funding under it. What I did ask as a process perspective that is if Santa Clara Pueblo is applying and they need assistance, if we're providing assistance or there's something that we can provide that they could then get funding for from them and us contracting or helping them get it quickly. That might be a way that we could receive funding via the pueblo. But most likely not. What they had indicated is that they were just requesting our volunteer assistance at this point.

COMMISSIONER MAYFIELD: Thank you. And Madam Chair and Katherine, when the state emergency is issued by the governor, is that just for the specific reason of the fires? Let's go back to what I asked earlier about the flooding that happened up in the northern part of Santa Fe County. Would any of those acequias be eligible for trying to mitigate some of that mud damage?

MS. MILLER: Madam Chair, Commissioner Mayfield, probably not. The governor – when they declare through executive order one of those type of emergencies they're very specific as to what qualifies, and that's usually determined by Homeland Security, and then they'll actually go out, do an assessment as to what qualifies, then make a recommendation to the governor to declare an emergency so that those funds can then be available. So they would actually have to state in the emergency declaration that that is included in it.

COMMISSIONER MAYFIELD: Thank you.

CHAIR VIGIL: Okay. We will move onto item XI. A.

XI. CONSENT CALENDAR

A. Final Orders

- 1. BCC Case # MIS 02-4325 La Pradera Master Plat Authorization. Gardner Associates LLC and La Pradera Associates LLC (Alexis Girard), Applicants, Request Authorization to Proceed with a Master Plat for the Creation of 22 Residential (Live/Work) Lots on Approximately 2.27 Acres within the Existing La Pradera Subdivision (Phase I), which is Located within the Community College District. The Property is Located West of Richards Avenue Between I-25 and the Arroyo Hondo, within Sections 17 & 18, Township 16 North, Range 9 East (Commission District 5) Vicki Lucero, Case Manager (Approved 3-2)**

CHAIR VIGIL: This is under Findings of Fact, so I assume, Commissioner Mayfield, your question is for our Legal.

COMMISSIONER MAYFIELD: It is, Madam Chair, hopefully they can answer it. Mr. Ross, do you know, and I don't know from the applicants were here, but did they mitigate any of those problems? They had some debris on a couple of those lots that they indicated they would be good stewards and try to get rid of that debris and then I think there was also some issues with permitting of their sewer system out there.

MR. ROSS: Madam Chair, Commissioner Mayfield, I think Shelley has the answers to those questions.

COMMISSIONER MAYFIELD: Thank you.

SHELLEY COBAU (Building & Development Services Manager): Madam Chair, Commissioner Mayfield, subsequent to the public hearing staff and I went out and we asked that the applicants' engineer, that designed their wastewater system, along with the New Mexico Environment Department met us out in the field. The operator was also there and they assured us that the system is fully operating as designed and they're making some

additions to it. Some of the problems with the smell that people have been complaining about were during periods of service when they were cleaning it and they believe that that was the source of the smell.

The piles of debris, when we were out in the field that day, are large. And we told them that those needed to be removed, including broken concrete, large stockpiles of dirt. They want to save the stockpile of dirt for some work that they've got going in subsequent phases, but they assured us that the broken concrete and other debris out there would be removed and we wouldn't be willing to record anything until that situation is resolved, Commissioner Mayfield.

COMMISSIONER MAYFIELD: So it's still there.

MS. COBAU: It was a month ago but they assured us that it would be done and I haven't gone back out to check. The wastewater treatment system should be fully functional at this time.

COMMISSIONER MAYFIELD: Thank you.

CHAIR VIGIL: Okay, what's the pleasure?

COMMISSIONER ANAYA: Move for approval, Madam Chair.

COMMISSIONER HOLIAN: Second.

The motion passed by majority [4-1] voice vote with Commissioner Mayfield casting the nay vote.

CHAIR VIGIL: The next is to authorize an indefinite price agreement. Do I have the wrong amended agenda? I have item B.2. Is that the one you had a question on?

COMMISSIONER MAYFIELD: Let's see, Madam Chair. B. 2 – well, my questions would be on B. 3 and B. 4 then. So we could just move to those.

CHAIR VIGIL: On the amended agenda that's what was requested. So we'll go on to B. 3.

XI. B. 3. Request Approval of Easement on Santa Fe County Property for Telecommunication Utilities Right of Way in Support of Santa Fe Studios Local Economic Development Act Project (Growth Management/Economic Development)

CHAIR VIGIL: What is your question, Commissioner Mayfield?

COMMISSIONER MAYFIELD: Thank you, Madam Chair and Paul. Paul, is there any cost to the County for moving this easement forward and why wasn't this easement already negotiated with Qwest or whoever was providing that service?

PAUL OLAFSON (Community Services Department): Madam Chair, Commissioner Mayfield, there is no cost to the County for this easement. This easement was requested as part of the design of the final telecommunication layout.

COMMISSIONER MAYFIELD: And that telecommunication is going to service the whole Santa Fe County Business Park, correct?

MR. OLAFSON: Correct.

COMMISSIONER MAYFIELD: Thank you. That's all I had, Madam Chair.

CHAIR VIGIL: Okay. Is there a motion on this? I move for approval.

COMMISSIONER HOLIAN: Second.

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

COMMISSIONER STEFANICS: Madam Chair, since we had removed B. 2, do we need to approve it? We had removed it from Consent. So I move approval of item XI. B. 2.

CHAIR VIGIL: I'll second that.

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

XI. B. 4. Resolution No. 2011-94, Correcting Typographical Errors in Resolution 2011-79, (a Resolution Adopting Water Service Rate and Fee Schedule) (Utilities Department)

CHAIR VIGIL: Steve, how do we do this? Since we had already approved B. 4 under the regular Consent approval, but Commissioner Mayfield has a question on that, can your question just be posed? Can we just do that and the motion will stand? Commissioner Mayfield, please pose your question.

COMMISSIONER MAYFIELD: Thank you, Madam Chair. Mr. Guerrerortiz, this question might be for you. On the clarification – I'm looking at the Resolution 2011, just the second page that was attached. What was the change? So when we're looking under water usage, you're saying the first 5,000 gallons are for \$6.12 per thousand gallons. What was stated before that?

MR. GUERRERORTIZ: Madam Chair, Commissioner Mayfield, the units were not stated. The 1,000 gallons which is used commonly in water sales as a unit of sale was not stated in one of the tables, in two of the tables. So we needed to make that absolutely clear.

COMMISSIONER MAYFIELD: But Madam Chair and Mr. Guerrerortiz, if the units weren't stated then what the Commission approved in the resolution prior, wouldn't it look to be a little less expensive for the water user?

MR. GUERRERORTIZ: Madam Chair, Commissioner Mayfield, when I was making the presentation I specifically stated and the records show that I stated that it was per thousand gallons, \$6.12 per thousand gallons. It was accidentally left out as a typographical error.

COMMISSIONER MAYFIELD: Okay. And then going back to the third part of this, Mr. Guerrerortiz, let's see. You've also made a change to one and two and –and then what's the change you're making in Rate Schedule 6?

MR. GUERRERORTIZ: There are two tables and the tables have to show the units in which the water – that are used for measuring the water that is sold, and in those two

tables the units were omitted. And it's obviously an error because if you don't state the units then you cannot have a complete sentence.

COMMISSIONER MAYFIELD: Okay. Thank you, Madam Chair.

COMMISSIONER ANAYA: Madam Chair.

CHAIR VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, Mr. Guerrerortiz, this is the rate increase resolution that was approved –

MR. GUERRERORTIZ: May 31st.

COMMISSIONER ANAYA: May 31st. Madam Chair, I'm going to let the record reflect that I vote no on this amendment because I voted no on the rate increase.

CHAIR VIGIL: Okay. The record will reflect that.

COMMISSIONER MAYFIELD: Madam Chair, I'd like to ditto that. Thank you.

CHAIR VIGIL: Okay. The record will reflect two no votes on that. I actually think we have to reconsider the resolution but we will reflect it in the record.

XII. STAFF AND ELECTED OFFICIALS' ITEMS

A. Community Services

1. Ordinance No. 2011-5, an Emergency Ordinance Declaring Hazardous Fire Conditions and Imposing Restrictions on Open Fires, Smoking and Other Ignition Sources (Community Services/Fire Department)

COMMISSIONER ANAYA: Move for approval, Madam Chair.

CHAIR VIGIL: I have a motion. Is there a second?

COMMISSIONER MAYFIELD: Second.

CHAIR VIGIL: There's a second.

COMMISSIONER ANAYA: Madam Chair, this is the resolution that we've been continually amending month after month. People realize the issues associated with smoking and lighting fires and burning. Is that correct, Mr. Sperling?

CHIEF SPERLING: Madam Chair, Commissioner Anaya, that's correct.

CHAIR VIGIL: I do have a motion and I've taken it and a second. Is there anything you'd like to add to this presentation today?

CHIEF SPERLING: Madam Chair, just that this is our fourth 30-day emergency ordinance for no-burn and I'm hopeful that this will be our last this year, that with the start of our monsoon season we'll be able to move into more normal conditions into August.

CHAIR VIGIL: Thank you very much. I have had a request if there's anyone out there in the public that would like to address this please step forward. Seeing none, we have a motion and a second.

The motion passed by unanimous [5-0] roll call vote with Commissioners Anaya, Holian, Mayfield, Stefanics and Vigil all voting in the affirmative.

CHAIR VIGIL: Thank you, Chief Sperling. Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, Chief Sperling, before you take off, is there anything we can do to continue the prohibition on fireworks? Or when does that expire?

CHIEF SPERLING: Madam Chair, Commissioner Mayfield, the sales on fireworks, by state law, already expired. So there's really nothing more I think we need to do this year regarding fireworks.

COMMISSIONER MAYFIELD: So they can't buy them right now or –

CHIEF SPERLING: The period for licensing firework vendors has expired. That's correct.

COMMISSIONER MAYFIELD: Can this Commission still ask that county residents not use aerial fireworks or do we have to take a different action for that?

CHIEF SPERLING: Madam Chair, Commissioner Mayfield, I don't believe so. We haven't moved in that direction in the past, that once the Fourth of July is done the fireworks are generally over and that follows the proscription in the state law as well.

COMMISSIONER MAYFIELD: Thank you.

XII. B. Public Works/Utilities Department

1. Request Approval of Santa Fe County Agreement #2011-0220-PW/MS for Engineering Services for the Caja del Rio Road Widening Project to Bohannon Houston, Inc., the Highest Rated Offeror, \$299,457 (Public Works)

ROBERT MARTINEZ (Public Works Director): Madam Chair, Commissioners, the Public Works Department requests authorization to award an agreement to Bohannon Houston. They were the highest rated offeror for engineering services for the Caja del Rio road widening project. Caja del Rio Road project is the last of the 2008 general obligation bond projects that has to do with roads. This project entails reconstruction of the road, widening it to accommodate bike lanes, turn lanes, acceleration and deceleration lanes. This project will be constructed in the spring of 2012. As I said earlier, Bohannon Houston was the highest rated offeror so Public Works is recommending authorization and approval to enter into a contract with Bohannon Houston in the amount of \$299,457. I stand for questions.

CHAIR VIGIL: Questions?

COMMISSIONER MAYFIELD: Madam Chair.

CHAIR VIGIL: Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, Mr. Martinez, thank you. I looked through the contract of what they submitted. Under payments, has the County – and I don't know if this question would be for yourself or maybe Ms. Martinez – but they have a pretty significant penalty if we're ever late on any payments to them. We would make sure that we're not late on payments? Has that ever happened in the past? And I'm looking at page 3 of the agreement that was submitted to us.

MR. ROSS: Madam Chair, Commissioner Mayfield, that's actually state law.

COMMISSIONER MAYFIELD: That is state law?

MR. ROSS: Yes.

COMMISSIONER MAYFIELD: Okay. And the second question I have and I don't know where it's at but it's back here. These individuals are using or utilizing the services of some subcontractors. And it's just a state flat rate. Does that need to be broken down or they can just do that?

MR. MARTINEZ: I'll defer to that Maria Sanchez.

MARIA SANCHEZ (Purchasing Division): The question is regarding the geo testing, I believe. Any other subcontractors. What the engineering firm does is he goes out and gets quotes and that's a set dollar amount that they're going to be charging us for that portion of the work. So we never look at their breakdown although they should have in the proposal packet, I probably have the submittal of how many hours and the breakdown of what it is but it won't be reflected in the contract that you have before you. But in our procurement files I do have the cost and how many hours and what it's going to cost to get those specific technical items taken care of.

COMMISSIONER MAYFIELD: Thank you. So those subs cannot come back and ask for additional money for additional work?

MS. SANCHEZ: Madam Chair, Commissioner Mayfield, no.

COMMISSIONER MAYFIELD: Thank you. That's all I have. Thank you.

COMMISSIONER HOLIAN: I move for approval.

CHAIR VIGIL: I have a motion.

COMMISSIONER STEFANICS: Second.

CHAIR VIGIL: Second. Any further discussion?

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

- XII. B. 2. Request Authorization to Publish Title and General Summary of Ordinance No. 2011-___, an Ordinance Amending Ordinance No. 1998-16, (an Ordinance Establishing Provisions for Extension of Sewer Service; Adopting Operating and Management Procedures; Setting Rates; and Establishing Design Standards for the Santa Fe County Wastewater Utility) Section 8, Paragraphs B.3 and B.4(a) Through B.4(e), in Order to Provide the Necessary and Complete Text of Said Paragraphs by the Insertion of Page 27 into Said Ordinance and Correcting an Error in the Formula for Calculating the Extra-Strength Surcharge Contained in Exhibit A (Utilities Department)**

MR. GUERRERORTIZ: Madam Chair, Commissioners, again, this is one of those issues where we need to correct a typographical error that was committed back in 1998, and the reason why it just surfaced now is because up until now we haven't had any commercial customers that may require this provision. So when the County adopted the

ordinance from the City the error that got slipped in was never corrected and that's what we're doing now as we contemplate the increase in the customer base for wastewater services.

CHAIR VIGIL: Okay. Questions? Commissioner Holian.

COMMISSIONER HOLIAN: Thank you, Madam Chair. Pego, what is chemical oxygen demand?

MR. GUERRERORTIZ: Biochemical oxygen demand is a conventional measure of the wastewater contamination so waters that have a higher level of BOD are more contaminated than others.

COMMISSIONER MAYFIELD: Okay. Thank you.

CHAIR VIGIL: Further questions? What's the pleasure? Is there anyone that would like to address this, although we're not identifying this under a public hearing?

COMMISSIONER HOLIAN: Madam Chair, I move for approval.

CHAIR VIGIL: Okay.

COMMISSIONER STEFANICS: I'll second.

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

XII. C. Matters From the County Manager

1. 2011 County Commission Re-Districting Parameters

MS. MILLER: Madam Chair, we had at the last meeting talked about the redistricting process and Erle had provided some maps to you so that you could see where we would need to make changes within each district relative to population. And we said that at this meeting we'd come back and also ask for some direction as to how you'd like to go through this process. The League of Women Voters have representatives here. They, I believe, provided all of you with a letter last week that they would like to discuss with some recommendations relative to the process and so they're here to speak to that letter. I do believe it was emailed to all of you last week. And then also Erle is here to present some other items. So I just wanted to bring that up and I think maybe the first thing would be to have some representatives from the League of Women Voters explain to the Board some of the issues that they think need to be addressed as we go through the redistricting process.

CHAIR VIGIL: Okay. Judy, will that be you? Thank you and welcome. Please come forward and state your name and your title. You're president of the League, correct?

JUDY WILLIAMS: Good afternoon, Madam Chair, Commissioners, my name is Judy Williams. I'm the current president of the League of Women Voters of Santa Fe County. I have colleagues with me – Jody Larson and Rebecca Frenkel and we've been working on redistricting issue for a little while, attended the state legislative meetings and some of our representatives have attended City meetings as well.

The state League of Women Voters has a specific position on redistricting as does the national League, and it basically follows the federal criteria and recommendations: one person/one vote, which basically means equal voting districts within, I think the guideline is a

plus or minus five percent either way. So basically all population groups should be the same size in order to allow people to have the same right to elect their officials.

Other criteria that we have supported and do support is that districts should be contiguous, and I'm sure you've all seen pictures of the ones that are kind of spread out all over the place. There's a famous one in North Carolina that's a half a mile wide and 100 miles long. Be reasonably compact, which means being fairly square, more like Iowa than Florida in shape, if you think of the geography. Avoid crossing geographic barriers to travel. Obviously mountain ranges, rivers that don't have bridges, and so on. Highways that don't have cross roads. Minimize the partition of major jurisdictions to the extent possible, and not intentionally favoring any political party. And obviously, the jurisdictions maybe be communities of interest or other things.

The League of Women Voters of Santa Fe County spent a lot of time, as you all know, studying issues of transparency and working with the County for a number of years on helping to put more information on the website, suggesting ways of easing access to the website and navigation of the website. And we proposed that the County continue to use the website as the main repository of information on redistricting. We've also learned as I'm sure you have that the public doesn't always turn out for meetings if the meetings are called a committee meeting of something or they're not widely advertised. And a lot of times the public doesn't understand the implications of redistricting and reapportionment in their lives, and it has many, many implications in all areas of their lives – school boards, the local councils, congressional districts, precincts, where they vote, who the person on the other side of the street votes for might be different from them and so on.

So we are urging the County to do what it can, and I know I appreciate you have not gotten I think maps up on the website and that's a really good step forward. And I hope you'll continue to use the website and any other means to allow public comments, not only on – well, both on proposed maps and redistricting and also kind of what your final recommendations are going to be. So kind of all through the process, we are proposing that you maximize public participation. And I think if you have any questions we'll all be happy to answer them. But thank you for your time.

CHAIR VIGIL: Thank you, Judy. Any questions? Seeing none, Erle, do you have an update?

ERLE WRIGHT (GIS Division): Good afternoon, Madam Chair, Commissioners. I did prepare a memorandum for you and that should be in your packets and there are several pages of background material there along with smaller copies of the maps that you had received at your last meeting. There was one additional map which is at the very end, which is showing the relationship of the current County districts to the Sustainable Development Areas from our Sustainable Growth Management Plan that was requested.

I did want to update that on our Santa Fe County redistricting process page, that step three, the Secretary of State did sign off on the precinct boundary adjustments which we had done at the last meeting. That occurred yesterday. So that, again, this will be updated. These steps are also listed on the website but that step is now completed so we're continuing to move forward here.

What we would, in a nutshell – we can develop any variation of options for consideration. What we had asked is that if we can set some guiding parameters on how the Commission would like to see these options developed. And again, those are listed on your memo in terms of the least change where we maintain districts to as close to the current configuration as possible, why obviously adjusting the population numbers so we can get to the one person/one vote requirement.

Also, we want to get each district as close to our ideal population as we can. The reason why we added that last map is an option to actually look at growth accommodation. We did this somewhat ten years ago where several of the districts were under populated. It had some effect. District 3 was the farthest under the five percent but is actually the one that grew the most. So it's still out of whack. It can help but it doesn't necessarily mean that we have the crystal ball and can produce a plan that will actually accommodate growth to where we wouldn't have to redistrict again come 2021.

Some other options that really kind of deal with community of interest based sort of parameters, where you would look at urban versus rural. Some of our districts actually sort of do this already. A watershed base where districts are aligned as close as feasible to some of our watersheds. Again, there's elements of our districts that already tend to do that a little bit. What I've referred to as eco-cultural based, where we try to again aggregate communities of interest. For example, the acequia communities versus our ranching and other agricultural communities versus our more, if you will, urban or cosmopolitan communities of interest.

And then again, any – if there's something that we've missed on this list that the Commission would like to see as a concept brought forward in the options that we hope to bring to you. So I'll stand for any questions or explain and any of the attachments that are included in your packet.

CHAIR VIGIL: I have Commissioner Anaya, Commissioner Holian, then Commissioner Stefanics and Mayfield. We have questions.

COMMISSIONER ANAYA: Madam Chair, Mr. Wright, I appreciate the information and the work. I'll keep my remarks brief. I think the process that you were one of the primary parties to that went on ten years ago brought us to the point where we're at today and I think given not having the advantage of having a crystal ball I want to commend you and the work of that team at that time for getting us to this place. I will speak from a district standpoint. As an individual that just started on the County Commission, that campaigned in the entire district that I'm representing, I represented to those individuals what I would work with them on to achieve results that they like to see in their communities in their areas. On that base, fundamental premise I would like to see as much as is possible the district remain similar.

With that said, I fully appreciate and would support balancing those districts. That was done the last cycle. It makes sense to do that, and I would also say that it makes a lot of sense to make sure that there are some reasonable accommodations for growth based on the very plan that the Commission and the County has adopted. I think the other items are important items and important items to take into consideration, but from my perspective: least change, accommodating balance and accommodating growth I believe gets us where we need to be. So those are my thoughts.

COMMISSIONER STEFANICS: Thank you, Commissioner. Commissioner Holian.

COMMISSIONER HOLIAN: Thank you. I guess I certainly agree with the principles that are laid down in the memo that are – the five basic principles, certainly, but another thing that I would like to consider and sort of maybe get the other Commissioners' feedback on is balancing the amount of population in rural areas. Because after all, it's the rural areas that we really represent as Commissioners. We do not deal with incorporated area issues so much. And so if it's possible in a way that we have more or less a balanced population in the unincorporated areas – I don't know. I would just like to throw that out for consideration.

COMMISSIONER ANAYA: Madam Chair, on that point.

COMMISSIONER STEFANICS: Thank you. Yes, Commissioner.

COMMISSIONER ANAYA: Madam Chair, on that point, I think that's a good point to look at, and I guess I would speak from just being elected to the Commission and just starting six months ago. And understanding that if we unravel the entire districting it was a rather extensive process, which is fine, but we ended up – I want to say, and you tell me how many Erle, that you had, there was 20-plus maps that the Commission looked at ten years ago and went through the process and the discussion of urban versus rural and a lot of different scenarios. And I would say let's look at it but I would not think that it would be a good idea to unravel the entire redistricts and start from scratch. I just don't think that that would be a prudent expenditure of time. If we could evaluate some of the issues associated with rural versus urban I think that's good and we should but I just don't think it would be a good idea to unravel the entire boundaries that are in place, just given what areas are represented by different districts. So those are my thoughts along Commissioner Holian's comments.

COMMISSIONER STEFANICS: Thank you. Commissioner Holian, you still have the floor.

COMMISSIONER HOLIAN: I'm done, thank you.

COMMISSIONER STEFANICS: Commissioner Mayfield. I'll wait until after.

COMMISSIONER MAYFIELD: Thank you. Madam Chair and Erle, are you all looking at the guidelines that are developed for the state and the congressional district plans? Those are pretty comprehensive bullet points that they have in there. I'm sure this has never been challenged in a court of law. It's taken in the viewpoints of the public and it seems like it's a pretty comprehensive plan as for those redistricting and you didn't include it in our packet.

MR. WRIGHT: Madam Chair, Commissioner Mayfield, that was the intention and really there's a reference that – these are the seven guiding sort of principles that the legislative council adopted for the congressional and state level redistricting and thought that would be appropriate here, so yes, we would tend to kind of follow along those guidelines.

COMMISSIONER MAYFIELD: And have they ever been challenged in court?

MR. WRIGHT: Absolutely. State redistricting has been challenged by most – well, it was certainly challenged ten years ago.

COMMISSIONER MAYFIELD: But these guidelines survived.

MR. WRIGHT: The guidelines themselves, no. Those are actually the basis of the challenges – that they somehow didn't adhere to those guidelines.

COMMISSIONER MAYFIELD: And then Erle, if you could just touch a little more with growth accommodation for me. I heard what you're explanation – do you all have a crystal ball of where our county's growing and if so, just let me know, because that would be beneficial.

MR. WRIGHT: Madam Chair, Commissioner Mayfield, it's just based on best guess and again, what looking at the Sustainable Growth Management Plan, and actually the Sustainable Development Areas. And again, that's why we included that map at the back of the packet, to really show where that SDA-1 and -2 areas are, because I think that's where – that's certainly where, from the policies that the Commission has adopted is where the County is trying to direct growth. Not always successful. Things happen in the economy, but certainly, New Mexico has grown as a state consistently for the past ten censuses, for the past 100 years, and Santa Fe County has continued to experience that same positive growth throughout that time. The last census ten years ago was the first time that there was actually more population – this kind of goes back to Commissioner Holian's point, that there was actually more population in the county than there was in the city for the first time. And that trend has continued, but I think one of the things to realize, I think we have three incorporated municipalities within the county between Española, Edgewood and the City of Santa Fe. But really and truly, a lot of our population is in the rural areas and how we accommodate that growth is a way we can look at it where we would actually – districts that for instance contain SDA-1 areas, we try to keep a little under the ideal population, of course within the –5 percent range, but to allow those to grow so that over the course of ten years we've still more or less maintained the one person/one vote and that we wouldn't be out of whack as soon as the economy takes off again.

COMMISSIONER MAYFIELD: Thank you, Madam Chair. That was my worry, that is if we do adopt future growth accommodations is that we would be out of that five percent, one person/one vote because you would have to accommodate for that somehow and the person on the high side right now, if that was a growth area we would really be taking a lot more current voters from them under the 2010 census data, wouldn't we?

MR. WRIGHT: Commissioner Mayfield, it would be – our intention would be not to bring you a plan that would be out of that five percent range. That would subject us to a court challenge I think, which is not – it's not in the Commission's best interest to consider a plan like that. So we wouldn't bring it to you unless there was an absolute critical reason to bring you such a plan.

COMMISSIONER STEFANICS: Could we finish with Commissioner Mayfield and myself and then come back to you, because I have some questions about the numbers as well.

COMMISSIONER MAYFIELD: I'm done, Madam Chair.

COMMISSIONER STEFANICS: Thank you, Commissioner. I would like to – I think we all have more questions and I think this discussion will go on for a while so I hope you don't think I'm cutting you off. But what I'd like for you to do is to hypothetically address the issue that Commissioner Anaya and my districts have several numbers that need to be cut if we were to equalize. So my question is – okay, so Commissioner Anaya's district is 4,000 over and my district is 2,200 over.

MR. WRIGHT: Yes.

COMMISSIONER STEFANICS: Okay. And there is one district that is as much as 2,200 under. So my question is have you hypothetically thought about how many precinct would have to be added or deleted in order to equalize the districts? And not with any boundaries or anything like that.

MR. WRIGHT: Madam Chair, honestly, it depends on the precinct. Some of our smaller, older precincts within the center of the City of Santa Fe are actually relatively small, a few hundred population. Some of our larger precincts that have seen a lot of growth, and that was one of the reasons why we had some – a split, actually in your precinct was to accommodate some of that growth to allow us to be able to effectively redistrict. I think our highest population precinct is probably in the neighborhood of 5,000 maybe, so there's a range from several hundred to 5,000. So it really depends on which precincts you move.

COMMISSIONER STEFANICS: So on that point, which precinct has close to 5,000? In which district or what area is it? That's quite a few people.

MR. WRIGHT: It's actually – again, the larger precincts on the west side of the City of Santa Fe that are typically going to have that. I can get those numbers for you directly but I don't have them in front of me.

COMMISSIONER STEFANICS: Well, the reason – when you said 5,000, that could be the entire change that's needed for one person.

MR. WRIGHT: That is correct.

COMMISSIONER STEFANICS: And we would not want to get into splitting precincts for a district.

MR. WRIGHT: At this point, Madam Chair and Commissioner Stefanics, you can't split precincts. All the adjustments that we've done were done with that adjustment we did at the last meeting and again, those were actually in the works for really about the past four years, working with the Census Bureau and Secretary of State and our Bureau of Elections. So right now our precincts are effectively locked down, so we're working with the 88 building blocks that we have right now.

COMMISSIONER STEFANICS: Okay. Madam Chair, I'm sure we'll all have more questions, but I've finished mine. Commissioner Anaya had more questions, and you haven't gone yet.

CHAIR VIGIL: Who hasn't gone? Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, I went, but I just had a question from the last redistricting. Which districts did you hold back population on for growth? And what percentage did you hold?

MR. WRIGHT: Let me see if I can find that real quick. Madam Chair, Commissioner Anaya, essentially the districts were pretty close. The one that was the farthest out of the five percent range was actually District 3 and it was about a minus three percent. District 1 was almost right on at about a third of a percent. District 2 was about minus 2.5 percent points below the ideal population. District 4 was about 2.5 over and District 5 was also about 2.5 over. So they have to balance out between them. We have that population of essentially just a little under 29,000 per district is what we're looking at.

COMMISSIONER ANAYA: Madam Chair, Mr. Wright, all five districts were right at the 29,000, 28,000 the last time.

MR. WRIGHT: Well, we grew. So last year – or ten years ago our ideal number was about 25,800. It's come up a little.

COMMISSIONER ANAYA: But we were all within that deviation with distribution with less than three percent of that?

MR. WRIGHT: Yes. The lowest population district was 25,095 and the highest populated district was 26,500. So we were very close.

COMMISSIONER ANAYA: Thank you, Madam Chair.

CHAIR VIGIL: Thank you. The only comment I have, and I'm seeing that you have a representation of that, prior to – and I'm going to go further back, prior to the 2000 Census, the 1990 Census had Santa Fe County starting from the midpoint of the City of Santa Fe, sort of extending itself so that there was an equitable distribution of urban and rural representation. The map that you've posed today sort of lends itself to that. We have a whole different scenario because there's urbanization in your district and in your district. But the largest representation that we have in terms of population is the City of Santa Fe. But can you use these guidelines and give us a map that identifies that kind of distribution, the equal urban and rural?

MR. WRIGHT: To a certain extent, Madam Chair, I can. Again, the building blocks are the precincts. Our incorporated areas actually split precincts, and this is the one exception, but that's the nature of the beast. Their elected officials are only elected within their incorporated boundaries and that's the only sort of provision for where you can split a precinct. So I could aggregate them and report that to you, if the precinct is predominantly in or out of the city. But again, and as I explained a little earlier, while you'd stepped out, but actually there's more population outside of the City of Santa Fe under the last two censuses than there are in the rest of the county. But again, we do have the Town of Edgewood which was really only just a few thousand people ten years ago but it experienced the highest growth in the state, largely because of annexation, almost 100 percent growth down there.

CHAIR VIGIL: Okay. Thank you very much. So, Commissioner Stefanics.

COMMISSIONER STEFANICS: I'm wondering – okay, so we know that the unincorporated areas of the county have grown at a higher percentage than the city. So the majority of voters now live in the unincorporated areas of the county. Is that correct?

MR. WRIGHT: Yes and no. With a caveat. Because again, we have three unincorporated areas.

COMMISSIONER STEFANICS: Right. I'm talking about the City of Santa Fe then.

MR. WRIGHT: City of Santa Fe, yes. The City of Santa Fe had a population in 2010 of 67,947, which was about 47 percent of the total county population, but that also includes incorporated areas.

COMMISSIONER STEFANICS: Right. Española and Edgewood. That's correct.

DENIS LAMB (Bureau of Elections Chief): And let me add that one thing we need to remember is that population does not equal registered voters.

CHAIR VIGIL: Right.

COMMISSIONER STEFANICS: I understand that. So, Madam Chair, I'm wondering if as we move ahead to different presentations if the GIS in conjunction with the County Clerk's Office could provide us with some of the precincts that have the higher numbers that are contiguous. Like without getting into boundaries and saying we could do it this way or that way, I believe one of the things we would be interested in seeing is along our borders of our districts what are some of the numbers to know if they should go or come, regardless of whether we keep pieces of the city or we go all rural or whatever. But I think looking at some of those numbers would be helpful too.

COMMISSIONER HOLIAN: Madam Chair, on that point.

CHAIR VIGIL: Commissioner Holian.

COMMISSIONER HOLIAN: Erle, I would actually like to see a map that shows the population in each precinct, because it was a little confusing to me with just the pluses and minuses, what does that really mean? How many people are really in a precinct? So would it be possible to get a map that showed that?

MR. WRIGHT: Madam Chair, Commissioners, absolutely and actually, my apologies. I should have had it for you today, but I can produce that for you pretty quickly and I can leave you similar 11 X 17s and actually get them posted to the web as well, to actually show again, for the League and the public's purposes maps that would show the raw numbers of population by precinct. That's very easy to do.

COMMISSIONER HOLIAN: And can you repeat to me again how many people are in each precinct? I think I missed that as you were saying it? What's the total population in each precinct? I mean in each district is what I meant.

MR. WRIGHT: The current?

COMMISSIONER HOLIAN: Yes, the current. Do you have that information with you?

MR. WRIGHT: I believe I do.

COMMISSIONER STEFANICS: Madam Chair, Commissioner Holian, are you asking what it should be or what it is?

COMMISSIONER HOLIAN: No, what it actually is?

COMMISSIONER STEFANICS: Thank you.

MR. WRIGHT: Again, I'll rattle these numbers off. District 1 is currently at 26,023 people, District 2 is 28,164, District 3 is at 32,842, District 4 is at 26,045 persons, and

District 5 is at 31,096. And again, our ideal population that we're shooting for is about 28,834. Probably again, because we're stuck with the building blocks, no plan we're going to come up with is going to be absolutely perfect but we try and get as close as we can to that number.

COMMISSIONER HOLIAN: Okay. Thank you.

CHAIR VIGIL: Anything further? So, Ms. Miller, what's the next steps on this?

MS. MILLER: Madam Chair, what we were requesting today was some parameters, and I think that we've gotten some opinions from you on that as to what you'd like to see, but also from a process perspective, if there was anything that you would like to see us do, if it's develop a committee or our initial recommendation was to get these parameters from you and then just bring back various maps and make this a part of all of our regularly scheduled meetings, if you want and that would probably be a two-month process, two to three months before we'd actually approve – before you would approve anything. So that's what we had anticipated doing but if you want us to do anything in addition to that, we're looking for direction.

CHAIR VIGIL: Process questions. Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, Ms. Miller, I like that. I like that. I think these are established meetings that I agree with the comments the League made. The more we can do in addition to our regular notice to add language that emphasizes that in addition to the regular business noted we're also doing redistricting, that whatever we can do to do that is good. But I think that process will work fine.

COMMISSIONER HOLIAN: Madam Chair.

CHAIR VIGIL: Commissioner Holian.

COMMISSIONER HOLIAN: Thank you, Madam Chair. I agree with that. I think that it's good to have this as part of our regular meeting. I'm not sure that if we had separate meetings all that many people would show up. So it's more important to probably get it on the web so that people can look at it that way. Thank you.

CHAIR VIGIL: Any other comments? Okay. Process – as much as we can keep the public engaged, I think that's where we want to go. I agree that we should have it as an ongoing item. I think as we get more and more into the details about it I think we can even further decide if a separate public hearing is necessary, but I think what we need to do is to advertise that redistricting is going to be an ongoing hearing at the Board of County Commission meetings and anyone interested in commenting on that please plan to be here for one of those.

One of the concerns I had that I know we've spoken to the League of Women Voters on is whether or not a separate commission or an independent review committee should be appointed. At this point in time I'm not having a strong sense of that. I will speak to Bernalillo County to see what kind of success they are having I think that option should remain available and I'd also like the League of Women Voters who have been working on this and perhaps the League to be a part of a presentation or for us to be a part of a presentation for any input that they may have with regard to where we're at in our process

and how we're defining our districts. So I think we're still open to process and for now we'll continue to have it on as an agenda item. Is everyone in agreement with that?

COMMISSIONER STEFANICS: And Madam Chair, I would suggest that when we get closer that we actually notice at least two public hearings as part of our agenda on this topic, so that we can take public testimony regarding it.

CHAIR VIGIL: Most definitely.

XII. C. 2. Update on Road Acceptance Policy

MS. MILLER: Madam Chair, I just wanted to mention this item that back last fall there was a request for the Commission before Commissioner Mayfield and Commissioner Anaya were on that we look at our road acceptance policy and see if we could incorporate some mechanisms to do some lighter maintenance of roads and work on a process that potentially private roads that through participation of all the constituents that live on that road and if they wanted to be able to contribute to kind of a lighter maintenance of it and start to bring it up to a County standard that we draft a policy in such a way to do that. I think we are now kind of at a stage that we would be able to bring a draft of that policy forward to the Commission and I just wanted to know if there was still an interest in doing that type of change to the road acceptance policy.

CHAIR VIGIL: Commissioner Holian, then Commissioner Anaya.

COMMISSIONER HOLIAN: Thank you, Madam Chair. Yes, I am interested in having that option.

CHAIR VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, Ms. Miller, I'm interested, but before it comes to the Commission I'd like to have had an opportunity with yourself and staff to go through what's put in place thus far and maybe offer some input. I don't know if Commissioner Mayfield feels the same but we could even maybe meet together with some of the staff to save time on that but I'd like to get acclimated with what was done and then recommendations moving forward before it comes back to the full Board, if that's okay.

CHAIR VIGIL: Commissioner Mayfield.

COMMISSIONER MAYFIELD: Thank you, Madam Chair and Katherine, I would really like to meet with you guys. Just for my understanding though, this is talking of maybe having a special assessment for folks that are – we're not going to be violating any anti-donation clause or working on private roads, right?

MS. MILLER: Madam Chair and Commissioner Mayfield, this is kind of one of the issues we've had real difficulty in dealing with private roads that are not – that need some type of kind of general maintenance and we're trying to add a provision in there that they would actually pay for it. So we would have it as an option in our policy, because we have not had an option like that. So no, it wouldn't be a donation issue. It would actually be more like an assessment for what we call kind of a lighter maintenance on roads. And Steve

is most familiar with it because they did it in San Juan County when he was there so we were trying to incorporate that into our current policy.

COMMISSIONER MAYFIELD: So, Madam Chair, Steve or Katherine, we'd be then arguably like a contractor doing services for a private road? They would pay us. And my question just right now is what happens if there's a problem with that road? Are they going to come back to us and say you guys need to maintain this? You've created the problem?

MR. ROSS: Well, Madam Chair, Commissioner Mayfield, the policy provides for accepting private roads into the County road system so it would be a public road, so some of those conditions wouldn't exist.

COMMISSIONER MAYFIELD: But Madam Chair, Steve, that's if up to code, to be accepted.

MR. ROSS: And it also has language about that. If the road is not up to standards there's a number of options. One option is to take it in the way it is but another option is to improve the road, bring it up to County standards so that it's capable of being maintained cheaply by the County. So there's a number of techniques to do that, just like we have in the growth management plan. So that could include special districts. It could include people pooling their money and getting some basecourse on the road. Whatever. But there are a lot of options. The thing is mostly options, but what the draft that Robert and I have come up with is really a process.

COMMISSIONER MAYFIELD: And we have a project like that currently in the country, right? Where a group of folks got together, pooled their money, and we're doing the work for them right now?

MR. ROSS: Yes, yes.

COMMISSIONER MAYFIELD: But we do not have to maintain that road in the future, right?

MR. ROSS: I don't know about that specific situation but in this situation where a road would be accepted into the County road system you have a duty to maintain it. The question is how much you maintain it and how much it's going to cost and who's going to pay for it. And all that stuff is addressed as options in the policy.

COMMISSIONER MAYFIELD: Madam Chair, I have a lot of questions so I'll just meet with staff independently.

CHAIR VIGIL: Sounds good. Okay. Thank you for bringing that to our attention, Ms. Miller.

XII. C. 3. Update on ICIP Process [Exhibit 2]

MS. MILLER: Actually, item 3, real quickly is just an update on the ICIP process. As you know we have to provide an updated ICIP to the state, which we're trying to, as I have indicated before, kind of revamp our process for doing capital projects for the County and trying to have a more informative way of providing the Commission options for

projects by district and then by countywide projects. But in addition to that we have the regular ICIP process. Eventually what we'd like to do is get these merged together so that you have an overall process that incorporates countywide, district projects and then this ICIP that we turn into the state as just one piece of that of what we might be requesting from the state if they had funding.

But this is the schedule that needs to happen in order to make sure that we meet the state requirements and I just wanted to let you know that there is – we are still working on the other side of it as well. But Joseph can probably give you some additional information on what is different about this from last year.

JOSEPH GUTIERREZ (Community Services Director): Madam Chair, members of the Commission, in front of you is what our schedule is to have community meetings around Santa Fe County. There's five. They are over two weeks. If this schedule is okay we're going to publicize it. Starting this week we'll go to the papers, we'll put it on our website and have Kristine issue some press releases. Typically, we don't get a lot of community input on this but we'll go to them and see what kind of input we have. Our current ICIP plan is \$187 million. Our CIP plan is \$227 million. ICIP is for five years; CIP goes out to 20 years.

ICIP, we might look at this year as a mechanism to look at maybe regional community projects because our track record with the legislature seems to be that what we receive funding for is community-related projects – buildings, non-profits, those types of things. So we'll go out to the communities and see what kind of input that we do receive. We'll bring that to you and update you in terms of the number of people that attended and the projects that we're requested that we place in the ICIP plan. And again, this is all due September 30th, and we'll have two public meetings – on August 9th and August 30th.

CHAIR VIGIL: Questions? Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, thank you. Would it be possible to have one more meeting right here in our County chambers? There are a lot of folks that are in the central area that could have some ideas and they would have to just go to a meeting outside of this downtown corridor.

MR. GUTIERREZ: Madam Chair, Commissioner, we can look at that and put that on the schedule possibly. One of these – the public meeting is for that also.

COMMISSIONER MAYFIELD: The public meetings they could still come in.

MR. GUTIERREZ: They could come in and do that.

COMMISSIONER MAYFIELD: Okay. Thank you.

CHAIR VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, kind of along the same lines as Commissioner Mayfield, I'm looking at the meeting locations. First one, Nancy Rodriguez Center, second one fairgrounds. Those are both in Santa Fe. And the Highway 14 area, Cerrillos, Madrid, even La Cienega. I think I would ask for – and maybe not even an additional meeting, but a re-look at the location of the meeting because you might be able to keep the same number of meetings but accommodate locations that make more sense to the

areas. And when I look at Highway 14 and Cerrillos and Madrid, and I don't even see Galisteo on here, logistically, it's probably telling me I'm not going to get people that are going to come to Santa Fe for that meeting. But if there's a way to re-look at the locations commensurate with the geographic area that might – you might end up with more people.

MR. GUTIERREZ: Okay. We'll look at that, Commissioner.

COMMISSIONER ANAYA: Thank you.

CHAIR VIGIL: Any other comments? Okay. Is that all, Joseph, or do you have anything to add?

MR. GUTIERREZ: Hold on one second. The constituents can also email requests to us, and we'll put that in the press release in our information also. And we'll look at that location.

CHAIR VIGIL: Very good. Anything to add, Ms. Miller?

MS. MILLER: No, Madam Chair. Just wanted to make sure that you had an update that we were going to be starting this process as well.

XII. C. 4. Audit Report [Exhibit 3: Audit Highlights; Exhibit 4: Audit Report]

MS. MILLER: As you are probably aware, the audit report was released by the State Auditor last Friday for the audit that was contracted for on the Sheriff's Office after former Sheriff Solano had admitted that he had been selling County items on eBay. At that particular time one of the things that the Board had supported and requested that we is take a look at the Sheriff's Office, make sure that we knew exactly what had occurred. So we contracted in conjunction with the State Auditor's Office for what it would call at the time a forensic audit. Now, obviously, any information that would be used that's confidential and that would be used in the prosecution is not part of the summary report that's provided to you. That would be worked with the auditors and the prosecutor. That's not information that we would get involved in.

But this audit is a consulting report to help us determine what occurred at the Sheriff's Office at that time. Where there controls that were not in place? What issues do we need to deal with from a management perspective? And from the Board's oversight of all County functions? And then also to determine an amount of restitution to provide to the prosecution. So this I the result of that audit as released by the State Audit and Moss Adams was the firm that we contracted with and they're here and I was going to have Helen introduce them and have them give an overview of the audit report and then I want to follow up with what we have done as we were going through this review of the Sheriff's Office. Quite a few of the items that were brought forward, as they were brought forward by the auditors, we immediately took action along with the current chair to make sure that these things were rectified.

CHAIR VIGIL: Thank you, Ms. Miller. Ms. Perraglio, please proceed.

HELEN PERRAGLIO (Finance Department): Thank you, Madam Chair, I would like to introduce our independent auditors that conducted this review for us. We have

Jim Thompson with us. He's a principal partner that serves on various audits of federal and local government bodies. He's a certified public accountant and a certified fraud examiner. And we also have Audrey Jaramillo here and she's a senior manager with the firm. She served as the lead auditor on this engagement and she's also a certified public accountant and a certified fraud examiner. So I'll hand it over to them.

CHAIR VIGIL: Thank you very much. Mr. Thompson, will you start?

JIM THOMPSON: Madam Chair, Commissioners, thank you. First I'd like to go over the objective and scope of the audit and then kind of talk about the detailed phases that we did. We performed these consulting forensic procedures under consulting standards and we worked closely with the County management as well as the Sheriff's Office to gather the information. The scope of our work was really geared around the former Sheriff Solano and what he might have access to or control over, and identified in the key areas that management and us felt were higher risk area would have been Region III where some monies were passed there; the County assets including property and inventory; and some capital assets; and evidence and safekeeping.

The project that we did was done under two phases. The first phase was to go out and gather information to see what audit trails were there, controls that were there, inventories that were available, and then to make a recommendation in phase 2 on some of the higher risk areas where we knew that there might be lack of controls over certain areas or inventories that might assist us in identifying some of the items that the Sheriff took and sold on eBay.

And so when we conducted phase 2 of the project we expanded our views and we did additional detailed testing and we traced items that were on eBay back to the County's books and records and identified \$73,000 at the cost of the County that the Sheriff had access to. Because of certain lack of controls and lack of inventories there might have been other items that were taken and maybe sold at other places off eBay but we couldn't conclude on any of that because there was certain lack of inventories in there. But we could conclude on the amount that we could trace back to the County's records and the cost to the County.

The procedures that we did went from December 15, 2004 to December 15, 2010, and it's quite an undertaking and I'd like to take a minute just to thank the County staff who assisted in this, as well as the Sheriff's Office. They went above and beyond their staff to dig in these old files. They produced emails for us going back years. As we came across control deficiencies and those were communicated to management and the Sheriff's Office they were very pro-active in taking steps towards resolving these and putting new controls in place.

Clearly, as we sat there with management and the Sheriff's Office personnel the former Sheriff – he had the trust of his staff, and he had the ability to override some of these controls. And clearly, the people that are working at the Sheriff's Office and the new Sheriff that's in there are very competent and qualified people, but I think the former Sheriff took advantage of the trust in the capacity he was in. So as Audrey kind of goes through some of the high level findings here, just keep that in mind that we had a former Sheriff who was in charge of the department that had the ability to override controls and take advantage of other people's trust. So I'll just let Audrey kind of walk through this.

CHAIR VIGIL: Okay.

AUDREY JARAMILLO: First, I think you all have a copy of the report. I just wanted to have us turn to the executive summary to just give you a high-level picture of the results of the examination. So on page 1 of the executive summary, in the middle there is the paragraph that kind of gives you a little bit of detail but a bigger picture and just basically, the estimated known cost to the County of the dollar amount there of the item sold on eBay. We have also noted here that the majority of the items were not purchased with federal funds but rather general funds and state grants, and as Jim mentioned a moment ago, the inventories we couldn't tell of the other items that were at risk what else may have been removed from the Sheriff's Office.

Through our testing and the interviews with State Police we have no conclusive evidence of collusion. So I just wanted to make that clear. Our testing did not uncover theft of evidence. I think that's important to note, and also no theft of Region III Drug Task Force funds from the scope of our audit and what we tested. We did not policy violations and internal control weaknesses, and at the end of the report you have the details and all the different bullet points on our recommendations.

So in addition to the forensic examination that covered the six years we looked at the risks and made valuable recommendations to you to hopefully help you put into place some further checks and balances to prevent or detect errors or fraud in the future. Again, I just want to reiterate what Jim said that the current Sheriff and the County management and all of the staff were – I don't say this lightly – they were very, very cooperative with us and helpful to get us through this process.

We also have at the end of the report – I wanted to point out one other paragraph that's kind of big picture so we don't get into too much of the details for you at this time. You can read the report later in detail. But on page 17 there's kind of an overall recommendation that wraps up some of what Jim was saying already about the trust and we're just recommending that you take future action to strengthen the tone at the top and adopting policies and procedures to trust but verify and design and implement and then monitor controls, because sometimes you can put a policy into place but if it's not monitored then it just kind of goes by the wayside. So we encourage you to encourage to employees to follow those policies and procedures. And we did see that throughout the Finance Department, reiterating things to the Sheriff's Office, but I think it's something the Sheriff's Office can improve on and just having the employees feel safe and able to report things as necessary.

And then just a note there that according to the ACFE 2010 Report to the Nation on Occupation Fraud, the number one way that you're going to identify fraud is normally by a tip and so just having that tone at the top for open communication will help.

COMMISSIONER STEFANICS: Madam Chair.

CHAIR VIGIL: Thank you, Ms. Jaramillo. Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you very much for your work on this, and I recognize that while it might have been difficult I'm sure it was difficult for our Sheriff's Office as well. And I'd like to thank – I think they're in the audience – I'd like to thank them for their cooperation and participation in the collection of the data. My question is for our County Attorney. Do we have – did we not set up a process anonymously on our web

or some other manner in which employees can report complaints or tips about things that are being done illegally?

MR. ROSS: Madam Chair, Commissioner Stefanics, we have essentially two ways in place they can do that. They can lodge a complaint with Human Resources. That's a long-established technique, and they can lodge a complaint with my office pursuant to the new Ethics Ordinance.

COMMISSIONER STEFANICS: Okay. So, Madam Chair and Steve, if an employee feels that they need to remain in an anonymous or a confidential manner, how would that be handled?

MR. ROSS: Well, a third way that that could be handled if they want to maintain confidentiality is just come to talk to me.

COMMISSIONER STEFANICS: Okay. Directly.

MR. ROSS: Directly.

COMMISSIONER STEFANICS: Okay. I just want to make clear to our employees and to the public that we do have a process set up, an internal process for that type of reporting. So thank you very much, Madam Chair.

CHAIR VIGIL: Thank you. Commissioner Anaya. Hold on, Commissioner. Did you want to add on to that particular subject, Ms. Miller?

MS. MILLER: Madam Chair, I just wanted to make sure that you also – I have several things that the Sheriff's Office has done relative to this and I wanted to make sure that you were aware of what those were because what you have in front of you were the findings but much of what, as it came out, before the report was even finished, the Sheriff and his staff were immediately on improving the procedures there and working with the Finance Department and with my office on making sure that we got funding in to fix the issues that they had – some were created by the sheer fact that they didn't have the resources. So I wanted to make sure, and I don't know if Commissioner Anaya had a question for –

CHAIR VIGIL: Commissioner Anaya, would you like her to give that report before your question? Do you think she might answer something?

COMMISSIONER ANAYA: I can wait.

CHAIR VIGIL: Okay. Ms. Miller.

MS. MILLER: Thank you. Madam Chair, as was stated, the auditor was engaged to ascertain the value of the theft and then also to conduct the internal control reviews, and then also the intent for the County when we went forward was this was not just to implement changes at the Sheriff's Office but also to use these findings for controls throughout the County, anywhere that we may have similar issues of just lack of controls. And some of the immediate steps that have been taken to address the items brought to our attention in this audit are that in the Sheriff's Office and in the budget for fiscal year 12 the Commission approved an additional FTE to assist in the workload of the evidence custodian and property control. The Finance Division and Sheriff's Office are working together to ensure that new staff are properly trained to adhere to existing and upcoming policies and procedures. We're budgeting and have budgeted some capital dollars to invest in heightened security for both the property and evidence rooms, limiting access and monitoring all activity within those rooms. The Sheriff's Department has immediately begun a very detailed

procedural manner to adopt into policy, but before they did that they wanted to make sure that they got the results of the audit to make sure they included everything in that.

The County, Countywide has implemented stronger internal controls over the requisitioning, receiving and approval of payment for goods and services to ensure that at a minimum these are performed under dual or triple controls. The County has eliminated the inventory supply budget line item and it has mandated that material inventory-exempt assets – items less than \$3,000 – are assigned a tag number and they're tracked as inventory, even though they are below the capital threshold. It's the goal of the Finance Division to conduct informal reviews at each department and additional trainings to ensure proper adherence to our established policies, including the tracking and certifying of all inventory-exempt items. Cash controls – the audit finding was resolved during the 2010 audit. However, Finance is always working to ensure stronger controls are in place. Changes and updates to policies and procedures will be ongoing to ensure continued strong cash controls, and the Finance Division immediately began a thorough review of the Region III bank account activity and changed procedures on that and will continue to monitor and sign off on all bank reconciliations.

I just wanted to make sure that you were aware that as we were working with the auditors we were meeting at least making changes. We weren't waiting for the complete report to be put out. We wanted to make sure that as soon as we identified an issue it was addressed and we will continue to address throughout the County.

CHAIR VIGIL: Thank you. Commissioner Anaya.

COMMISSIONER ANAYA: Thank you, Madam Chair and thank you both. A couple questions, one that I want to start with that I think is a very important point to restate and clarify is you said two things that I think are very important to me as a citizen, much less a Commissioner. But you said two things that struck me and that was that there was no evidence of collusion, meaning the Sheriff acted alone by himself, based on the information that you reviewed. Is that correct?

MR. THOMPSON: That is correct. We did do interviews with personnel as well as scanned emails of the Sheriff and correspondence between him and others and we didn't see any evidence of collusion.

COMMISSIONER ANAYA: And Madam Chair, if I could, that was based on your review of documentation provided by the management staff, the Manager, Finance Director, as well as all information provided by the Sheriff, and all of his staff that you reviewed in addition to interviews. My assumption, you conducted a lot of interviews with the Sheriff's and staff as well. Based on all of that information no collusion; the Sheriff acted on his own.

MR. THOMPSON: Madam Chair, Commissioner Anaya, yes. We didn't see any evidence of collusion. It appears he acted on his own.

COMMISSIONER ANAYA: And I understand there's a legal process in place and I'm not providing any foreground for that, I'm just asking specifically based on your review. The other thing is that you said there was no other theft, and could you clarify that? You said there was no other theft from the Sheriff's Department? Meaning other – what I would assume that to be is there was no other loss of property based on your review, based on what you looked at? Is that – am I right in making that assumption?

MR. THOMPSON: Madam Chair, Commissioner Anaya, based on what we looked at the County didn't maintain inventories of all the items that they had. So for instance, some of the items that were sold on eBay were like CDs. So when they purchased CDs they didn't keep a log of here's all the CDs we have; here's ones we give to our employees; here's what's left. So if you went in there and inventoried there's no way to say how many CDs they had to begin with or how many were stolen. We could only quantify the ones that were sold on eBay that linked in to those. The cell phones were another thing that were sold on eBay and some of those cell phones were given to the Sheriff who was going to donate them somewhere and those cell phones were sold on eBay as well. But we tried to compile the best inventory, that the Sheriff's Office could come up with, given what they had but they didn't have a complete, what we would call a perpetual inventory of items coming in and coming out.

Now it sounds like from the comments from the County Manager that since our review they have put in place an inventory system to track those items.

COMMISSIONER ANAYA: And Madam Chair, if I could, I think that it's also for the public's knowledge that there are items within government structure that are classified as inventory-exempt items that are a pencil or a pen if you will, that are – there is no such thing as a perpetual, as you put it inventory list. There are other smaller items that are not items that we're going to track whether or not I gave a pencil to the Manager or not but I think that distinction needs to be made

A couple other questions. As I read the New Mexican and other papers associated with this particular item I didn't get the message that came across completely today. I didn't get the message that in fact the Sheriff's Department as the Manager just articulated and that you articulated yourselves, that the Sheriff's Department was providing you information and assistance and that this issue, had a huge impact on the community and on everybody involved, but in particular I want to speak directly to the Sheriff and all of those officers that were put under a microscope and that they didn't do anything wrong. There are things that you've discovered that other audits discover. We have audits across the board, and those audits are put in place to help us improve our operations, but that those individuals in the Sheriff's Department didn't do things wrong; there are things they can improve. And I think that didn't come across in those newspaper articles and I just want to emphasize that point because our Manager has been giving us updates based on discussions that she's had with yourselves and the department and saying there are things happening on a regular basis with our Finance Director and others to rectify those areas that we can. Would you agree with that assessment?

MS. JARAMILLO: Well, if I could, Madam Chair and Commissioners, just address that for a second, it was concerning to me also but I just would like to point out that we haven't spoken to the media at all, and in our report we do point out the positives, such as the things that Katherine had just mentioned and that management has addressed many of the items as we went along and many of these recommendations have already been put into place. The spin, if you want to call it that, that's placed on it is going to be – that's out off our control, but throughout the report you do see a difference between the two.

COMMISSIONER ANAYA: Yes. And Madam Chair, just a few more questions. Because I'm not very familiar with forensic audits but I am familiar with regular

governmental audits, within a regular audit you're provided with the audit findings, if you will, as you have them, and then there's a section in the audit that affords the entity, no matter how egregious findings may or may not be, there's usually a section that the management, in this case I would say the Manager in partnership with the rest of the County team, would provide responses to some of the items contained with the report. Is this different? Because I would assume that some of the things contained in the report – there may be items in there that have explanations associated with them. Whether or not they're accepted or not is not the point of a management response as I understand it in a regular audit process. But it is a process that allows for that. Is that not protocol or process with a forensic audit?

MR. THOMPSON: Madam Chair, Commissioner Anaya, under an audit you have certain findings that you report and management has to respond to those. They can choose not to respond but we still have the management response log. But under forensic accounting and consulting procedures, agreed upon procedures we say what we did and what we found. We've kept management in the loop so they can react and do that but it isn't part of the process where they have to report back to us what they're going to do or what actions they're going to take. It's more of we asked you to do this; what did you find?

COMMISSIONER ANAYA: Madam Chair, one last question. If the management team does that and provides you with feedback associated with items contained in this report that delineate that maybe one of the items was in error, is that something that you would respond to as a professional in the audit circles? Is that something that you would even respond back to if, on page 5, number 6, that the team said or the Sheriff said, or the Manager said, no, that's not the case. We actually have these systems in place or had this system in place. Would you respond at that point or you would have fulfilled your obligation based upon those agreed upon terms that you state earlier?

The reason I'm asking that is based on some of the feedback I've heard. There may be some items like that contained in the report.

MR. THOMPSON: Madam Chair and Commissioner Anaya, we reported to the County drafts of this report and there wasn't anything brought to our attention at that time that would conflict with these. So we did receive management feedback throughout the process.

COMMISSIONER ANAYA: Madam Chair, I guess this is a question for the Manager. In that feedback did we incorporate feedback from the Sheriff's Department specifically in that feedback?

MS. MILLER: Madam Chair, my understanding is that the Sheriff's Office and Finance Department worked with the auditors as they were finding things. I don't know whether there was – and some things probably weren't – didn't even go in here as a result of that. On each little wording, probably not because as they stated this is the type of process of this type of audit. It's not like an annual financial audit where you're cleaning up findings each year and reporting on those. It's more – and also the State Auditor has a lot to do with how these audits are released and whether they've met the contractual terms and they actually participate in writing the contract and approving that contract, and how the work is to be done and then also whether the report is also per the contract.

So I don't know whether on every individual finding they went back and forth between the Finance Division and the Sheriff's Office but I know that there was quite a bit of

dialogue with both the Finance Department and the Sheriff's staff. But Helen may be able to answer more specifically as to on each finding how much dialogue was afforded the Sheriff's Office.

COMMISSIONER ANAYA: Madam Chair, if I could, my response before your comment, and I would like to hear it, would be I think that that would be an appropriate exercise to undertake. Now that the report is put forth, it's public, that we make sure that we do go through item by item and that we afford the management team, which includes the Finance Department, which includes the Sheriff's Department, which includes yourself to do that. I think that's a good exercise. So I thank you. Anything that we can do to improve and learn and improve our protocols and processes I think is a good thing overall. But I think we may want to draft a response associated with those items.

MS. PERRAGLIO: Madam Chair and Commissioner Anaya, I would like to clarify that throughout the process the auditors worked very closely with the Finance Department directly and with the State Police and with the Office of the State Auditor. There were a lot of clarifications made with drafts of the first phase came up. However, the Sheriff's Department did not receive the full details of the final draft until last week. And so they needed the opportunity, I believe after speaking to them, to do more response to the specifics in there that Finance could not have any answer to. So I believe that the Sheriff would like to do some responses to the findings and I'm not sure that he was awarded the opportunity to do that prior to this release.

CHAIR VIGIL: Thank you. Are there any other further questions?

COMMISSIONER MAYFIELD: Madam Chair.

CHAIR VIGIL: Commissioner Mayfield, then Commissioner Stefanics.

COMMISSIONER MAYFIELD: Thank you. I also would like to see management response and Sheriff's responses to these findings. I know that we don't have to do it but I think it would be beneficial for us as policymakers to work in conjunction with Sheriff Garcia to implement any new policies that we have to. Madam Chair, Katherine, question, more so for you. In respect to any potential audit findings that the County can have from our State Auditor based on this report being released and based on our other independent auditors that work with the County, will these be put in record for our upcoming full County audit? And will these findings be something that we have to address and I believe that we definitely should try to fix and take care of any before that new audit comes into place. I don't know if this forensic audit can be used in our Countywide audit.

MS. MILLER: Madam Chair, Commissioner Mayfield, I'm sure that our current auditors that do our annual audit will review that and probably look at those issues as well. Typically, if you have any kind of internal audits or functions like that throughout the year your annual auditors take a look at those and look to see if you've actually address the issue. So they probably wouldn't go into this detail because the focus of the audit is different but I'm sure that they will look at our inventory controls and some of the things that we put in place already.

COMMISSIONER MAYFIELD: Thank you. And then on the executive summary page, the first page, the third paragraph caused me a little concern. The majority of items were not purchased with federal funds. Were there items that were purchased with

federal funds and how are we going to deal with that? How are we going to report that to the feds? Is there money that this County needs to pay back?

MS. MILLER: Madam Chair, Commissioner Mayfield, there actually were and we were awaiting results of the audit. We'll need to notify the respective grantor agencies of the theft uncovered to the federal Department of Justice \$2,119, the State Traffic Safety DOT, \$2,099, and DFA, the Law Enforcement Protection fund, \$32,888. So we will notify those agencies and we'll have to deal with that.

COMMISSIONER MAYFIELD: Madam Chair, Manager Miller, is that in addition to the \$73,000 or that's inclusive of the \$73,000?

MS. MILLER: Madam Chair, Commissioner Mayfield, that's inclusive. That's the breakdown. The rest was general fund.

COMMISSIONER MAYFIELD: Thank you. Thank you, Madam Chair.

CHAIR VIGIL: Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you, Madam Chair. This question is for our County Manager. Do we have department directors currently purchasing items that might not necessarily be clear with our procurement process?

MS. MILLER: Madam Chair, Commissioner Stefanics, all of our purchasing is centralized so the departments receive their budget and then they can prepare requisitions. Those requisitions go to the Purchasing Department and are purchased in accordance with the procurement code and all of our policies. But no purchases can be made without going through the centralized purchasing. So a department director, unless they have for instance, in the Fire Department they do have a couple procurement cards for emergencies but they can't go out and individually purchase items without going through. One of the things we did do though was reduce – they had some purchase orders with entities that we have price agreements with where they could go and get items off the price agreement and that's one of the items that we changed. We limited that down to something much smaller that they could go and actually get things if they needed supplies for instance, to repair a housing unit. The entity could go to one of our contractors that we have a contract that's been awarded and pick up things. But they had larger open purchase orders. Those have all been limited to now \$500 maximum.

COMMISSIONER STEFANICS: So Madam Chair, Katherine, you believe that there's enough checks and balances in procurement in the County?

MS. MILLER: Madam Chair, Commissioner Stefanics, that's an area that we are even putting more focus on making sure, reviewing all the procedures there. I do believe that we have quite a few controls and probably some of the staff would say we have almost too many because it takes three signatures to buy anything. We're going to need to actually go through that a little more and make sure that we've covered all areas but we've definitely tightened the controls on requisitions and purchase orders.

COMMISSIONER STEFANICS: Thank you very much.

CHAIR VIGIL: Further questions? Seeing none, Mr. Thompson, Ms. Jaramillo, thank you very much for your report and for the work you did with us. I thank our Finance Department, our Sheriff's Department, our County Manager's Department for their cooperation, and thank you for Katherine for even bringing forth the opportunity for a forensic audit. Appreciate it.

CHAIR VIGIL: We are now done, unless Ms. Miller, there's anything further you need to address? Are we done with County Manager?

MS. MILLER: Madam Chair, that's it.

XII. D. Matters From the County Attorney

1. Executive Session

a. Discussion of Pending or Threatened Litigation

b. Limited Personnel Issues

MR. ROSS: Madam Chair, we need a closed executive session to discuss pending or threatened litigation. It should take an hour.

CHAIR VIGIL: Is that the only item?

COMMISSIONER STEFANICS: I'd like to request personnel as well.

CHAIR VIGIL: Okay. Any other item? Do I have a motion?

COMMISSIONER STEFANICS: Madam Chair, I move that we go into executive session where we will discuss pending or threatened litigation as well as limited personnel issues.

CHAIR VIGIL: Is there a second?

COMMISSIONER STEFANICS: Second.

The motion passed by unanimous [5-0] roll call vote with Commissioners Anaya, Holian, Mayfield, Stefanics and Vigil all voting in the affirmative.

[The Commission met in closed session from 4:35 to 6:35.]

CHAIR VIGIL: Welcome everyone. Welcome to the July 12th meeting of the Board of County Commission. We just are coming back from executive session and we need to come out of that.

COMMISSIONER HOLIAN: Madam Chair, I move we come out of executive session where we discussed pending or threatened litigation as well as limited personnel issues.

COMMISSIONER STEFANICS: Second.

CHAIR VIGIL: All of those in favor signify by saying "aye."

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

XIII. PUBLIC HEARINGS

A. Growth Management Department

1. **CDRC Case # MP/PDP 09-5300: UDV Temple. Centro Espirita Beneficente União do Vegetal (UDV Temple), Applicant, James Siebert, Agent, request Master Plan and Preliminary Development Plan approval for a Community Service Facility (religious institution) as defined in Article III, Section 7 of the Land Development Code (the Code), as amended. The two-phase proposal consists of a 4,660 square foot enclosed structure to be used as a temple with a 540 square foot covered portal and a 1,900 square foot roof and slab to be enclosed for inclusion to the temple as part of a subsequent phase, a 706 square foot yurt, a 225 square foot utility room, and a 225 square foot storage building on 2.52 acres. The property is located at the southwest corner of the intersection of Arroyo Hondo Road (CR58) and Brass Horse Road (CR 58C) at 5 Brass Horse Road, within Section 13, Township 16 North, Range 9 East (Commission District 4) [Case packet on file with County Land Use Department]**

CHAIR VIGIL: We are now under the subject of public hearings. The first public hearing is CDRC Case #MP/PDP 09-5300, UDV Temple with the same caption as the previous. Does everybody have their packet of information with regard to this? If so we're going to go on with this. We were on a place where we had close to six hours of hearings on this case. There was one gentleman at the end of the hearing who came to us and said he did want to say something and he did come earlier in the meeting tonight and wanted to speak under matters from the public. Is he here? Okay, please step forward. I think we – let me clarify for you sir that I did say to you that you could speak, however, I'm going to have to create a limitation because the opportunity we gave you is to supplement the record so we do have your testimony supplemented. You are welcome to underscore and highlight that but limited because you are already part of the record. Thank you, please –

CHRIS GRAESER: Madam Chair, if I could address this aspect briefly. I would like to make sure that we do have the opportunity to both rebut and cross-examine anything this witness might say.

CHAIR VIGIL: You have that, Chris, okay, but I'll have to create a limitation to that too. So long as it goes just to the testimony that he's going to give.

MR. GRAESER: Madam Chair, it will certainly address just the testimony. The problem is, at least based on the letter that was submitted, almost the entirety of that letter has nothing to do with land use. It does pose some very serious, very significant allegations against UDV that the UDV does need to be able to respond to.

CHAIR VIGIL: And you'll have that opportunity.

MR. GRAESER: Thank you.

CHAIR VIGIL: Thank you. Please state your name and come forward.

[Duly sworn, Elijah Nash testified as follows]

ELIJAH NASH: Elijah Nash, 544 ½ Franklin Avenue.

CHAIR VIGIL: Okay, Elijah, as I've informed you we do have your

testimony as part of the record and I think that a lot of us in the community and in this Commission have been exposed to your story. If you would just specifically highlight it for us. You will be asked some questions from those proponents of the project; okay?

MR. NASH: Okay. Do you want me to speak about what I came here to speak about or are you saying that I should sort of summarize that?

CHAIR VIGIL: Summarize it.

MR. NASH: I don't – I mean I understand that you have already have the information, however, I don't really know how I can summarize this.

CHAIR VIGIL: You don't have to give a much detail. You could just highlight it.

MR. NASH: Okay. What I wanted to address tonight is not about land use. It's more of the social issue of the possible effects the practices the UDV Church may have. I believe this is relevant due to the status of a church as a community service facility.

My little brother, Isaiah, committed suicide last summer by jumping off the Taos Gorge Bridge. It's been sort of a process with myself and my family to try to understand what took him to the point that suicide was the only option. He was 21 years old. He was an athlete. He played soccer. He was intelligent. He did very well in school. He was very social and very well liked. He made friends easily and kept them for a long time. He also had a family with three brothers that loved him and supported him through everything.

Isaiah was introduced to the UDV in 2008 and he became very absorbed and dedicated to their practices and teachings. He believed that the UDV was helping him to progress spiritually. We had always been very close. In many ways he was my best friend. He changed a lot during that time. He was more withdrawn and cautious not his usual outgoing, friendly and helpful self. On several occasions I voiced my concern for him and the effects of how seriously he was taking these practices and the consumption of this mind-altering substance but he would just dismiss it.

Last June I was living in South America finishing out a trip that he and I had started together before splitting paths when he went to Brazil to spend time with the UDV community there. I began to receive frantic emails from my family regarding Isaiah's well-being. In two weeks I was back in New Mexico leaving behind a business that I am still a partner in. I learned that my little brother had been put on medication due to a condition that was described as "psychotic breaks." Some of the time he was fine but not his old self, physically fine and then seconds later he could be completely uncontrollable.

The beginning of July he disappeared from my mom's house and it wasn't until two weeks later that raptors found his body under the Gorge Bridge.

I knew Isaiah his entire life. I don't believe that his development of mental problems that led to his suicide occurring around the same time as his involvement with such a little known church and the use of a powerful mind-altering tea are just a coincidence. From what I've learned about the practices of the church, it is my opinion, that it's spiritual leaders administering a very powerful substance they are very irresponsible. I personally don't think that they should be allowed to administer such a substance based on how carelessly they treated – however, that isn't what we are hear to discuss and therefore I think that denying them the ability to build a church they are proposing is the only way to limit their effect in the community so no other older brother has to experience this.

CHAIR VIGIL: Thank you very much.

MR. NASH: Thank you for your time.

CHAIR VIGIL: Chris, is there any questions that you have of this witness?

MR. GRAESER: Madam Chair, Ms. Hollander had just a few questions for him.

CHAIR VIGIL: Okay. I would just remind everyone that we are here for a land use case and not a social case.

NANCY HOLLANDER: Mr. Nash, I only have a few questions for you.

CHAIR VIGIL: I understand – I just got word that we do have some experts on the line. Before I have you cross or ask questions – are they available on the line? Are the experts available on this line for this hearing? Can you hear me? Hello. Could you all identify who you are so that you can be a part of the record, please.

STEVEN BARKER: Dr. Steve Barker.

CHAIR VIGIL: I'm sorry, you'll have to speak louder.

DR. BARKER: Dr. Steven Barker, Louisiana State –

CHAIR VIGIL: Dr. Stephen?

DR. BARKER: Barker.

CHAIR VIGIL: Okay. Next one please.

CHARLES GROB: I'm [inaudible] Charles Grob. I'm a professor of psychiatry and pediatrics at Harbor UCLA Medical Center.

CHAIR VIGIL: Next one, please.

DAVID NICHOLS: My name is David Nichols. I am a professor of medicine chemistry and molecular pharmacology at Purdue University.

CHAIR VIGIL: Okay, and I think we have another one? Is there any only three? Is there a fourth participant out there? Okay. Gentleman, we've started the hearing and we've had testimony from one witness who requested that he be heard and he's going to be cross-examined. Thank you very much. Please proceed.

MS. HOLLANDER: Thank you, Madam Chairman. Mr. Nash, were you aware that it had been over six weeks since your brother drank any of the hoasca tea before he died?

MR. NASH: If it was six weeks, I'm not really sure about that. You would probably have more detailed information as to that as I would.

MS. HOLLANDER: Let me ask you this: Were you aware that your family took your brother to see a guru in California after he left the UDV and before he died; were you aware of that?

MR. NASH: Yes, I was.

MS. HOLLANDER: And you're aware that it was at that time that he had what was referred to as a psychotic break and then ended up in the emergency room?

MR. NASH: I actually believe it was before they went to California that it had been determined that he was having psychotic breaks.

MS. HOLLANDER: He had been in the emergency room after he had been to California; isn't that right?

MR. NASH: I believe so, yes.

MS. HOLLANDER: And then he saw a psychiatrist here in Santa Fe, correct?

MR. NASH: Probably. I mean from a parent's perspective what are you going to do when your child starts going through –

MS. HOLLANDER: I am not saying that that was bad thing. I'm just asking you if you were aware of that.

MR. NASH: And I will answer your question to the best of my ability.

MS. HOLLANDER: Were you aware that he saw a psychiatrist after that and who put him on a medicine called Zyprexa?

[Background disturbance]

MR. NASH: [Inaudible]

MS. HOLLANDER: And do you know what medicines he was on when he was in emergency room in California?

MR. NASH: No.

MS. HOLLANDER: I don't have anything else. I would like Dr. Grob to be able to respond at this time. This is relevant specifically to this gentleman's testimony.

CHAIR VIGIL: Dr. Grob, a couple of statements have been requested of you based on this testimony. Can you hear me?

DR. GROB: Yes. Can you hear me?

CHAIR VIGIL: Yes, please proceed. And could you just speak specifically to the testimony.

DR. GROB: Okay. Let me first mention that I studied ayahuasca specifically within the context of [inaudible] for 20 years and I have never before heard an allegation connecting a suicide with a UDV ceremony or UDV member. I just want to put that out on the record.

I also want to state that although I understand the family's concern and obviously consider it tragic for this family. There are, I believe, quite a number of extenuating circumstances which put into question the role of ayahuasca as the causative agent for this. So it's important to keep in mind that Isaiah was apparently from what I've been told gone through a great deal of emotional turbulence for some time before this event occurred. He had recently broken up with his girlfriend and appeared from what I was told to becoming increasingly socially isolative. He was also under a great deal of stress as a pre-medical student in college taking an excessive course load including seven courses from the previous semester which is an extremely high course load. Furthermore, Isaiah, from what I was told, was reported to have serious difficulties within his family. His parents were divorced when he was 11 years old and he reportedly had a contentious relationship with his father who has been described to me as angry and verbally abusive. The possibility of past domestic violence in the home has also been raised. All of these [inaudible] factors may have contributed to Isaiah's vulnerability and psychological decompensation in the spring and summer of 2010.

While minimal information is available concerning Isaiah's prior functioning and past history of mental illness, it is likely that he was a very sensitive young man prone to experiencing depressive moods and difficulties communicating his feelings. It is not known if Isaiah previously received psychiatric treatment and/or psychotherapy. After he began to demonstrate signs of psychological disturbance in the spring of 2010 he apparently was taken to see psychiatrist in Santa Fe, Dr. Jefferson Davis, who prescribed the anti-psychotic

Zyprexa at an unknown dose and for an unknown duration of time. It is also not currently known what Dr. Davis' working diagnosis was or whether – and also it is not known whether Isaiah was provided ancillary mental health treatments, particularly psychotherapy. It is also unknown to what degree that Isaiah was compliant with the medication regimen although the postmortem toxicology tests conducted by the coroner did report the presence of Zyprexa. Whether Zyprexa was in fact the appropriate treatment for Isaiah's condition is not clear given the relative lack of information provided regarding past history as well as family psychiatric history. Certainly, given the degree of emotional instability displayed by Isaiah from May to June 2010 it should be strongly advised that he be provided with supportive psychotherapy either by Dr. Davis himself or someone he had referred him to.

Receiving the Zyprexa without any additional psychological treatment provided would not have been an appropriate level of care. I should also mention that there are a couple of discussions in the literature now of the potential of Zyprexa, in and of itself, to induce suicidal ideation and suicidal behavior. Dr. David Healy a very prominent British psychiatrist and psychopharmacologist had gone on the record by saying that Zyprexa has been associated with more suicides than any other antipsychotic.

Let me mention also –

CHAIR VIGIL: Doctor, I think you've submitted enough testimony with regard to this and this Commission is not equipped nor are we required to make an evaluation with regard to a diagnosis here. I appreciate your testimony and it has become part of the record and we need to move on at this point. Thank you very much.

DR. GROB: Thank you.

CHAIR VIGIL: With that, thank you for your testimony. This will end the public hearing, finally, has it has been – [Steve Tinker approaches the podium] This is getting ridiculous. I'm not taking any more testimony. We've had close to six, six and a half hours, of testimony in this case. We need to move forward. This Commission will make the decision on this has to have questions answered also. So we need to move forward with regard to this.

STEVE TINKLER: [away from microphone] – I just want to state – they put on a [inaudible] and I just want to ask a couple of questions, that's all.

CHAIR VIGIL: You can have two questions.

MR. TINKLER: I don't think I need more than that – let me ask a few questions.

Dr. Grob, are you on the line? Dr. Grob, are you on the line?

DR. GROB: Yes.

MR. TINKLER: Can you hear me?

DR. GROB: Yes, can you hear me?

MR. TINKLER: Yes. Okay. Did you ever meet Isaiah?

DR. GROB: No.

MR. TINKLER: You never examined him?

DR. GROB: No.

MR. TINKLER: So you don't have any personal knowledge about anything about Isaiah do you?

DR. GROB: Only what I –

MR. TINKLER: -- what you read. Okay. That's all I have.

CHAIR VIGIL: Thank you very much. This case is closed now. This is a difficult case that you have a Commission that needs to make a difficult decision on. Would you please allow this process to move forward? Thank you very much for your testimony.

At this point we're going to continue hearing from our objective review of the case who are the Geoscience folks. And I think you have the floor at this point in time. Would you please state your name and I think you were identified at the previous hearing. Shelley, do you have a report for us.

MS. COBAU: Madam Chair, I won't reread the staff report. I would like to point out that there were several minor corrections and minor changes made in the conditions. Those are in the current packet. I can note you or point you to those conditions changes if you'd like or, Madam Chair, I could just enter them into the record. It's your choice.

CHAIR VIGIL: What we normally do, Shelley, is we enter it into the record.

MS. COBAU: That's correct, Madam Chair.

CHAIR VIGIL: So it will be considered entered into the record, thank you. [Exhibit 5: Staff conditions] But please identify the page just for our reference.

MS. COBAU: It's on pages 12 and 13 of the staff report, conditions 4, 7.d. and 7.g. have changed in minor ways.

CHAIR VIGIL: Thank you.

COMMISSIONER MAYFIELD: Madam Chair, Shelley, would you repeat that please.

MS. COBAU: It's condition 4, there's a change, condition 7.d. and 7.g.

CHAIR VIGIL: Please proceed, state your name.

JAY LAZARUS: Chair and Commissioners, my name is Jay Lazarus. I am president and senior geohydrologist of Glorieta Geoscience. With me tonight I have Dr. Elke Naumburg and Meghan Hodgins of our staff. The three of us will take a very little bit of your time in our presentation tonight. I'm going to start out by giving all three of us a very brief description of our qualifications and then get right into our testimony so as not to bog things down.

Glorieta Geoscience –

MR. ROSS: Madam Chair, we should probably swear these folks in.

CHAIR VIGIL: Please stand up and be sworn.

[The oath was administered to Jay Lazarus, Elke Naumburg and Meghan Hodgins]

MR. LAZARUS: Madam Chair, Commission, Glorieta Geoscience was retained by the County to evaluate whether or not the applicant's water and wastewater submittals met the requirements of the County Code. We've been in business here in Santa Fe for 32 years and have offices here, Taos and Roswell. We want to make it very clear to the Commission, staff and everybody in the room that we are neither proponents nor opponents of the project. Whether this project gets approved or denied really doesn't matter to us professionally.

We're going to try and speak English as much as we can. Every once in awhile we lapse into one or two technical terms and we'll try and translate that into as simple of a language as possible.

As I said before, we were retained to evaluate whether or not they meet the Code requirements and it is our professional opinion that water and wastewater requirements meet the – submitted by the applicant met by the applicant.

Dr. Elke Naumburg is an eco-hydrologist with Glorieta Geoscience. She has a Ph.D. in plant physiology from Duke University School of the Environment. She has been a visiting professor and post-doctoral research assistant at UNLV. She has experience in both academia and environmental consulting. Dr. Naumburg is author and co-authored 15 peer review scientific papers including evaluating the nitrogen cycle, including chemical analysis of plant tissues for nutritional quality and secondary compounds.

Ms. Meghan Hodgins is our senior modeler and geologist. She has both a bachelor's and masters in geology. She has authored or co-authored 12 peer reviews scientific papers in the area of geology, hydrology, groundwater modeling and fractured rock aquifers. She is currently the project manager for the Eldorado area water and sanitation district for hydrology, groundwater modeling, and water rights. She is also the project manager for Nye County Nevada Water Resources study and the development of a groundwater flow model in conjunction with the US Geological Survey used in modeling radio active transport from the Nevada Test Site and Yucca Mountain. Ms. Hodgins has also prepared dozens of approved Santa Fe County geohydrology reports.

Like I said, I'm president and senior hydrologist of Glorieta Geo. I have more than 35 years consulting experience in geology, hydrology, water quality, water rights, and geomorphology. I'm dating myself, but I was the first County hydrologist under the Code from 1981 to 1986. And I'm going to date Judy [sic] because she's been swearing me in for all of those years.

I've authored or co-authored and reviewed scores of Santa Fe County approved geohydrology reports and have more than 25 peer-reviewed publications in geology, hydrology, water quality, water rights, and water supply. In 2011 alone this year I've published a paper on emerging contaminants in surface water and groundwater in *Progressive Dairyman*. I have an abstract accepted for a conference next month in Copenhagen on sources in control of emerging contaminants at Dairy. I am an invited special session chair, organizer and presenter at the American Water Resource Association special session on applications of aqueous and isotopes geochemistry to groundwater investigations in New Mexico this coming November. And last Thursday I was an invited paper to a general session of more than 400 people from the Ground Water Protection Council in Atlanta this September and I'm also collaborating with Los Alamos National Laboratory on a forensic isotopes study where we're using stable isotopes and geochemistry to source trap nitrogen compounds from dairy manures and chemical fertilizers. We have good understanding of the chemistry of hoasca and the treatment.

The first thing I'm going to do is to turn it over to Dr. Naumburg to talk about hoasca. I'll discuss some of the geologic and hydrologic parameters after that and Ms. Hodgins will finish with Code compliance and we hope to wrap this all up in less than 20 minutes.

CHAIR VIGIL: Thank you.

[Previously sworn Elke Naumburg testified as follows]

ELKE NAUMBURG: Madam Chair, Commissioners, I am going to briefly talk about whether the septic system of the applicant's poses a threat to the groundwater

quality and subsequently the neighbors' wells. The only relevant information with respect to the question is what are the compounds that are being deposited into the septic system due through the consumption of hoasca and what are the concentrations of these. References to estrogens in rivers, mad cow disease and other things are really not relevant to this case because these compounds are completely different from what we are talking about with hoasca and they act in the body completely differently. So let's look at an event where we say there 100 participants are consuming hoasca and let us examine what ends up in the septic system and at what concentration.

One thing to note is that the effects of hoasca don't last forever because the body actually begins to metabolize the active ingredients and metabolism essentially means breaking down the active ingredients within the body and then that gets excreted in the urine and then it ends up in the septic system. If we look then that at these compounds and their concentration relative to the tea that was consumed, we're talking less than 1 percent of the original concentration in the tea. So much reduced goes into the septic system. If we then also take into consideration that flushing of toilets and other water consumptions during the use of this facility ends up in the septic system, we're down to concentrations that are less than 0.02 percent of the original in the tea.

Based on the available information then this concentration in the applicant's septic system is much too low to cause any affect on groundwater quality in the area let alone in the neighbors' wells. In addition, because the applicant's experts have mentioned that a light damages or breakdowns one of the active ingredients we have recommended to add a UV system to the septic system, which again would further decrease the amount of active ingredients that would ever reach the groundwater table if it were to reach the groundwater table that is. So, again, the body metabolizes, breakdowns these active ingredients, they reach the septic system in very low concentration that pose no threat to the groundwater quality. Thank you.

CHAIR VIGIL: Thank you. Next.

MR. LAZARUS: I'm going to address the geology, hydrology and some of the comments made on drilling during the last hearing. I heard testimony from both the applicant's consultant and the opponents' consultant. I'm normally not in the business of defending Steve Finch's work but this is where we're at tonight.

In terms of the presentations that were made last month we had not seen the opponents' presentation submittals before the June hearing. I would like to point out that the opponent used one consultant to write a written review of the geohydrology report and then they used another consultant to present at the hearing. So a little different way for us to sees reviews done by two people in two very different ways. The opponents' consultant mischaracterized our report and presented contradictory testimony in both report and presentation.

The one thing that they did not contest at all is the ability of the well to produce the amount of water required for the project. So we believe that's all agreed on. There is sufficient water available, wet water available in the well for the project.

There was a lot of discussion about drilling, air rotary and mud rotary in the last meeting. We've drilled extensively in this area. I don't know how many hundreds of thousands of feet all over Santa Fe County and all over New Mexico using a wide variety of

drilling techniques. And in terms of drilling – I was a driller in graduate school and I hold two patents on a specialized environmental drill rig so we've got quite a bit of drilling experience under our belt. I hang out with drillers, okay. This is a chrome plated 4.5-inch tricone drill bit. What happens and this is very important, what happens is – and I don't want to cut through this podium here, but the bit will rotate. Each one of these cones rotates and you can see the teeth on the bit. These cut the rock. When the rock is fractured the teeth get snagged and the bit jumps around. When the bit jumps around the whole drill rig is jumping around.

Prior to us being retained by the County I was helping Craig Smith one of the geologists in our office move furniture and we happened to drive by UDV site while it was being drilled so we pulled over. Whenever we see a drill rig we pull over and we visit with the driller and see what's going on, see what they're drilling in and see if they have any problems, find out what kind of bit they're drilling with and things like that. While we were there they were around 230 to 235 feet. The bit was skipping very significantly indicating the formation was very severely fractured and the cuttings were oxidized and coming out in chunks. So what does that mean in English? They're oxidized, they're rusted. So if you see rust on the actual surface of the chips coming out of the hole, that means there is water flowing through it. And if it weren't fractured, the rock would be coming out in a powder form just like flour you would use to make a tortilla or something like that.

The County Code does not require any specific type of drilling method for a well for a subdivision or for water availability report. There was a lot of discussion on the drilling rate and the degree of fracturing or lack of fracturing, and I want to make it perfectly clear to everyone in the room for water well drilling any drilling rate greater than 20 feet per hour is fast. At the end of the day a driller will have 150 to 200 feet of a hole done whether they're drilling a 22, 23 or 24 feet an hour is irrelevant. Your drilling rate depends on what's going on in your bore hole, what we call down-hole conditions, bit wear and pressure. So if you look at this bit, these teeth are all in really good shape and what we're looking at here is that this kind of bit that will be a bigger diameter than this, pumping 20,000 pounds of pressure right at the tip of the bit here to cut the rock. Now when drillers have problems they'll back off a little bit if there's lost circulations zones or they're worried about the hole caving in, they'll back off and the drilling rate will go down a little bit. In addition, the driller is making sure that he doesn't lose his tools in the hole by the hole caving in on him.

So the whole discussion about drilling rates when they're all greater than 20 feet per hour that you heard last time is totally irrelevant for this discussion. There was a lot of testimony about the saturated thickness and specific yield as far as water availability with the County Code. The interesting thing is that the geologist's field notes were included in the hydrology report and they were either ignored or not noticed by the opponent's consultant.

You can see this is hollow here and when you drill you have a long line of drill steel that's hollow in the center and we eject mud or air under pressure. It comes out in holes through the bottom of this bit and then it pulls the cuttings out so that it keeps the hole clean. You can see that drilling is not collapsing in on you. It doesn't matter whether you're using air or mud it's the same concept applied to it.

What we did was to look at the geologist's field notes and from 180 feet to 278 feet the geologist's field notes specifically note three things that the opponent's consultant did not

bring up to you. There was lost circulation. There was bit skipping and the cuttings were oxidized. Let me address the three of these each briefly. Lost circulation: I'm injecting mud or air through the hollow portion of the drill steel and this drill bit and I'm rotating and cutting at the same time. In a good situation for the driller cuttings are being blown up are floated up with the mud out of the hole and onto the surface. When you have lost circulation which is noted in the geologist's field logs that means that the cuttings aren't coming back to the surface and they're going back out into the formation. In our lingo that's called drilling blind. We don't know what we're in and there's a chance that the formation make collapse in on the hold. The driller could lose his tool string. So when we have a lost circulation zone we know it's very permeable and in this case very, very highly fractured because it's taking water. The driller is going to have to remix mud, go back and fill his water truck up again, but we know it's very highly fractured in these zones because of the circulation. The bit is skipping around like this means we're in a fractured zone and it's oxidized as I said before with water flowing through the whole thing. So when you look at saturated thickness and specifically yield as part of the components of the water availability formula of the County Code you look at saturated thickness from the top of the producing zone, the total depth of the well and that's described as fractured in the driller's log. That's what all of us use no matter what side we're on. And I'm not on any side of this whether there is Code compliance or not. For the highly fractured zones the specific yield is a lot higher than it normally would be in the mountain zone so based on the driller's log and the geologist's field notes we evaluated the saturated thickness and if you look at what Shelley handed out – if you look here the two red lines, what the applicant's hydrologist put in for a very high specific yield, if you look here on the two blue lines here to the right on the UDV well, we reduced that significantly to 98 feet based on our interpretation of the cuttings and being on site and what the driller and the geologist were reporting. So, therefore, the specific yield, the high specific yield was supported by what was going on during drilling and it's very clear to us.

In terms of saturated thickness, the Code requires that you have a certain amount of feet of producing aquifer in the well to plug into the water availability calculation. We've cut this back here, we cut back the saturated thickness of the higher producing zone and the saturated thickness is from 110 feet all the way down to 320 feet. We evaluated very carefully and we stand behind our water availability calculations.

In terms of wastewater analysis, in terms of septic system, UDV is proposing to install an advanced treatment septic system with the ultraviolet treatment that Dr. Naumburg talked about and it should be after the septic tank before it goes into the leach field. During the back and forth discussions between the County, neighbors and the applicant, we estimated through a list of how many of their homes were equipped with or had installed advanced treatment septic systems and we did not get a response from them at all. So we had to go with the operating theory that none of the neighbors had septic systems with advanced treatment systems like the UDV. So most septic systems in the area are without advanced treatment so UDV's advanced treatment system is going to produce higher quality effluent and cleaner water than the rest of the neighbors septic tanks which will be discharging nitrogen compounds, naturally occurring and artificial hormones, antibiotics and expired medicines as we call emcons or emerging contaminants. Over here the two pictures on the left on the center came from the opponent's consultant. This first one in February, he draws the UDV

septic tank about 50 feet into the granite with very highly fractured granite and fractured at all different angles beneath it showing a direct saturated conduit to the nearest neighbors' wells.

Then for the hearing last month he shows a completely different cross-section. So what's going on the left we're showing an unconfined aquifer which is his scenario in February and then to the presentation to the Commission which we hadn't seen before he shows a confined aquifer that would inhibit groundwater flow. So from our perspective they can't have it both ways. They can't have it both ways. They either have to have a confined aquifer or a unconfined aquifer but they can't be presenting evidence that conflicts with any of their own reports and it is hard for us to understand exactly what they're trying to say.

Once again it is our professional opinion the submittals of the applicant meet the requirements of the Code for wastewater. I'm going to turn it over to Ms. Hodgins to discuss the water supply and 100-year water availability. Thank you.

[Previously sworn, Meghan Hodgins testified as follows]

MEGHAN HODGINS: Good evening. I'll be addressing the Santa Fe County Land Development Code compliance for the applicant's hydrologic report. First I'd like to talk about the water budget. The applicant presented a water budget of 0.17 acre-feet per year. The applicant then later metered water use for five months at their temporary facility that they're recently using and the five-month metering extrapolated to a full year is equal to 0.10 acre-feet per year which is less than their water budget. They also compared water use at six other places of worship in Santa Fe which were metered by Sangre de Cristo and each of these six places showed an annual use of a .25 acre-foot or less for years 2007 and 2008 which supports again their lower water budget.

The applicant has agreed to proposed conditions of approval requiring that their well be metered and the meter readings posted to a website and reported to the County and to be made public for anyone to review.

The County Code does not require a geohydrology report for developing an existing lot with a water budget of .25 acre-foot or less. The applicant did, however, submit a geohydrology report due to the concerns of the opponents and GGI reviewed that for compliance with the County Code. Table 5 of GGI's review which was submitted to the County June 6th has a checklist of items required by the County Code for a geohydrology report. This checklist follows Code section 6.4 and 6.5 Article 7. From this compliance checklist the opponents made concern are first the water availability, the 100-year water availability as determined by the saturated thickness and specific yield of the aquifer. Jay has already addressed this and described our analysis of the thickness and our justification for applying an increase specific yield value which is based on site specific well and aquifer data.

The second concern from the opponents is the 100-year schedule of effects of the applicants well from existing off site pumping and proposed onsite water uses. This schedules of effects is determined by running a groundwater model that includes pumping amounts from all offsite wells within one mile of the UDV well, plus the onsite water use as proposed. The applicant conducted the groundwater model analysis but did not include some of the wells within one mile to the northeast of the UDV site. They also included a recharge cell based on their analysis of the pumping test results.

In response to the testimony by the opponent's experts, GGI modified and reran the applicant's model. [Exhibits 6 & 7] We modified it by removing the recharge cell, by

adding pumping from El Gancho's well at 15.5 acre-feet per year, and Harry's Roadhouse at 3 acre-feet per year which are the water rights amounts for those wells which are listed by the State Engineer. We also increased the size of the model to follow modeling convention. The results of GGI's model modifications shows that there's still sufficient water column in the UDV well to support the 100 years of pumping from the onsite and offsite wells within [inaudible] mile and this meets with Code compliance.

We reviewed all of the applicant's geohydrology submittals and the neighbors' submittals and find that the geohydrology report complies with Code requirements and we stand by our conclusions and recommendations that we submitted to the County on June 6th.

CHAIR VIGIL: Thank you very much.

KARL SOMMER: Madam Chair, [away from microphone] and we need to ask a couple of questions.

CHAIR VIGIL: You can ask a couple of questions, Karl. You'll probably want to get to the speaker and then whoever you're going to ask questions of needs to be there with you so they can be on the record. Who are you going to be asking questions of?

MR. SOMMER: I will be asking questions very briefly of Mr. Lazarus, just some clarification and I think Mr. Tinker would like to ask questions of Dr. Naumburg.

CHAIR VIGIL: Okay, before I let you proceed let me just say for the record that Dr. Robert Eaton has joined us on the telephone. Dr. Eaton could you identify that you're there. Hello, Dr. Robert Eaton.

ROBERT EATON: Yes, I'm here.

CHAIR VIGIL: Thank you very much. We just wanted to make sure that you were there.

DR. EATON: Yes, we are.

CHAIR VIGIL: Thank you.

MR. SOMMER: I've just got a couple of questions for Mr. Lazarus and if I could get him to come up here. He pointed to the --

DR. EATON: Hello.

CHAIR VIGIL: You both need to be on the record so you'll need to ask the questions and hand him the mike. Or perhaps you could bring the display board over here.

MR. SOMMER: Actually, if I just go with Mr. Lazarus over here it'll take two seconds -- if I don't fall down.

You had indicated that Mustafa Chudnoff had come --

COMMISSIONER STEFANICS: Can you speak more clearly? We can't hear you.

MR. SOMMER: I'm sorry. Is this better? You had indicated that he made a representation in February and then another one at the hearing that was different, correct?

MR. LAZARUS: Correct.

MR. SOMMER: And the difference -- what happened between those two time periods is that there was a well drilled and we had actual information on this particular well; correct?

MR. LAZARUS: That's not quite the whole story, counselor --

MR. SOMMER: -- hold on. I'm just asking you if --

MR. LAZARUS: -- I would like to be able to explain to the Commission,

counselor, that if you notice here this is Mr. Chudnoff's first picture, first cross-section just shows granite all the way to the surface. There are published geologic maps that we all use that have been out for years that show that there are ancha formation and alluvial on top of the granite that is shown here. Mr. Chudnoff presented this one where there is no materials – no alluvium or basin fill or ancha onto of the granite which is a very inaccurate representation of the aquifer system and it's available in published literature for a long time.

CHAIR VIGIL: Okay, next question, Karl.

MR. SOMMER: My question is is the representation here from a well information and the geology that you had just described just now is accurate; correct?

MR. LAZARUS: Well, all I know is that Mr. Chudnoff has a lot of question marks here on the context so the accuracy here by himself with the question marks here is questioning the accuracy of that material, that content.

MR. SOMMER: What I'm saying is what he presented at the hearing is accurate to the geology; is it not?

MR. LAZARUS: No.

MR. SOMMER: You disagree then.

MR. LAZARUS: I disagree.

MR. SOMMER: So then the only other question I have for you is this whole thing about water availability on this particular well boils down to the specific yield that you gave to the well at .15 for that 98 feet. The rest of it was at .02, correct?

MR. LAZARUS: Correct.

MR. SOMMER: And so if it –

CHAIR VIGIL: Speak into the mike, Karl.

MR. SOMMER: If it was all at .02 you would agree that there would not be demonstrated compliance with the Code.

MR. LAZARUS: It would be significantly lower but we never ran the number.

MR. SOMMER: But we could run that number now, couldn't we? Just by running .02 instead of .15 at 98 feet.

MR. LAZARUS: I think your consultant has already done that.

MR. SOMMER: Right. Okay, so you agree then with the number, the calculation?

MR. LAZARUS: No. I agree that he ran the calculation. I don't agree with his input.

MR. SOMMER: I understand that but you agree his math is right at .02.

MR. LAZARUS: I didn't check his math.

MR. SOMMER: I have no further statements.

CHAIR VIGIL: Did you want to make a statement?

MR. SOMMER: I just have one thing I'd like to submit to the record it's a geohydro report done by Mr. Lazarus in 1989 for Arroyo Hondo Vistas and we'll make a copy for the record, which is adjacent to this property at which he gave a specific yield out of three well taps at .02. And we'll make that part of the record.

CHAIR VIGIL: Chris.

MR. GRAESER: Madam Chair, I again object to any new materials being put

in the record that weren't provided by our May 20 deadline.

CHAIR VIGIL: Okay, noted for the record. Is somebody else wanting to assure that this hearing should go on for ever. You may go ahead and address us.

MR. TINKLER: We just have a right to examine the witnesses, that's all.

CHAIR VIGIL: What is that you would like at this point?

MR. TINKLER: To examine Dr. Naumburg.

CHAIR VIGIL: How many questions do you have?

MR. TINKLER: Not many.

CHAIR VIGIL: I'm looking for an amount?

MR. TINKLER: It depends on her answers but not many.

CHAIR VIGIL: If I need to limit you I will. We have a long hearing ahead of us and we still have not gotten to Commission questions. Please ask your question.

MR. TINKLER: Dr. Naumburg, you cited quite a few concentrations that you felt that the hoasca tea produced and then were reduced to lower concentrations; correct?

MS. NAUMBURG: Correct.

MR. TINKLER: And what was the database for that? Where did you get the studies to come up with those numbers?

MS. NAUMBURG: They're published studies that have been submitted to the record.

MR. TINKLER: Are you talking about Dr. Steven Barker's study?

MS. NAUMBURG: No, Mr. McElhaney Study.

MR. TINKLER: Okay, Mr. McElhaney's study. And you did note in his study that the compounds did not break down in his study, the harmaline.

MS. NAUMBURG: It did get chemically altered and excreted in the urine.

MR. TINKLER: But no one, have you ever seen a single study where they actually studied the harmaline and how it breaks down in the body.

MS. NAUMBURG: That really doesn't matter because we're concerned about what goes in the septic system not how the body processes it. So if we look at the urine we know what goes into the septic system and these numbers were published in that study.

MR. TINKLER: The numbers were not of the urine though. They were the numbers of the DMT is the only urine studies you have; isn't it?

MS. NAUMBURG: Not correct.

MR. TINKLER: Did you read Dr. Barker's study?

MS. NAUMBURG: Which one?

MR. TINKLER: That last one, the latest one in 2010.

MS. NAUMBURG: The McElhaney study, is that what we're talking –

MR. TINKLER: Oh, is that his name? I thought it was Dr. Barker's study.

MS. NAUMBURG: We refer to it by the first author which is McElhaney.

MR. TINKLER: Okay, so you're talking about that study?

MS. NAUMBURG: Correct.

MR. TINKLER: In that study didn't he say that he didn't really study the harmaline?

MS. NAUMBURG: They looked in the urine at harmaline and haramine metabolizes. They were studied in that study. The concentrations are listed in a table.

MR. TINKLER: But they weren't studied to the same degree as the DMT were they?

MS. NAUMBURG: No true. They were studied the exact same way. Urine was analyzed post consumption.

MR. TINKLER: Okay.

MS. NAUMBURG: After several hours, several times.

MR. TINKLER: And is that the only study that you're relying on?

MS. NAUMBURG: Yes.

MR. TINKLER: Okay. And how many subjects were in that study?

MS. NAUMBURG: Three.

MR. TINKLER: Okay, is that a scientific study, three people?

MS. NAUMBURG: Yes.

MR. TINKLER: And who says? Is that really how your 50 papers are you used three people in your studies?

MS. NAUMBURG: I did not study people.

MR. TINKLER: Oh you don't.

CHAIR VIGIL: I'm going to discontinue this line of questioning. If you want to discredit a witness you take it through a court of law. This is information that we're trying to gather to make decisions and you are finished, sir, with your questions.

From this point forward I am going to allow the Commission to ask their questions. I think – is there anything else that Geoscience needs to add to their report.

From this point forward I am going to allow the Commission to ask the questions that they have been interested in based on the testimony that we've heard. And, Commissioner Anaya, I know that you've been patient about us asking your questions.

COMMISSIONER ANAYA: Thank you, Madam Chair. And I will cut to the chase. I've got a lot of questions and either side determine who needs to answer the questions and/or staff. I'll direct those specifically to staff. The first few are directed to staff.

Madam Chair, Mr. Kolkmeier or Shelley or whoever wants to respond, has the County denied applicants for a similar purpose or use in the last 20 years?

MS. COBAU: Madam Chair, Commissioner Anaya, no, in fact, the County has permitted 54 churches since the inception of the Code under the Community Service Facility section of the Code.

COMMISSIONER ANAYA: Based on that, Madam Chair, Ms. Cobau, were any of those approvals under the provisions of the Code within communities similar to this community and if so, tell me where they were and which ones they are?

MS. COBAU: Madam Chair, Commissioner Anaya, to name a few that have been done since I've worked at the County for the last six years there's been the Mission Viejo School which is surrounded by residential property on Richards Avenue north of I-25. There's been Santo Nino School also on Richards Avenue in the Rancho Viejo area. We just approved one about four months ago down in the Rancho Viejo area. They're all over the County, Commissioner Anaya. Those are just some of the ones I can name off of the top of my head that are in the same district as the one you're considering tonight.

COMMISSIONER ANAYA: Madam Chair, Ms. Cobau, were any of those that were approved that you just rattled off were any of those part of a planning process

associated with the existing neighborhood – I know the Community College District was part of a planning process; but were any of the others? Or how many of those that you just rattled off were within the Community College District or were there some that were outside of that district that were approved? Because I know there was a real long process because I worked at the County when that was going on associated with input in the process. Were there some outside?

MS. COBAU: Madam Chair, Commissioner Anaya, the process is pretty similar regardless of where in the County they are. It's a master plan, development plan process. The Community College standards are very similar to the existing Code standards in that regard. They go through about a five-month process normally. We go through master plan and development plan approval before the County Commission and the CDRC.

COMMISSIONER ANAYA: Madam Chair, I'm not going to pick on you but I just want some clarification. Mission Viejo, Rancho Viejo – the church in Rancho Viejo and Santo Nino –

MS. COBAU: And Santo Niño de la Paz and then there's facilities that aren't churches that are in close proximity to this facility. That's the Seton Castle which is now the Academy for the Love of Learning. It's in close proximity to this which was considered and approved as a community service facility.

COMMISSIONER ANAYA: Seton Castle?

MS. COBAU: It's the Academy for the Love of Learning at the former Seton Castle site in Arroyo Hondo outside the Community College District.

COMMISSIONER ANAYA: So based on the past six years, Jack, are there others that you can think of that happened in your tenure at the County that – I'll go on and then you can find that information when I get --

MR. KOLKMEYER: Commissioner, there are a number of churches throughout the County. There's actually one that's in this area too and we're just going to try and find the name of it but there are a number of churches.

COMMISSIONER ANAYA: We just heard a lot of testimony, Madam Chair and everybody here, this time and last time associated with the geohydro in particular. Did I hear in the beginning that that was not required but we did it anyway? And if so why did we go through the long arduous task of all the testimony and discussion if it wasn't even required?

MS. COBAU: Madam Chair, Commissioner Anaya, that's correct. It is not required by the Code. If they can demonstrate that they have a water budget that utilizes less than .25 acre-foot they are not required to conduct a geohydro report. However, because of the contentious nature of this particular case the applicant opted to drill a well of their own accord and subsequently prepared and submitted a geohydro report for consideration.

COMMISSIONER ANAYA: Madam Chair, there was a use in the area of and I heard two things and I want to clarify it of 14 years where the yurt was utilized; is that correct? Fourteen or fifteen years? Yes, you can go ahead and respond.

TAI BIXBY: Madam Chair, Commissioner Anaya, it was actually 15 years.

COMMISSIONER ANAYA: Okay. And that was not an approved use your utilizing it and then you decided to go through the process. You moved to another area; is that correct?

MR. BIXBY: That's correct.

COMMISSIONER ANAYA: And that other area is that an approved site that you were permitted through the County or was it already previously permitted? Tell me a little bit about the site that you're at right now in the interim.

MR. BIXBY: Madam Chair, Commissioner Anaya, I believe it's a home that we're in with an attached studio that is big enough for our purposes and my understanding is that it's zoned rural residential similar to other non-master planned areas in that part of the County.

COMMISSIONER ANAYA: So, Madam Chair, staff, is that allowable use where they're at now? Forget about what they're doing and what they're proposing to do. Is what they're doing with their services where they're at an allowable use within Code?

MS. COBAU: We were digging for that map, I apologize, Commissioner Anaya, we do have it and it's Exhibit J. It's the use map you should have it in the original packet that was produced last month. The entire County is zoned residential unless it goes through a zoning process otherwise. So residential uses that are permitted are home occupations and things of that nature so when things were going on in the yurt on Brass Horse they would not be considered permissible under the Code until the site was zoned as a Community Service Facility.

COMMISSIONER ANAYA: Madam Chair, Ms. Cobau, I'm not talking about the site now that we're hearing. I'm talking about the where they're at right now. It's my understanding that they're practicing in a location; is that an allowable Code use?

MS. COBAU: That is. They are practicing in a location down in La Cienega that is a legal non-conforming use. It has been utilized for similar events before the inception of the Code in 1981.

COMMISSIONER ANAYA: Madam Chair, they've been at this use since 2006; is that right? At La Cienega since 2006 is that an accurate timeline?

MR. BIXBY: Since 2007.

COMMISSIONER ANAYA: So the Code was 1981 and it's pre-code is that my – am I off on that? Help me out with delineating the use that they're in now. I'm just trying to understand the framework and it's a lot of information and I'm new on the Commission but I want to make sure that I understand the framework so I could utilize it in the future.

MS. COBAU: Madam Chair, Commissioner Anaya, it's my understanding that they're at Sunrise Springs which is a facility that is zoned for non-residential uses. So they're down there in an area that has been utilized for similar activities. We haven't received any complaints. And just as an example, if someone has a school, let's use the New Mexico Academy as an example, it's empty right now. It was zoned as a community service facility.

COMMISSIONER ANAYA: Madam Chair, just to clarify so that we're all on the same page –

MS. COBAU: And, Tai, just give me a minute okay.

COMMISSIONER ANAYA: -- the gentleman, and trust me I'm not picking on either of you. The gentleman didn't say Sunrise Springs. He said we're in a residential house. So I just want to clarify it. Are you in a residential house with a studio or are you in

Sunrise Springs?

MR. BIXBY: Madam Chair, Commissioner Anaya, we are gathering for religious purposes which as I understand it is allowed as free right of assembly, it's a free right to practice religion, in the home of a member of our church.

COMMISSIONER ANAYA: Okay. So you're not at Sunrise Springs.

MR. BIXBY: No, sir.

COMMISSIONER ANAYA: Do you want to continue, Shell.

MS. COBAU: Yes, so let me go back to the New Mexico Academy point because I think it will clarify the Code and then we can talk about what's going on with the residence. New Mexico Academy was zoned as a community service facility about 10 years ago. If a new user – and it doesn't exist, they have left the site – if a new user wants to come into that site they can do so and the property is still zoned as a community service facility. So that zoning stands with the property. We would require that they do a master plan amendment or maybe address the traffic. So do you see the point I'm making?

COMMISSIONER ANAYA: Yes. Madam Chair and Ms. Cobau and I don't see Steve but maybe Rachel, where are our other attorneys, maybe you can respond. Based on the gentleman's – tell me your name again, I apologize.

MR. BIXBY: Tai Bixby.

COMMISSIONER ANAYA: Mr. Bixby. Based on Mr. Bixby's comment that he just made associated with freedom of assembly, at what point does the County distinguish as a Code issue, okay, not impeding on anybody's ability to assemble, at what point does an individual or groups freedom to assemble change from being allowed or within the Code use in a house to meeting a more, for lack of a better word, commercial structure? Do we have some, is there some barometer that we have? Is it the number of people? Is it number of vehicles? How do we do that?

COMMISSIONER ANAYA: Madam Chair, Commissioner Anaya, if it's advertised to the public we require a special use permit if it's not in an area that is zoned for the use and then it is reviewed carefully by Sheriff, Fire Department to see if we can issue a special use permit. As you know our Code Enforcement is complaint driven. If we don't – if something is going at someone's house and we're not getting any complaints about it we don't have anyway of knowing about it without a complaint. But we would say that if it's advertised to the public of if it's generally going to address, to change the traffic parameters or any other specific public health, safety and welfare issues for a special use permit to be sought for uses that are not occurring in a property that are zoned for that us.

COMMISSIONER ANAYA: So, ms, Ms. Cobau and Mr. Kolkmeier, Mr. Bixby came in with his fellow parishioners if you will, if that's the right I hope, and they requested to engage in a process to get the approvals for this particular development that is before us, at that time did they begin a process of receiving and applying for and getting special use permits not on the site that we're talking about for the approval but for the site that they're on now?

MS. COBAU: Madam Chair, Commissioner Anaya, no, they have not.

COMMISSIONER ANAYA: Okay. Madam Chair, Ms. Cobau, why?

MS. COBAU: As I said if the events are not advertised or public and if they're not impacting traffic or any other public health, safety and welfare issue than we

wouldn't necessarily require special use permit.

COMMISSIONER ANAYA: Okay, thank you, Shelley.

CHAIR VIGIL: Let me just state that Tai you're still under oath. Anyone who was placed under oath at the previous hearing remains under oath for this hearing. Just to clarify that for this record.

MR. BIXBY: I understand, Madam Chair.

CHAIR VIGIL: Thank you.

COMMISSIONER ANAYA: Madam Chair, I appreciate your time. I'm going to try and go fast.

CHAIR VIGIL: No, go right ahead, please.

COMMISSIONER ANAYA: There was a comment and I don't know if you made it or someone else made it in your group but that 15 years of utilizing hoasca is that right?

MR. BIXBY: Hoasca.

COMMISSIONER ANAYA: Hoasca, I'm sorry, hoasca tea with no health issues associated with that was the comment that was made that I just wrote down –

MR. BIXBY: That's correct. That's what I said.

COMMISSIONER ANAYA: Is there any studies if you will that have been done or is that just based on you being in and around utilization of the tea and your practices? Is that based on just your individual and the members of your churches participation or is that based on something else?

MR. BIXBY: Madam Chair, Commissioner Anaya, we submitted as part of the record all of the scientific studies that are available regarding the subject. When I said that I was speaking in my personal experience I know people that started drinking hoasca tea some of them in 1958 who have been drinking hoasca tea every two weeks, sometimes once a week, sometimes twice a week since 1958. These are people who are now elderly and are some of best friends, teachers, mentors who are in their 70s and 80s. They are clear, cogent and they've healthy, productive lives. They've raised kids. They've had professional careers. And I don't see any indication, and I'm not a doctor, but knowing these people and having spent many months with them, sometimes years with these people I can say that I don't see any health affect. And much to the contrary these people don't drink alcohol. They don't smoke. They don't do drinks. They are nice to their kids. They are contributing members of society. Dr. Barker I believe is available on the line and he could speak more specifically and perhaps Dr. Grob who is involved in some of the studies.

COMMISSIONER ANAYA: No, Madam Chair, Mr. Bixby, I think that for now that will suffice.

Relative to being an active member of your church can you tell us how that happens? Who can become a member and how does that occur? Can anybody become a member and tell me a little bit about that process for being a member of your church.

MR. BIXBY: Madam Chair, Commissioner Anaya, people become members through their request and they usually find out about the UDV because they know somebody who is a member. We don't hide what we do but we are discreet about what we do because there are a lot of people who don't understand what we do yet. Many, many people have come to the União do Vegetal who work with our member or are neighbors or family member

who know us and who see the kinds of lives that we lead and they want to know more about who we are and what we do. We let people that we are members of the UDV, we drink a tea, we have a religious doctrine and we live our lives in a certain way. So they come and they speak with a person in our organization who has the most responsibility for the distribution of the tea and the transmission of our teaching and they ask permission. They have an opportunity to meet with members of our community to see who we are and to get to know us. We have an opportunity to meet with them and to speak with them and then they can come when we have a session maybe two or three times a year just for new people that are coming.

COMMISSIONER ANAYA: So there's some kind is it like a screening process that you undertake? If I wanted to be part of your church how would I – would I just say I have an interest and then you would ask me about my background and stuff like that and where I'm from and what I believe in and things like that?

MR. BIXBY: Madam Chair, Commissioner Anaya, that's correct. And the reason that we do that is because the work that we do with the hoasca tea is deep work. It's very serious. We don't use the tea for any kind of fantasy or egoism. We're using the tea to develop the mental concentration in our understanding to develop spiritually, to grow, to correct ourselves to become better people. Better parents, better husbands and wives.

COMMISSIONER ANAYA: You, Mr. Bixby, you referenced a bar in your comments in the minutes and I could go to the minutes and specifically read them out as to what your comment was. I don't remember the exact verbiage but you made reference to a bar and somebody being able to go to a bar and it being their own individual ability to leave – you know, their individual responsibility but I was just curious about the analogy to the bar because you earlier made a comment that the hoasca tea is for religious purposes and mental concentration which I think were the two that struck me. And, then later on you made reference to a bar and you just lost me there so maybe you could help clarify that for me as to what you were referencing or drawing a comparison to a bar and what it is you do at your church.

MR. BIXBY: Madam Chair, Commissioner Anaya, the reference to the bar was in response to some concerns that I read in the record from some of the opponents where they questioned my ability and the ability of the other senior leaders to know how much tea are we giving, who is qualified to distribute the tea and I was pointing out that in my case I've been drinking the tea since 1994 and I've been in a training process since 1994 as to qualifications and the experience and the authority to distribute this tea. Which is much more qualification and experience than for example servers of alcohol have who in this County are permitted virtually without public protest. Alcohol licenses are regularly granted by this Commission, including one that is just a few miles down the road from the place where the tragic car accident happened last year. That's where I was going with that. I was trying to say that we have much more experience and training in the distribution of hoasca tea than people who are allowed to serve alcohol because of proven negative effect on the health of Santa Fe County, there's a proven DWI problem contrasted to the UDV, we have no driving problem. There is no issue about driving on the way home from sessions with hoasca tea. It's because of the experience and the responsibility that we have with respect to the use of this tea. Something that we can extraordinarily seriously. You will not find it in any alcohol establishment the level of seriousness, care or responsibility that we have in União do Vegetal.

Alcohol and hoasca tea are completely separate and distinct. There is nothing similar about them. Alcohol destroys people's lives, families. The UDV saves people from the use of alcohol and drug addiction. We have a number of members in our congregation who have been saved from a life of vice, use of alcohol and drugs, as a result of their practice.

COMMISSIONER ANAYA: Madam Chair, Mr. Bixby, alcohol has a direct impact to impairment. Does hoasca tea have a direct impact to impairment? As a question, does it impair your ability to drive a car?

MR. BIXBY: After the four hour session is closed, no, sir, it does not.

COMMISSIONER ANAYA: Not after but leading up to the four it has impairment.

MR. BIXBY: Nobody drives within that four hour period and we close and lock the gate to make sure that people don't leave and also to keep people out.

COMMISSIONER ANAYA: Thank you, Mr. Bixby. Madam Chair, Mr. Kolkmeier or Ms. Cobau, can you speak to the provision associated that the opponents have brought up relative to compatibility? Can you talk to me a little bit about compatibility and how compatibility in the neighborhood has been utilized within the parameters of the Code? Not only compatibility but linking community space and compatibility, those two together. I heard some reference that it's only physical compatibility. Can you help me and clarify if it's only physical or is compatibility within a community in a broader sense?

MS. COBAU: It's not well defined in a detailed sense. What it says is that the use should be compatible in the area in the Code, that's what the Code states. There is no specific requirements regarding things like how many cars you can have parked at your community service facility; what are your hours of operation are going to be; what size your community service facility can be – none of that is defined in the Code.

COMMISSIONER ANAYA: Madam Chair, Ms. Cobau and I think I'll ask this specifically of Mr. Graeser who in addition to you know being here representing his clients spent time sitting over there on that side of the aisle. You made a comment and you can help me out and understand, but you made a comment to Mr. Ross at the meeting the last time and said something to the effect that it's only physical compatibility; right, Steve and that's what's leading me to this question so I'm hearing some deviation. So can you because you specifically referred to Mr. Ross and said you know, Mr. Ross, it's physical compatibility and then there was no response. So what's your response to that?

MR. GRAESER: Madam Chair, Commissioner Anaya, thank you. I do agree that it's not clearly defined in the Code as many issues in the Code aren't. Our interpretation certainly is that because if you read the text of that section it says that the use is permitted anywhere in the County. Community service facilities are permitted anywhere in the County. We interpret that to mean that the use is permitted anywhere so that the primary inquiry is physical capability and that's why we spent so much time explaining it's designed to look like a residential structure. That it is screened from view. That we've taken steps to address noise, light, that type of impact is because of the physical compatibility issue. But we do think that the use is clear that the use is permitted anywhere in the County and certainly there are community service facility located in residential areas throughout the County, Commissioner Anaya.

COMMISSIONER ANAYA: Thank you, Mr. Graeser. Ms. Cobau, Mr. Kolkmeier or Mr. Ross, let me get some clarity on permitted and allowed anywhere in the

County and proposed facilities are necessary. Help me understand that provision in the Code and not related to churches but just in general that provision necessary within the community. How do I as a policymaker that's sitting up here having to make these difficult decisions, help me understand that, that word if you will. And, Mr. Ross, if you'd like to help me understand that, compatible, necessary, community compatible and necessary those kind of core provisions within the approval or the recommended approval from staff.

MR. ROSS: Madam Chair, Commissioner Anaya, the Code actually states, here's the language of the Code from Section 7.1, this is a recent amendment from 2010, it says that, "community service facilities are allowed anywhere in the County provided all requirements of the Code are met if it is determined that 2) the use is compatible with existing development in the area and is compatible with development permitted under the Code." So I'm not sure I totally agree with Mr. Graeser in his characterization. It's about the uses being compatible. You can look at page 6 of the staff report and the Code language is recited there.

Now in terms of the first provision, Section 7.1 of the Code also requires that the community services facilities must be necessary in order that community services may be provided for in the County. So let's say for some reason it was determined that there was no need for a community service facility then you wouldn't be able to satisfy that element of the requirements. Let's say in this case that the UDV had five churches and still the low membership that they currently have, you might question whether there was a need for this facility. And so staff's recommendation in this case is because they have no facility whatsoever and that requirement appears to be satisfied.

Then number three, the third element, requires a master plan and preliminary and final development plan for the proposed development and that's what we're doing right now. So that's how the Code section works.

COMMISSIONER ANAYA: Mr. Ross, you were out of the room so I'm going to re-ask this question and ask you specifically for your perspective on it. Mr. Baxter [sic] may a point about freedom of assembly and freedom of religion, a very valid point that we all have within this country. At what point does freedom of assembly in location cross over from being able to utilize a house or having a need to be in a more appropriate commercial space that has all the other Code issues affected by it? Is it based on number or what's your perspective on that?

MR. ROSS: Madam Chair, Commissioner Anaya, I'm not completely sure I'm understanding the question.

COMMISSIONER ANAYA: Okay, I'll clarify. Mr. Baxter [sic] brought up that they're utilizing a home to utilize their services.

MR. ROSS: Mr. Bixby.

COMMISSIONER ANAYA: Bixby, I'm sorry, I apologize.

MR. ROSS: That was part of my confusion.

COMMISSIONER ANAYA: Mr. Bixby brought up that they're utilizing the home and we obviously have a Code to help provide whatever the function would be in an environment that is adequate, appropriate, safe. At what point does utilize – where's the break point for us from a legal standpoint as far as intervening to assure that the appropriate space is done or provided?

MR. ROSS: That would depend on the zoning where the services are being

held.

COMMISSIONER ANAYA: That's similar to what Mr. Kolkmeier said earlier. Bixby, not Baxter, Bixby. Mr. Bixby in your testimony the last time you made a general comment about support from all kinds of congregations. I listed some of them, could you clarify the support that was provided? I think you said that large entities throughout the country were supporting – are they supporting this application?

MR. BIXBY: Madam Chair, Commissioner Anaya, what I was speaking to was in the 2000 lawsuit that we filed against the government and we went through the whole process of affirming our religious rights to use hoasca tea, during that litigation process before our case arrived at the Supreme Court all of those religious entities that I listed provided amicus curiae briefs, friends of the court briefs, in support of our case affirming the right of religious freedom as the sovereign right of the land.

COMMISSIONER ANAYA: And, Madam Chair, for clarification for everybody listening and watching and in this room, I have no concern, issue, complaint, whatever with the ruling that was made by the Supreme Court and those determinations leading up to associated with the tea. My questions with that I'm trying to get clarity in my mind on are directly linked to the land use aspects associated with the church.

A few more, Madam Chair, staff could you again state the areas that we have, you added a couple that I didn't see before, or you brought their days up today. But the fire station, tell me which is in the closest proximity to the proposed site? The closest similar uses. You mentioned last time and you have on the maps Arroyo Hondo Fire Station and Harry's restaurant but what others that are similar as per Code use within –

MS. COBAU: We have quite a few, Madam Chair, Commissioner Anaya. We have the Academy for the Love of Learning which is 1.19 miles from the proposed site as the crow flies. We have the New Mexico Academy School site, which is .81 miles from the proposed site. We have the Mount Cloud Zen Center which is 1.14 miles away. We have the Seventh Day Adventists Church which is 1.49 miles away. And we have a number of schools that are community service facilities and if you look in Exhibit J of staff report from last month, Commissioner Anaya, it's in a pocket and it's this map that looks like this and it shows each one of these facilities. We do have a printout from our HTE system that shows all of the churches that have been permitted in the County and I can hand that to you if you wish.

COMMISSIONER ANAYA: Thank you, Ms. Cobau. One last question, Madam Chair, for staff. We utilize the fire station when we talk about public safety issues with land use in particular. We bring them in here all the time associated with fire protection and ingress and egress. Has this body utilized the Sheriff's Department in a similar fashion for land use cases to provide feedback associated with public safety issues beyond fire protection?

MS. COBAU: Madam Chair, Commissioner Anaya, not normally but there was an accident study done in association with the information, the volumes of information that have been provided along with this case that did go to the state and the County Sheriff's and got lists of accidents that have occurred in this area for I believe in about the last 10 years.

COMMISSIONER ANAYA: Thank you, Madam Chair.

CHAIR VIGIL: Commissioner Holian.

COMMISSIONER HOLIAN: Thank you, Madam Chair. I have a few questions for staff and then a couple of questions for the consultants and then finally a couple of

questions for the applicant. First of all, Shelley, I noticed condition 7.g., the new condition 7.g. says that the applicant can use up to .35 acre-feet per year of water and that's more than the .25 acre-feet that they normally would be allowed. So why and how did that increase?

MS. COBAU: Madam Chair, Commissioner Holian, it's been our policy for community service and commercial facilities when an applicant provides a geohydro report that proves up that they have a water availability we normally make that a condition. The .25 acre-foot that has been referred to so widely in this is normally more of a residential type of restriction. So we have a lot of facilities throughout the County that are using and are allocated more than .25 acre-foot per year and those are usually more commercial types in nature such as this.

COMMISSIONER HOLIAN: And if, I noted that one of the conditions that you put in there was that the applicant would post on the web their water usage for each month for at least I think it was at least one year. I was wondering what would happen if they went over their allotted water usage?

MS. COBAU: Madam Chair, Commissioner Holian, typically when someone exceeds their allocation and they're on a meter they are given a letter. They're provided a letter that says they have exceeded their water restriction and they're given a period of time to correct that. That's all handled through our County Utility Department. They are given three chances and then they're fined.

COMMISSIONER HOLIAN: Okay, thank you, Ms. Cobau. I have another question. The facility has two kitchens in the plan when I guess Phase 2 is finished and I was wondering how can this facility have two kitchens when the residential homes in the neighborhood are only allowed to have one and not have a guest house?

MS. COBAU: Madam Chair, Commissioner Holian, I guess that's a zoning type of issue. When something is zoned as a community service facility they're not under the same restrictions as a residence. And, that's the best answer I can give you on that.

COMMISSIONER HOLIAN: Okay, thank you, Ms. Cobau. And, finally, for staff, are there features, archaeological features on this site that you know of or that staff knows of that are related to the Arroyo Hondo Pueblo that was nearby and do you recommend an archaeological survey?

MS. COBAU: The application was sent to SHPO and because it is in an area that has a high potential for archaeological sites. Because it is less than five acres an archaeological report isn't required for a site of this size. In their recommendation SHPO did recommend that an archaeological survey and report be done and the applicant did research and provide information regarding archaeology on the site and found that no pueblo nor any other significant site was occurring on that piece of property.

COMMISSIONER HOLIAN: Okay, thank you, Ms. Cobau. Madam Chair, now I have a couple of questions for our consultant.

CHAIR VIGIL: Go ahead.

COMMISSIONER HOLIAN: One is: are there any studies that show what happens to harmaline or harmine in the presence of UV light?

MS. NAUMBURG: Madam Chair, Commissioner, not that I know of.

COMMISSIONER HOLIAN: So you are but you feel that they might be broken down by light?

MS. NAUMBURG: We put it in specifically for DMT.

COMMISSIONER HOLIAN: I see.

MS. NAUMBURG: Which because the experts have mentioned that DMT is sensitive to light.

COMMISSIONER HOLIAN: Thank you. What is the depth of the leech field where the wastewater will go versus the depth of groundwater at that site? And what would be in between?

MR. LAZARUS: Madam Chair, Commissioner Holian, the leach fields would typically be three, four, five feet deep maximum. And intervening material from the bottom of the leach field to the top of the aquifer actually is this material right here where we're showing alluvium an ancha formation above what's mapped as Espinoza Volcanic. To put it in English there's about 100 feet plus of sediments above their water bearing zone and in this well specifically in the applicant's well specifically and the two nearest down gradient, in our lingo that's downhill on the water table to the west, there's a clay layer that gets thicker to the west. So any percolation downward through the alluvium and ancha formation would be held up by the clay layer that was at the site described in the driller's log and the increasing thickness of that clay layer through the west as described in the driller's log on the neighbors' wells.

COMMISSIONER HOLIAN: And so where do you think that the water from the leach field would end up then?

MR. LAZARUS: Think a lot of it will be evapo-transpired away.

COMMISSIONER HOLIAN: Okay.

MR. LAZARUS: The septic system has been approved by the Environment Department and their analysis is that it is approvable and I believe it will be evapo-transpired away in the leach field.

COMMISSIONER HOLIAN: Thank you. And, Madam Chair, now I have a couple of questions for the applicant. One is I would like for you to explain what it's like – what it's typically like when people leave the site after the service? What times do they leave and do they leave in ones, twos and threes or do them leave at once? Just what is it typically like?

MR. GRAESER: I'll have Mr. Bixby address that.

MR. BIXBY: Madam Chair, Commissioner Holian, it's like I said in the previous hearing. People leave in a trickle. The session closes no later than 12:15 for the ones that happen at night and then people leave in ones and twos over a period of time. Usually people stay afterwards and have some food, hang out, talking, socializing. It's not like a mass exodus that happens with some churches where the service is over and everyone rushes out to the parking lot and all of the cars leave at once.

COMMISSIONER HOLIAN: And do people typically come by themselves or in family groups or do they carpool?

MR. BIXBY: Usually people carpool. More than half of our congregation are families that come together, husbands and wives. We also encourage our congregation to carpool just because it's a good idea.

COMMISSIONER HOLIAN: Okay, and, also, Mr. Bixby, what kind of outdoor lighting will there be and will it be turned on at that time?

MR. BIXBY: The outdoor lighting as specified in our application packet, they

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are 40 watt bulbs or less. They're enclosed in – there's a photograph that I presented at the previous hearing, they're flagstone uprights, two flagstone uprights with a piece that goes over the top and so we're able to direct the light in two directions for path lighting. Our plan is to turn the light on when it gets dark and turn the lights off when people leave.

COMMISSIONER HOLIAN: Thank you, Mr. Bixby. Thank you, Madam Chair.

CHAIR VIGIL: Commissioner Mayfield.

COMMISSIONER MAYFIELD: Thank you, Madam Chair. And just so everybody knows I did review all of the tapes and I have looked at the record and I have general questions for a lot of folks but I'm going to start with staff if you don't mind. Shelley, what is the zoning status currently of that area?

MS. COBAU: It's just a standard residential zoning, Madam Chair, Commissioner Mayfield.

COMMISSIONER MAYFIELD: Going back to Commissioner Holian's question as far as the multiple kitchens, will there need to be a zoning status change?

MS. COBAU: That would be what would be resulting in your action to zone, if you would approve it, it would be zoned as a community service facility.

COMMISSIONER MAYFIELD: Thank you. And then you mentioned some other commercial that this is around. There's also the Bobcat Bite correct, there's the El Gancho, there's the Steaksmyth; what their water consumption usage disposal; do you all know? Because you've mentioned Harry's Roadhouse a lot as a comparison and I just want to know if those other businesses have been looked at also.

MS. COBAU: Madam Chair, Commissioner Mayfield, I can't specifically answer what the water usage for each one of those businesses. Maybe Mr. Lazarus can answer because he considered a couple of them in his analysis.

MR. LAZARUS: Madam Chair, Commissioner Mayfield, I can speak directly to that. As Ms. Hodgins pointed when she reran the model, El Gancho has a water right of 15.5 acre-feet and Harry's Roadhouse currently has a 3 acre-foot domestic well permit.

COMMISSIONER MAYFIELD: Thank you. Shelley, going back to the applicant's water usage should be restricted to .35; I just heard you and clarify me, but that's a policy decision by staff on commercial buildings. Doesn't our Code specifically state .25?

MS. COBAU: Madam Chair, Commissioner Mayfield, our Code specifically states it for residential use.

COMMISSIONER MAYFIELD: Okay, so is there anything stated for commercial use or is that just a staff policy decision that they're making?

MS. COBAU: The Code doesn't to my knowledge; the Code doesn't restrict commercial water use. Commercial businesses are required to prove water if they use more than .25 acre-foot per year. They're required to prove that they have that water available to serve their business.

COMMISSIONER MAYFIELD: Thank you. Going into the advanced system and I heard testimony folks from the tapes I watched. There was some concern with graywater being used. The permit was cited for graywater use or for not graywater use. The Environment Department may have to pull back that permit now, can you just help me out with that, please.

MR. LAZARUS: Madam Chair, Commissioner Mayfield, right now the

applicant is not permitted by the Environment Department for graywater reuse.

COMMISSIONER MAYFIELD: There was testimony saying that they were going to use graywater usage.

MR. LAZARUS: I don't remember that specifically.

CHAIR VIGIL: Chris, can you address that.

MR. GRAESER: Madam Chair, Commissioner Mayfield, certainly. It was probably imprecise language on my part the idea being that the shower water and the washing machine water, they want to reuse that in a relatively direct way for landscape watering. But graywater system using those terms is not allowed for an institutional use like this. It's only for residential. So whatever we end up doing we'll have to comply with New Mexico Environment Department regulations. I should say that the original – the permit for the system that we permitted, staff had some initial concerns because it is a relatively innovative advanced treatment system so that's why we went to the Environment Department and pulled a permit just to assure staff. There may have to be revisions. There may be some changes for final development plan but we actually at this stage are not required to submit a full septic permit. But certainly there will be a permit for all discharge submitted.

COMMISSIONER MAYFIELD: Madam Chair, Shelley, as far as an advanced system, help me out just learning a little more about an advanced system because I understand what I understand about a system. But there's going to be a leach field also attached to this advanced system; correct?

MR. LAZARUS: Madam Chair, Commissioner Mayfield, yes, sir.

COMMISSIONER MAYFIELD: And, typically where I live in my traditional area a leach field is sized accordingly. With an advanced system it can be smaller, there doesn't have to be as much linear footage. Do you know what is the sizing of this leach system that they're going to have?

MR. LAZARUS: Actually the applicants testified to that the other time and I defer to them because they had specific numbers.

COMMISSIONER MAYFIELD: Thank you.

CHAIR VIGIL: Please state your name and you have been sworn in, correct?

RICHARD JENNINGS: My name is Richard Jennings and I was sworn in at the last hearing.

CHAIR VIGIL: Thank you, Mr. Jennings.

MR. JENNINGS: Madam Chair, Commissioner Mayfield, there are rules about the size of the leach field based on what's called the design flow. The design flow for this facility is 700 gallons per day and that's based on NMED regulations that they got from EPA. Accordingly, the leach field would be required to be 1,400 square feet. We have designed it with 8,360 square feet. We did that because the applicant wished to use all of the effluent and the nutrients from sewage to water their landscape. So we have 10 times the required amount.

COMMISSIONER MAYFIELD: I was just understanding that the effluent wouldn't be used. Am I not hearing that right?

MR. JENNINGS: No, the effluent will be used for irrigation. It's a permitted use and it uses a subsurface special irrigation tubing for that.

COMMISSIONER MAYFIELD: The graywater won't be used but the effluent will?

MR. JENNINGS: Okay, just so there's no confusion about terms. What we have is treated effluent. It doesn't matter if it's blackwater or graywater. Whatever goes into the septic tank is treated to a certain level of clarity and then it can be used for irrigation.

COMMISSIONER MAYFIELD: Okay. I'm going to look at my notes here really quick, excuse me.

CHAIR VIGIL: Take your time.

COMMISSIONER MAYFIELD: There was also testimony as far as talking about adjacent properties. The County open space maybe and they talked about residents' homes but there was one piece of vacant land. How far is the closest buildable site on that vacant land, does anybody know from the septic system?

MS. COBAU: Madam Chair, Commissioner Mayfield, I can't answer that easily. We could spend some time and ascertain what the nearest buildable site is. There's a home right across the street, right across Brass Horse. There's pretty steep slope on the other side of the Arroyo Hondo which I believe is part of the County Open Space area. The site itself is relatively flat and the area probably to the south and to the west of the site is relatively – to the south and the east is relatively flat. To the west is pretty steep.

COMMISSIONER MAYFIELD: And where this leach field is going to be sited is that in proximity of the vacant land or is that on the whole other side of the property?

MS. COBAU: I believe the leach field is on the south side of the property; is that correct, Jay, that it's kind of on the southerly side of the property?

COMMISSIONER MAYFIELD: And the vacant land is where?

CHAIR VIGIL: Tai, did you want to shed some light on that.

MR. BIXBY: The vacant lot is immediately to the west.

COMMISSIONER MAYFIELD: -- and it's Mr. Bixby, correct? I think you would probably be able to answer this question for me. You testified a little earlier and then also in what you testified a couple weeks ago, and I'm just going to read it. It's easier for me to read it. For the safety of the participants our policy is that the people may not leave the property during sessions and the parking area gate is closed to keep unauthorized people off the property. Participants do not become out of control or dangerous or unreasonable during sessions. In the unlikely case that someone were trying to leave the property during the session there is always a person on duty who is designated during the session to ensure that people do not leave or enter the property.

My thoughts on that as far as public health, safety and welfare, how are you going to address, God forbid, there's a fire in the facility? You indicated a little earlier I believe to Commissioner Holian that there's like a four-hour time period where folks may not want to be leaving the properties. Has our Fire Department looked at that? If folks aren't able to leave this facility because the gates are locked or you're not allowing folks to leave the facility?

MR. BIXBY: Madam Chair, Commissioner Mayfield, people are allowed to leave the building. There's no restriction. People can go outside during our services. If there were a fire in our building, which will be partially made of wood but which will also be fully sprinklered, people will have every opportunity to exit the building. There will be exit signs, fire extinguishers and according to our application the entire development will be applicable with all the fire codes that Buster and the rest have for the project.

CHAIR VIGIL: And Madam Chair, maybe a question for staff. I don't know if

we have anybody from our Fire Marshal's Office here, what if people have to leave the property in general? They can't even physically be on the property?

MS. COBAU: Madam Chair, Commissioner Mayfield, the Fire Department did review this. I don't know if they considered that particular point or not but they did review and find it compliant with the codes that they review these type of facilities by, fire codes.

COMMISSIONER MAYFIELD: Do we have anybody here from Fire that could answer that question for me? I don't see anybody.

MS. COBAU: I'm sorry. I don't think anybody from the Fire Department is here this evening.

COMMISSIONER MAYFIELD: Okay. And you indicate you're going to have some carpooling. I think I heard 20 to 30 cars maybe onsite, three or four people attend per car. And you're slated for how many parking spots for your site?

MR. BIXBY: Madam Chair, Commissioner Mayfield, I believe we have 32 marked parking spaces. And then we have a vacant field which is for overflow which I think will accommodate another 18, so enough for 50. And that's based on our average numbers that we've counted, which is two people per car, is typical attendance.

COMMISSIONER MAYFIELD: Okay. Thank you. I'm going to look at this real quick. I know we talked, and there were a lot of reports as far as water, the quantity of water out there. And this is more of a question for our staff, whoever can answer it. We're proposing to take a water system out in this area, are we not?

MS. COBAU: Madam Chair, Commissioner Mayfield, we're running water out to Harry's Road House and El Gancho right now but beyond that – and we're running – there had been some consideration for running water out to Cañoncito but that's a question for the County Utility.

COMMISSIONER MAYFIELD: And what's the reason why we want to take a water system out in that area? Based on what I'm hearing there's plenty of water in the ground out there from some of these reports that came.

MR. KOLKMEYER: Madam Chair, Commissioner Mayfield, the plans for the future for running water systems are based as you know on the Growth Management Plan. SDA-1s are the areas where we plan to provide our water system services first. This is outside of that area.

COMMISSIONER MAYFIELD: This will be outside of that area?

MR. KOLKMEYER: I believe this is an SDA-2 area.

COMMISSIONER MAYFIELD: Thank you. Do you all, staff, have the total draw-down of well permits issued in that area? How many residents are out there? I know that on the maps some folks say, well this resident wasn't cited, this resident wasn't plotted. How many folks out there are pulling water out of that aquifer?

MS. COBAU: Madam Chair, Commissioner Mayfield, I did an analysis a long time ago on this project to see how many lots were contributing to the intersection of Arroyo Hondo and the Old Las Vegas Highway. I think there's about 270 lots in Arroyo Hondo, and I would assume they all have their own well or are on a shared well. So it would be hard to say exactly how many wells, and I don't have the maps that shows the lots that I analyzed. But from a year and a half old memory I'm thinking it's about 270 lots.

COMMISSIONER MAYFIELD: Thank you. Madam Chair, those are all my questions and I really appreciate staff's time and the applicant's time. And as far as, what I mean to say is I know this process has taken a long time and I just want to thank everybody for your patience with this Commission and with the status of this case. Thank you.

CHAIR VIGIL: Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you, Madam Chair. I'm not going to have any questions. I just have a few comments. I believe this is not a decision that the community wants to have happen and yet I think that the applicant has complied with our existing code. I think the testimony has been extremely interesting between all the experts and how they vary and actually contradict and conflict, which leaves it to us to depend either upon our County contractor or not to believe anybody. So I think that when it comes right down to it we've had some other difficult decisions to make about land use and some situations that have been about are applicants specifically meeting code requirements, and if they're meeting code requirements do we have valid reasons to deny? And what our code will be next year, we don't know. But today what our code says is some of our responsibility to it is to apply to applications.

So I think that in terms of our responsibility that we might all have different beliefs, different feelings about what should happen here, but I would just like to make the comment that today our code and the definitions are being met with the application. Thank you, Madam Chair.

CHAIR VIGIL: Thank you, Commissioner Stefanics. Commissioner Holian.

COMMISSIONER HOLIAN: Thank you, Madam Chair. First of all I will note for the record that this development is in my district, District 4, and I will just simply say that I cannot support this development. Thank you, Madam Chair.

CHAIR VIGIL: Thank you. This is an emotional issue for everyone. There will be a decision. There may be some folks out there that are going to be happy with it and some that aren't. I just ask that everyone respect everyone's decisions here as we've tried to do throughout the hearing. Further comments? Direction?

COMMISSIONER STEFANICS: Madam Chair.

CHAIR VIGIL: Commissioner Stefanics.

COMMISSIONER STEFANICS: I move approval of CDRC Case #MP/PDP 09-5300 with all staff conditions.

CHAIR VIGIL: I have a motion for approval with all staff conditions. Do I hear a second? I will second it then. We have a motion and a second for approval with all staff conditions. Any further comments?

The motion failed by 2-3 voice vote with Commissioners Stefanics and Vigil voting in favor and Commissioners Anaya, Holian and Mayfield voting against.

CHAIR VIGIL: Okay. Motion fails. Do I have another motion? I think that that's the direction we've taken, Mr. Ross. Is that correct? No other motion is necessary?

COMMISSIONER ANAYA: Madam Chair.

CHAIR VIGIL: Let me get Mr. Ross to answer this procedurally.

MR. ROSS: Well, they need an affirmative motion and they haven't received

that.

CHAIR VIGIL: Okay.

COMMISSIONER HOLIAN: Madam Chair.

CHAIR VIGIL: Yes.

COMMISSIONER HOLIAN: I move for denial of this case.

CHAIR VIGIL: Okay. I have a motion for denial.

COMMISSIONER ANAYA: Madam Chair, I'll second. Discussion.

CHAIR VIGIL: I have a motion and discussion. Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, I made some comments earlier that can be reflected in the record, but when I read the code as the code is written, and I see the words community service facilities and compatibility, and take those into consideration, that's the basis for my vote.

CHAIR VIGIL: Further discussion? Commissioner Stefanics.

COMMISSIONER STEFANICS: Madam Chair, I think it's interesting that the compatibility and the use of the community service facility is what's in question because last year, late last year the Girls and Boys Ranch was the point of contention around the compatible use, and the entire community except for those people who were sitting on the board of the Girls and Boys Ranch opposed it. And yet when we look at what the landscape, the plans, moving through all of the application process it did not make many people in the community happy. And what it did do was require some mending, because – and that case went on for quite a few years. This went on for what? Shelley? Two and a half years? Longer?

MS. COBAU: Madam Chair, Commissioner Stefanics, it went on for about two years. You're correct.

COMMISSIONER STEFANICS: And so we have had other difficult cases that have gone on for a long period of time and this whole issue of compatible use for community service facilities has usually been the contention. And I'm not sure what the solution will be for the future code. I just had a discussion today with our energy staff about green building and about how you can't really force something on people or they'll just ignore it. It has to be something that's acceptable. So we do have churches in the area, so one has to wonder if there are already existing churches in the area, what's so different about this? And I'm not asking the audience; it's more about us that have to make the decision. And when I heard the amount of mileage of all these different facilities that already exist in that community that tells me we've already provided approval in those areas. So I do know that compatible use has been the debate in the past, so I'll respect my colleagues however it goes.

CHAIR VIGIL: Very well. Further discussion? Hearing none, I have a motion to deny.

The motion to deny passed by majority [3-2] voice vote with Commissioners Anaya, Holian and Mayfield voting in favor and Commissioners Stefanics and Vigil voting against.

[The Commission recessed from 8:30 to 8:50.]

XIII. A. 2. CDRC CASE # V 11-5090 Suzanne Teng Variance. Suzanne Teng, Applicant, Santa Fe County Open Space and Trails, (Colleen Baker), Agent, Requests a Variance of Ordinance No. 2007-2 (Village of Agua Fria Zoning District), Section 10.6 to Allow a Land Division of 2.55 Acres into Two Lots; One Lot Consisting of 1.51 Acres and One Lot Consisting of 1.04 Acres and to Allow Two Dwelling Units on 1.51 acres. The Property is Located at 1673 Camino McMillin, West of Siler Road, within Section 32, Township 17 North, Range 9 East (Commission District 2) Wayne Dalton, Case Manager

CHAIR VIGIL: Thank you, ladies and gentlemen. Members of the Board, we're going to move on to the next case. Has this been referred to the Agua Fria Village Association, Mr. Dalton?

WAYNE DALTON (Building & Development Services Supervisor): Madam Chair, not that I'm aware of.

CHAIR VIGIL: Okay.

MR. DALTON: Thank you, Madam Chair. On April 21, 2011 the CDRC met and acted on this case. The decision of the CDRC was to recommend approval of the applicant's request for a variance by a unanimous 7-0 voice vote. There is currently a residence, guesthouse, RV garage, a detached two-car garage and two conventional septic systems on the property. The property is served by an onsite well which serves the two existing dwelling units. The property is located within the Village of Agua Fria low-density urban zone.

Ordinance No. 2007-2 states the minimum lot size in this area is 2.5 acres per dwelling unit. Lot size can be reduced to one acre with community water or sewer and can be further reduced to half an acre with both community water and sewer. The proposed land division would divide the current 2.55-acre parcel. The applicant would retain 1.551 acres, which would be Lot 5-A with all existing structures, and the Santa Fe County Open Space and Trails program would purchase the remaining 1.04 acres, which would be Lot 5-B encompassing the Santa Fe River floodplain.

The applicant states the proposed land division is solely for the purpose of creating public open space along Santa Fe River. The land division would not be recorded until and unless the purchase of Lot 5-B is completed by the County. The proposed Lot 5-B will be used exclusively for open space, river restoration, habitat enhancements, public trails and related amenities such as benches and drinking fountains. There is also a historic windmill on Lot 5-B that the Open Space and Trails program plans to improve and maintain.

The applicant also states that the Open Space and Trails program is working to implement a long-range plan to acquire land along the Santa Fe River in order to create a greenway of public open space and trails from downtown Santa Fe to the wastewater treatment plant. The proposed land division is necessary for the County to purchase this portion of the river.

Recommendation: Staff has reviewed this application and has found the following facts to support this submittal: Ordinance No. 2007-2 states the density in this area is 2.5 acres per

dwelling unit; however density on this property was established prior to the adoption of Ordinance # 2007-2; density in this area prior to the adoption of Ordinance No. 2007-2 was 0.75 acres per dwelling unit; the land division would preserve distinctive natural features such as the Santa Fe River, and primary open space corridors; and clustering of structures is encouraged to preserve natural open space areas as stipulated within Ordinance No. 2007-2; therefore staff recommends approval of the Applicant's request subject to the following conditions. Madam Chair, may I enter the conditions into the record?

[The conditions are as follows:]

1. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval.
2. Water use shall be restricted to 0.50 acre-feet per year for (Lot 5-A). Water meters shall be installed on both homes this shall be noted on the Plat. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk's Office.
3. No further division of either tract shall be permitted. This shall be noted on the Plat.
4. Prior to Plat recordation, the Applicant shall submit documentation from the City of Santa Fe granting an ingress and egress easement across the City owned parcel in order to provide legal access to (Lot 5-A).
5. (Lot 5-B) shall be designated as open space, development other than open space amenities on this lot is prohibited, and this shall be noted on the Plat.
6. The Applicant shall connect to community water and sewer when it becomes available within 200 feet of the property line.
7. The Applicant shall provide updated liquid waste permits from the New Mexico Environment Department prior to Plat recordation.

CHAIR VIGIL: Are there any questions of staff at this point? Okay. I have just for the point of clarification. This lot division will not include any additional dwellings.

MR. DALTON: Madam Chair, that is correct.

CHAIR VIGIL: Okay. The only additional structures that will be built will be to enhance the Santa Fe River Corridor, correct?

MR. DALTON: Madam Chair, that's correct.

CHAIR VIGIL: Okay. I just wanted that clarification. Is the applicant here?

PAUL OLAFSON (Community Services Department): Madam Chair, Commissioners, I'm here on behalf of Colleen Baker who could not be here tonight, and this is part of our Open Space and Trails Santa Fe River project.

CHAIR VIGIL: Okay. And everyone in Colleen's shop and your shop has read the conditions and were all okay with it?

MR. OLAFSON: Madam Chair, yes.

CHAIR VIGIL: Okay. Thank you. Any questions of the applicant? Seeing none, this is a public hearing. Is there anyone in the public that would like to address the Commission?

COMMISSIONER STEFANICS: Madam Chair, could I ask a question?

CHAIR VIGIL: Yes.

COMMISSIONER STEFANICS: Since this seems to be something that would

be benefiting County Open Space, couldn't this have been done administratively?

MR. DALTON: Madam Chair, Commissioner Stefanics, it cannot be done administratively because it does not meet the lot size requirements as per Ordinance 2007-2.

COMMISSIONER STEFANICS: So the person is reducing their lot in order to make land available to the County?

MR. DALTON: Madam Chair, Commissioner Stefanics, that's correct.

COMMISSIONER STEFANICS: Okay. I just think that's a little weird. Thank you.

CHAIR VIGIL: Well, they're actually selling that property to COLTPAC, correct?

MR. DALTON: Madam Chair, that is my understanding, yes. That the 1.04 acres will be sold to the County.

CHAIR VIGIL: And Ordinance No. 2007-2, is that the Agua Fria Community Plan?

MR. DALTON: That's correct.

CHAIR VIGIL: And so prior to this the .75 was prior to the plan?

MR. DALTON: Madam Chair, that's correct. Yes.

CHAIR VIGIL: And currently it's 2.5 acres.

MR. DALTON: Yes.

CHAIR VIGIL: Okay. Further questions? Seeing none, I was just asking if anyone from the public would like to address the Commission on this. Okay. What's the pleasure of the Commission?

COMMISSIONER HOLIAN: Madam Chair.

CHAIR VIGIL: Yes.

COMMISSIONER HOLIAN: I move for approval of CDRC Case #V 11-5090, Susan Teng Variance.

COMMISSIONER STEFANICS: Second.

CHAIR VIGIL: I have a motion and a second.

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

- XIII. A. 3. CDRC CASE # V 11-5030 Ivan Salcido Variance. Ivan Salcido, Applicant, Requests a Variance of Article II, Section 4.3.2c (Family Proper) of the Land Development Code to Allow a Family Transfer Land Division of 2.8 Acres Into Two 1.4-Acre Lots From Sibling to Sibling. The Property is Located at 17 Corral Blanco Road Off the East Frontage Road, South of the N.M. 599/I-25 Intersection, within Section 4, Township 15 North, Range 8 East, (Commission District 5) Wayne Dalton, Case Manager**

MR. DALTON: Thank you, Madam Chair. On April 21, 2011 the CDRC met and acted on this case. The decision of the CDRC was to recommend approval of the applicant's request for a variance by unanimous 7-0 voice vote.

The Applicant requests a variance to divide 2.8 acres into two 1.4-acre lots. The Applicant states he would convey 1.4 acres to his brother who originally helped him purchase the property. The Applicant claims that his brother and his brother's family have been residing with him for nearly eight years and it is time for his brother resides in his own home. The division will also enable his brother to leave his children something in the future.

There is currently a residence and conventional septic system on the property. The property is served by an off-site shared well. The property is located within the Basin Hydrologic Zone. Article III, Section 10 of the Land Development Code states the minimum lot size in this Hydrologic area is 10 acres and can be reduced to 2.5 acres with water restrictions. Lot size may be further reduced to 1.25 acres via small-lot family transfer per Article II, Section 4.3.5. The property has been in lawful possession of the family proper for over five years, therefore the Applicant can apply for a small-lot family transfer if the proposed variance is approved by the Board of County Commissioners.

Family Proper is described in Article II, Section 4.3.2c, as lineal relations up to and including the third degree, i.e., grandparent, parent, child. Step-relations shall count as natural relationships so long as the step relationship is legally existent at the time of the transfer, including legal guardians who have performed the function of grandparent or parent to the person who is receiving the transferred lot.

Recommendation: Staff has reviewed this Application and has found the following facts to deny this Application: Article II, Section 4.3.2c of the Land Development Code states: lineal relations up to and including the third degree, i.e. grandparent, parent, child, lineal in definition is the direct line of descent from an ancestor or hereditary; the Applicant is requesting the variance to allow for a small-lot family transfer land division to be deeded from sibling to sibling, which is not considered a line of descent per Code; the purpose of the Code would be nullified; the Applicant has not justified a hardship which is contemplated by the Code therefore staff recommends denial of the request.

If the decision of the BCC is to approve the Applicant's request, staff recommends the following conditions be imposed. Madam Chair, may I enter the conditions into the record?

[The conditions are as follows:]

1. Water use shall be restricted to 0.25 acre feet per year per lot. A water meter shall be installed for both lots this shall be noted on the Plat. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk's Office.
2. The Applicant shall enter into a shared well agreement with the owners of Tract B and Tract C.
3. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval.
4. No further division of either tract shall be permitted. This shall be noted on the Plat.
5. The Applicant shall connect to the County Water System when it becomes available within 200 feet of the property line.

CHAIR VIGIL: Are there any questions of Mr. Dalton?

COMMISSIONER MAYFIELD: Madam Chair.

CHAIR VIGIL: Commissioner Holian.

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COMMISSIONER HOLIAN: Thank you, Madam Chair. Wayne, is it possible to put on a plat that only one dwelling unit is allowed on that plat?

MR. DALTON: Madam Chair, Commissioner Holian, I have seen that condition, that note put on a plat.

COMMISSIONER HOLIAN: Okay. Thank you.

CHAIR VIGIL: Okay. Any other questions of Mr. Dalton? Commissioner Anaya.

COMMISSIONER ANAYA: You learn something every day, Mr. Dalton. It's okay for a grandparent or child to get a lot split but it's not okay for a sister to give a sister a lot or a brother to give a brother a lot?

MR. DALTON: Madam Chair, Commissioner Anaya, that is correct. The code states that small lot family transfers can only be deeded from a grandparent, a parent or a child. So either a grandparent can give it to their daughter or son. It's kind of confusing. A piece of property can only be deeded from a grandparent to a parent to a child. That's all the code states for a small lot family transfer. It cannot be deeded from sibling to sibling. So a brother cannot give it to a sister and a sister can't give it to a brother, cousin or anything like that. It has to be –

COMMISSIONER ANAYA: Madam Chair, Mr. Dalton I would assume that we've had – have we had variances in this that have been approved? Brother to brother? Because it would seem to me that it's still a variance but it would seem to me that they would be included if they're immediate, but have we had variances similar to this request?

MR. DALTON: Madam Chair, Commissioner Anaya, yes. We've had these requests come forward.

CHAIR VIGIL: Are you done, Commissioner Anaya?

COMMISSIONER ANAYA: Madam Chair, one more question. Associated with lot size, I know that NMED has tightened up their regulations associated with septic tanks. Does any of this, if it would get approved, is it impacted by NMED within those new rules? Do you have any knowledge of that?

MR. DALTON: Madam Chair, Commissioner Anaya, if this request is approved and he does create two 1.25-acre lots or 1.4-acre lots I believe he would have no problem getting a septic permit from the Environment Department.

COMMISSIONER ANAYA: Thank you, Madam Chair.

CHAIR VIGIL: Commissioner Stefanics, then Commissioner Mayfield.

COMMISSIONER STEFANICS: Thank you very much, Madam Chair and thank you, Wayne. How many people live currently in the house on 2.818 acres?

MR. DALTON: Madam Chair, Commissioner Stefanics, it is the applicants and the applicants' brother's family. I'm not sure how many of them reside there.

COMMISSIONER STEFANICS: Can you ask them?

MR. DALTON: Madam Chair, Commissioner Stefanics, eight.

COMMISSIONER STEFANICS: Eight people. So if the lot is divided, how many people will live on the two lots? Eight? No more, unless there's more babies.

MR. DALTON: That's correct.

COMMISSIONER STEFANICS: Okay. Thank you very much, Madam Chair.

CHAIR VIGIL: Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, Mr. Dalton, based on Commissioner Anaya's question, it can't be transferred from sibling to sibling the way our code is, hypothetically, could the child give it to the parent and the parent come back and give it to a couple of kids?

MR. DALTON: Madam Chair, Commissioner Mayfield, the way the code is written, no. Well – Madam Chair, Commissioner Mayfield, yes. A child can transfer to a parent and then the parent can transfer it back to the child as long as the child is of age, which would be 18.

COMMISSIONER MAYFIELD: Okay. Thank you.

CHAIR VIGIL: How long have the applicants owned this property?

MR. DALTON: Madam Chair, the applicant has owned the property since 2003.

CHAIR VIGIL: Thank you. Any other questions of Mr. Dalton?

COMMISSIONER ANAYA: Madam Chair.

CHAIR VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, Mr. Dalton, Mr. Kolkmeier, just a comment associated with Commissioner Mayfield's comment and the comments I made previously, I think the intent, and this goes to the code discussions we're having now, I think the intent is immediate relation, so it's my perspective for discussions in the code and I just want to put it on the record that siblings should be included for consideration absolutely. I have a friend near and dear to me that raised his – all of his brothers and sisters. He raised them from the time they were little until the time they grew up. So I think that's a code item that we should look at. So thank you, Madam Chair.

CHAIR VIGIL: Mr. Ross, did you want to address that with regard to what state statute says family transfer and lineage?

MR. ROSS: Well, Madam Chair, the state statutes don't contain any language about this.

CHAIR VIGIL: So it's interpreted that –

MR. ROSS: No, it's County code. There are limitations in County code. It's poorly written; we know it is; we're trying to rewrite the whole thing. This is just one of many problems that exists in the code is that it doesn't make any sense. Why would you do it that way?

CHAIR VIGIL: Thank you, Madam Chair. Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, a question you asked previously. Mr. Dalton, the acquisition of this property was 2003. Is there when you acquire a property or purchase a property, is there a certain amount of time before it can be split up into a family transfer under our code?

MR. DALTON: Madam Chair, there is. It has to be in the family proper for no less than five years.

COMMISSIONER MAYFIELD: Not ten, five?

MR. DALTON: Yes.

COMMISSIONER MAYFIELD: Thank you, Madam Chair.

CHAIR VIGIL: Okay, if there are no further questions from Mr. Dalton is the applicant here? Please step forward. Are you Mr. Salcido. Please state your name. You're

going to need to be sworn in also. Please state your name and address. Is there interpretation going to go on? Bueno, bienvenido. ¿Cómo está?

[Duly sworn, Ivan Salcido testified as follows:]

IVAN SALCIDO: Bien, gracias.

CHAIR VIGIL: Mr. Larrañaga, you will be interpreting for us? Okay. Do you agree with all of the conditions that have been set forth?

MR. SALCIDO: Sí.

CHAIR VIGIL: Sí. Yes. Okay. Is there anything you would like to add?

MR. SALCIDO: Pues, de hecho querría pedir el permiso porque todos los vecinos que pregunté, todos están de acuerdo. No se oponen ni nada. Todos los terrenos que están juntos a mi casa están divididos. Por eso compramos nosotros allí.

CHAIR VIGIL: Bueno, Mr. Larrañaga.

JOSE LARRAÑAGA (Commercial Development Case Manager): Madam Chair, the applicant stated that he just wants to split his land and the property around him, a lot of the properties have been split, and he's talked to his neighbors and they're all okay with the lot division and what he's trying to do.

CHAIR VIGIL: Thank you. Are there any questions for the applicant?

COMMISSIONER STEFANICS: Madam Chair.

CHAIR VIGIL: Commissioner Stefanics.

COMMISSIONER STEFANICS: Are there any grandparents that might – that are around that might be joining the family?

MR. SALCIDO: Mi papa y mi hermano viven en el terreno enseguida.

MR. LARRAÑAGA: Madam Chair, Commissioner Stefanics, his father and another brother live right next to him. So they wouldn't be living on this property.

COMMISSIONER STEFANICS: Madam Chair, so they already live in the area.

MR. LARRAÑAGA: Madam Chair, Commissioner Stefanics, yes.

COMMISSIONER STEFANICS: Thank you very much.

CHAIR VIGIL: There's two units that are identified, and you can answer this, Mr. Larranaga if you know it, or Mr. Dalton. One Exhibit E, is that – those two units, who's living in those? And is there going to be an additional unit placed?

MR. DALTON: Madam Chair, the applicant currently resides in one of the residences and the other home he moved on the property because it was getting vandalized at another location. So he moved that on the property while he was going through this process.

CHAIR VIGIL: Is that home – does it have the appropriate permitting?

MR. DALTON: Madam Chair, no, it does not, because it would not meet the minimum lot size in this area. If he does not get this approved and does not go through the small lot family transfer process he will not have enough acreage for two dwelling units on that property. That home is just stored there. It's not hooked up to any utilities at this time.

CHAIR VIGIL: Okay.

COMMISSIONER HOLIAN: Madam Chair.

CHAIR VIGIL: Commissioner Holian.

COMMISSIONER HOLIAN: Mr. Salcido, would you agree to another condition that there would be only one residence per lot?

MR. SALCIDO: Sí.

MR. LARRAÑAGA: Madam Chair, Commissioner Holian, he agrees to that condition.

COMMISSIONER HOLIAN: Okay. Thank you.

COMMISSIONER MAYFIELD: Madam Chair.

CHAIR VIGIL: Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, Mr. Dalton, on Exhibit G, where we have the blocked out area, what's in that far upper right-hand corner? Where those two cars are parked. Are they sharing a structure with the other adjacent property?

MR. SALCIDO: Es un corral que tiene mi hermano tambien.

MR. DALTON: Madam Chair, Commissioner Mayfield, those are corrals and he is sharing them with his father on the adjoining piece of property.

COMMISSIONER MAYFIELD: Thank you.

CHAIR VIGIL: Further questions? This is a public hearing. Is there anyone in the audience that wishes to address the Commission on this agenda item? Please step forward. Seeing none, the public hearing is closed.

COMMISSIONER STEFANICS: Madam Chair.

CHAIR VIGIL: Commissioner Stefanics.

COMMISSIONER STEFANICS: Madam Chair, I would move approval of CDRC Case #V 11-5030 with staff conditions and the additional condition that Commissioner Holian noted of only one residence per lot.

COMMISSIONER HOLIAN: I'll second that.

CHAIR VIGIL: I have a motion and a second. Do we have a .25 limit on the water use and require metering or are they hooked up?

MR. DALTON: Madam Chair, that is condition #1 that we restrict both homes to a quarter acre-foot. Both lots will be restricted to a quarter acre-foot.

CHAIR VIGIL: We need clarification. .25 per lot or .25 to include both lots?

MR. DALTON: Madam Chair, it will be .25 for each lot.

CHAIR VIGIL: Okay.

COMMISSIONER MAYFIELD: Madam Chair, on that point. I think your report indicates they're on a shared well. Where is that shared well located at?

MR. DALTON: I believe that's on the adjacent tract, on his father's tract.

COMMISSIONER MAYFIELD: And what's the water restriction there?

MR. DALTON: It's shown on Exhibit F. It is on Tract B, the well.

COMMISSIONER MAYFIELD: And Madam Chair, Mr. Dalton, how many folks are sharing that well?

MR. DALTON: Madam Chair, Commissioner Mayfield, it is a shared well between all three tracts. So lots A, B and C share the well.

COMMISSIONER MAYFIELD: B and C. And I'm sorry, Mr. Dalton, on Exhibit G, I'm just trying to look at the big tract that we're asking to be split, and then the adjacent tract to the right, there's two tracts there.

MR. DALTON: Correct.

COMMISSIONER MAYFIELD: So does that other lower tract or the higher tract have an independent well?

MR. DALTON: Madam Chair, Commissioner Mayfield, if you look at Exhibit F, the survey plat, you can see the tracts we're talking about, which is Tract A. To the right of that is Tract B. To the right of Tract B is Tract C. So all three of those lots share the well.

COMMISSIONER MAYFIELD: And what is the water usage on that adjacent tract that already has it?

MR. DALTON: It's a quarter acre-foot.

COMMISSIONER MAYFIELD: Also.

MR. DALTON: Yes.

COMMISSIONER MAYFIELD: Thank you. Thank you, Madam Chair.

CHAIR VIGIL: Would the maker of the motion agree to an additional condition that would require the applicant and his brother to hold on to their property for a five-year period without reselling?

COMMISSIONER STEFANICS: Yes.

COMMISSIONER HOLIAN: Yes.

CHAIR VIGIL: Okay. I would like to make that condition #7. Would the applicant agree to that? Do you want to explain that, Mr. Larranaga?

MR. LARRAÑAGA: Madam Chair, the applicant agrees to the condition.

CHAIR VIGIL: Okay. So are there any other questions, comments? We have a motion with seven conditions, two that have been added tonight.

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

XIII. 4. A. CDRC CASE #VAR 10-5560 Juan Lozoya Variance. Juan Lozoya, Applicant, Requests a Variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to Allow Four Dwelling Units on 1.25 Acres. The Property is Located at 31 Cerro del Alamo, within Section 28, Township 16 North, Range 8 East, (Commission District 3). John M. Salazar, Case Planner

JOHN MICHAEL SALAZAR (Development Review Team Leader): Madam Chair, I spoke with the applicant last week. He stated that he was in California. He was supposed to send a representative for him today and I'm not sure if that representative is here or not.

CHAIR VIGIL: Is anybody here on behalf of Mr. Lozoya?

COMMISSIONER ANAYA: Motion to table, Madam Chair.

MS. COBAU: Madam Chair.

CHAIR VIGIL: Yes.

MS. COBAU: Prior to taking action, could I just point out that this applicant did not show up for any of the CDRC hearings. This case has been tabled before you twice. It's pretty obvious to us, we think that the applicant has no intention of showing up for a hearing and we'd like to enter the staff report into the record and recommend denial of his application for a variance.

COMMISSIONER ANAYA: Madam Chair, I'll pull that motion I made.

CHAIR VIGIL: Okay. Then let's hear the testimony then, Mr. Salazar.

MR. SALAZAR: Thank you, Madam Chair. He applied for this variance last July. When we took it before the CDRC he knew he had – he's had some experience with the County before on some illegal rentals he's had in other parts of the county. He tabled a few times and then he showed up to the last meeting he had to show up to and it appears we're seeing that type of behavior again now.

COMMISSIONER ANAYA: Madam Chair, motion to deny.

COMMISSIONER STEFANICS: I'm going to second with the conditions.

CHAIR VIGIL: I have a motion and a second which trumps any further discussion from you Mr. Salazar. Commissioner Mayfield.

COMMISSIONER MAYFIELD: Thank you, Madam Chair. Mr. Salazar, you contacted the applicant and he said he would at least have a representative here?

MR. SALAZAR: Madam Chair, Commissioner Mayfield, that's what he told me. I spoke with him today, earlier, late morning, he said he had a friend of his that lives out in the area by him, that would be here tonight. So he was aware of it.

COMMISSIONER MAYFIELD: He was.

MR. SALAZAR: Yes.

CHAIR VIGIL: Any further discussion? This is a public hearing. I do need to hear from the public before I take action. Is there anyone who would like to address the Commission on this case? Please step forward. Please state your name for the record and get sworn in. Will you be testifying, sir? Why don't you get sworn in also at the same time?

[Duly sworn, Suzanne Chavez testified as follows:]

SUZANNE CHAVEZ: Suzanne Chavez. I'm at 35 Cerro del Alamo. We own the property right below Juan Lozoya and I don't know. It sounds like maybe you're denying the request, which is really great for us because there's a lot of problems there. We have an acre and a quarter each. Four of us share a well. He has four families living on one piece of that. We have – the rest of the properties have two people each. So there's noise, there's sewer smell because they've just overrun the septic system. We're worried about our well. We have trash thrown in our yard. It's just really awful. We need to take care of business.

CHAIR VIGIL: Thank you, Ms. Chavez. Sir, please state your name.

[Duly sworn, Robert Young testified as follows:]

ROBERT YOUNG: Good evening. I'm Robert Young. I also reside at 35 Cerro del Alamo and Madam Chair and Commissioners, thank you for giving us the time to speak. I really don't think I've got too much more to add relative to what Susanne has eloquently stated. We've got concerns about trash, sewage, easements, easement maintenance, a number of things. Essentially, this is a property owner that is asking for forgiveness instead of permission. And it's a use that's completely inappropriate for the community. You may notice in your documentation that the La Cienega Valley Association has also opposed this.

CHAIR VIGIL: Thank you very much, Robert.

COMMISSIONER HOLIAN: Madam Chair, could I ask a question?

CHAIR VIGIL: Sure. Hold on. Is it of the –

COMMISSIONER HOLIAN: John Michael.

CHAIR VIGIL: John Michael, please step forward.

COMMISSIONER HOLIAN: Thank you, Madam Chair. What's the next step

if this is denied and how do we fix the problem?

MR. SALAZAR: Madam Chair, Commissioner Holian, the recommendations – actually we laid out some staff recommendations for denial. One of them is that the property owner – this was originally – the three-unit apartment was originally permitted to be a garage, so he has 30 days from tonight after the denial to remedy that and turn it back into a garage and allow our code enforcement officers to go in and inspect and make sure he's basically put cement down the pipes, removed everything out of there, tear down the walls and turn it back into a garage. Should he fail to comply with that we'll have to file him into court.

COMMISSIONER HOLIAN: Okay. Thank you, John Michael.

CHAIR VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, over the past six months, sitting on the Commission and starting my seventh month there's been variances that have come forward from people that are truly trying to better themselves and help their families to meet compliance with public safety, including issues associated with County requirements as well as NMED requirements, and it's this type of request that is a black eye to those type of people trying to do the right thing. Because I'm very supportive of those families who have to do family transfers or asking for variances that are legitimate, that meet health and safety, that meet the requirements of the County as well as state requirements. So thank you for the update and thank you, staff, Ms. Cobau. Thank you for bringing it up and letting me know that it was tabled and that you have made efforts to get him here and by not showing up it demonstrates what he thinks about the request he made to us. Thank you, Madam Chair.

CHAIR VIGIL: Any further discussion?

COMMISSIONER STEFANICS: Madam Chair.

CHAIR VIGIL: Yes.

COMMISSIONER STEFANICS: In relation to some of the testimony we heard from neighbors, sometimes I think we're more reactive than pro-active because of our staffing, etc. And so if the neighbors brought forward a formal complaint, what would our staff be doing? Besides what's here, what could be done for the neighbors if they brought forward a complaint?

MS. COBAU: Madam Chair, Commissioner Stefanics, this was brought forward on a complaint and I believe we have cited this individual into court and we're waiting for a court date. And John Michael, correct me if I'm wrong but I think that's where we're going with this. We can tell the neighbors that there are other regulatory agencies that can address things. We can have them call the New Mexico Environment Department, you can report your complaint to them if you haven't done so already, and the Environment Department will also go out and cite them if there's a septic violation, if it doesn't meet their standards.

COMMISSIONER STEFANICS: Well, the reason I ask, Madam Chair, and thank you very much Shelley, but if there are some health and safety issues then I think people just need to know about their various avenues.

CHAIR VIGIL: Thank you. I haven't closed the public hearing. Is there anybody else that would like to address the Commission on this, please step forward.

[Duly sworn, Richard Rice testified as follows:]

RICHARD RICE: My name's Richard Rice. This has been a long, ongoing story of the four households that he has there. The Sheriff has been out there many, many times. They have huge parties. They're very loud with the music and they won't turn it down. There's an incredible amount of vehicles that come and go out there. They all have tinted windows and a lot of vehicles come up and are there for ten minutes and leave. So you can just assume what has happened and there has been a drug bust that has taken place there. And apparently the owner lives in California and just has no control over what goes on there at all. And about a month ago, I guess there's a lot of young girls that hang out there also and apparently the two Sheriff's cars came and talked to the neighbors about – they said there was a potential molestation that took place there. So then the Sheriff went back and talked to them and the neighbors didn't hear anything more. So anyway, there's a lot of things that are going on at that house and the neighbors are fearful for retribution if they throw them out. So I don't know what the process is but I would certainly like to see that the immediate neighbors are not – do not have to live in fear.

CHAIR VIGIL: Thank you, Mr. Rice. There's another gentleman who wanted to address the Commission. Please state your name and get sworn in.

[Duly sworn, Frank Cox testified as follows:]

FRANK COX: My name is Frank Cox. I live at 27 Cerro del Alamo, or what is currently 3 Sunset Springs. I am on the easement that the road that goes to this residence. I just would like to state for the record the amount of traffic that goes in and out of there, not only for the noise pollution but also for potential accidents. There hasn't been any study done on how much traffic that can maintain. Also the number of people in and out of there, not just what the residents – not just how many residents are there or supposedly there but the number of people and young children in that area, my concern is for their safety and the safety of the neighbors and for the use of the land, what it can hold and what it cannot hold, with the water, the wells and the sewage.

CHAIR VIGIL: Thank you very much, Mr. Cox. Is there anyone else in the audience that would like to address this agenda item? Seeing none, I will close the public hearing. I'll ask the maker of the motion if any of the testimony in the public hearing will change his mind. And the seconder?

COMMISSIONER STEFANICS: No, but I do have a question, Madam Chair.

CHAIR VIGIL: Please proceed.

COMMISSIONER STEFANICS: I'd like to – or maybe it's more a recommendation or an idea. Perhaps when we are doing the rewrite of the code, and maybe it's already there, there needs to be some ability for the Sheriff to bring serious issues to Land Use so that something can be – so that we can get into cease and desist or something. It sounds like there's much more than just heavy habitation going on. So all I'm suggesting and I don't think we have to get into discussion, I'm just suggesting that maybe when we talk about the future code that there be an avenue for serious legal issues to come into land use decisions. Thank you very much, Madam Chair.

CHAIR VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, I concur with that recommendation. I made a comment earlier, in the earlier case relative to where we can, and it makes sense, getting input from the Sheriff's Department. So I would concur with those

comments.

CHAIR VIGIL: Okay, if there's no further discussion.

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

- XIII. A. 5. Reconsideration of BCC Case # MIS 11-5140 Rezoning of Polk Property (Commissioner Holian). Polk Rodeo Properties, Ltd. Co., Applicant, Jim Siebert, Agent, Request a Review of a Future Application to the City of Santa Fe for the Rezoning of .63 Acres of a 1.25-Acre Parcel From Rural Residential (RR) to General Commercial (C-2) for Consideration of Compliance with the Settlement Agreement and Mutual Release of All Claims Between the City of Santa Fe, Santa Fe County and Las Soleras, dated May, 2008. The Property is Located at 2910 Richards Avenue at the Southwest Corner of Rodeo Road and Richards Avenue within Area 12 of the Presumptive City Limits, within Section 8, Township 16 North, Range 9 East (Commission District 5). Jose E. Larrañaga, Case Manager**

MR. LARRAÑAGA: Thank you, Madam Chair. On May 10, 2011, a proposal to consent to the City's potential rezoning of the Polk property was presented to the County Commissioners. The decision of the BCC was to deny the request. On June 14, 2011, under Matters from the Public to the BCC Mr. Jim Siebert requested a reconsideration of a future application to the City of Santa Fe for the rezoning of .63 acres of a 1.88-acre parcel from rural residential to commercial. Commissioner Holian, being in the majority of the previous decision by the BCC requested a consideration of BCC Case #MIS 11-5140, Rezoning of Polk Property, to be heard on the July 12th BCC meeting.

Required action. The BCC should review the attached material and consider the facts presented, take action to approve, deny or approve with conditions or table for further analysis of this request.

CHAIR VIGIL: Okay. Any questions of Mr. Larrañaga on the reconsideration issue?

COMMISSIONER ANAYA: Madam Chair.

CHAIR VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: We should bring up the applicant right after, Madam Chair?

CHAIR VIGIL: I'm just asking questions of Mr. Larranaga.

COMMISSIONER ANAYA: I'll hold my questions for the applicant.

CHAIR VIGIL: Okay. Are there any questions for Mr. Larranaga? Seeing none, is the applicant here?

[Duly sworn, Jim Siebert testified as follows:]

JIM SIEBERT: My name's Jim Siebert. My business address is 915 Mercer. Madam Chair and Commissioners, I'd like to thank you for the opportunity to present this

again. I think I, at the last meeting I presented this and I think I failed to kind of adequately present what was requested by the applicant. So I brought a couple extra exhibits. I'd like to review those with you.

The first exhibit is the area that's currently zoned rural residential, that's the area in the real light yellow here. It's approximately 107 acres. My request sits at the very corner here. It's the absolute corner of Rodeo Road and Richards Avenue, and this area is .63 acres. Of the 107 acres, it represents approximately one half of one percent of the total acreage. The area – this area is currently zoned and under the presumptive city limits. The area immediately adjacent to it is zoned C-2, general commercial. If we proceed to the City we would be requesting the same thing, the extension of general commercial. There's a gas station on this side and a car wash. This is storage units and then a restaurant. So the nature, obviously, of Rodeo Road in this location is obviously commercial.

And the one thing I'd like to point out is the process we'll be using if we have the authority to go to the City Council and why we can restrict this to just simply .63 acres. The entire parcel right now is this area here. The steps would be first of all to do a lot line adjustment, and what we would do is we would take the lot line that's here and incorporated it into the existing C-2 tract that Polk Oil owns now, and this lot line moves down here, and the remainder of the lot is .82, and that would remain rural residential. This area would be annexed to the City. The remainder .82-acre parcel would remain outside the city limits. Once again all we're asking is to have this parcel zoned to C-2 and we would limit it to that particular area.

I know that –

COMMISSIONER STEFANICS: Excuse me, Madam Chair, are we doing the reconsideration or are we doing the next case?

CHAIR VIGIL: We're doing the reconsideration, so I've asked the applicant to step forward and add any information that he'd like to address the reconsideration. Do you believe that this does not –

COMMISSIONER STEFANICS: I believe that he's presenting the next case.

MR. SIEBERT: Yes, maybe I jumped the gun on that.

CHAIR VIGIL: Okay. So really, do you have anything to testify to with regard to this Commission reconsidering this case?

MR. SIEBERT: Only that we have additional information that I wanted to provide that really I didn't provide at the last hearing.

CHAIR VIGIL: And in all fairness to the applicant without us knowing that additional information we may not be able to take action on this. Mr. Larrañaga.

MR. LARRAÑAGA: Madam Chair, some of the additional information should be in your packet as Exhibit A. There's a letter and there are actual drawings on what the lot looks like as it's existing and how the lot line adjustment will incorporate it into the tract where the car wash is and the gas station and what remains in the county as .82 of the rural residential.

CHAIR VIGIL: Thank you, Mr. Larrañaga.

COMMISSIONER HOLIAN: Madam Chair.

CHAIR VIGIL: Commissioner Holian.

COMMISSIONER HOLIAN: I move for –

CHAIR VIGIL: Is this a public hearing? I do believe I need to get public testimony for reconsideration. This is strictly for the Commission to reconsider. Anyone that would like to address the Commission on this please step forward and state your name and be sworn in for the record. Please, whoever would like to speak first. Sir, did you want to speak also? Okay, you get sworn in also. First speaker, please state your name for the record.

[Duly sworn, Luz Loshbaugh testified as follows:]

LUZ LOSHBAUGH: My name's Luz Loshbaugh. I'm a resident right there behind the subject property, and the several issues I've got with the property in the area are water drainage – water drainage is really a big issue because every time we have a monsoon, which we haven't seen in a while, we do get a lot of flooding in our backyards and I'm just concerned about more surface water drainage as a cause of this. Also, the proposed use. Right now that car was his 24 hours, the one in question right now, the one that's already operating. And 24 hours is a bit much because like I said our yards, we live right there and it backs right up to it. It's annoying, especially at 2:00 in the morning when some kid decides to wash his car. Evening lighting is also an issue. We used to be quite tranquil but now they've got these 24-hour lights going on. Structure height is also another issue. We had nice views of the mountains and it seems to be dwindling with all this stuff going on. We are the Town & County Subdivision right there adjacent to the property and we'd like to be involved in approval of the development as it goes on. Thank you.

CHAIR VIGIL: Thank you. Next speaker.

[Previously sworn, Ann Wheelock Gonzales testified as follows:]

ANN WHEELOCK GONZALEZ: I'm Ann Wheelock Gonzales and I also live in Town & County Subdivision, my husband and I. The subdivision is approximately 40 years old and has been experiencing – the areas around the subdivision being developed. We do have issues with the gas station and the car wash, some of which he already mentioned. We also are totally opposed to 24-hour operation of either one because of the noise, the lights and the risk of people coming in after hours and being down around below Rodeo Road where they cannot be seen. The car wash beeps when it wants more money and we're not going to get up at 2:00 in the morning and put more money in. We really want to protect our neighborhood and minimize the impact of any future impact. The arroyo is alive and runoff does flow, as Mr. Loshbaugh said and a few years ago I brought a presentation where I should flooding in our backyard, so we really have to be careful with runoff, anything that changes the drainage and the runoff of the arroyo and not bring this proposed development into our neighborhood in any way. Thank you.

CHAIR VIGIL: Thank you, Ms. Gonzales. Next speaker.

[Previously sworn, Manuel Lujan testified as follows:]

MANUEL LUJAN: Madam Chair, my name is Manuel Lujan. I reside within the Town & County Subdivision. I would like to again, for the record, use my comments at the last meeting on May 10th. Further, I just want to address the traffic issue. I know this is a small portion, .63 of an acre I think it is or something like that. That is Richards Avenue. It's the corridor that goes into the Community College, on the main road that goes into Rancho Viejo and all those subdivisions down there. We have – I think we have two roundabouts there and there's another one that is being built that goes into the Community College and Rancho Viejo down there right now. Those take quite a bit of time to navigate when there's

traffic. Right now, there's times during the day that you cannot use Richards Avenue because of the traffic that's going to the Community College and people are coming two and from work that live within Rancho Viejo. So I believe that I don't know exactly what the impact will be here. I don't know if you have a study on that but I'm sure that it's going to aggravate it more. So for that reason I oppose it. Thank you.

CHAIR VIGIL: Next speaker. Thank you, Mr. Lujan.

[Previously sworn, Ernest Gonzales testified as follows:]

ERNEST GONZALES: My name is Ernest Gonzales and I am one of the residents of the area there and I would just like to echo what the other neighbors have said. One of the biggest problems we have is the 24-hour opening of the car wash which is already distributing trash all over the neighborhood because the trash flies out of the barrels after the people have dumped it in there when they're cleaning their cars. It creates a situation where the neighborhood, although adjacent to it, we get some of that too. Thank you.

CHAIR VIGIL: Thank you, Mr. Gonzales. Next speaker.

[Duly sworn, Romulo Martinez testified as follows:]

ROMULO MARTINEZ: My name is Romulo Martinez. I have that property just south of the owner, Mr. Polk, and I'd like to have Mr. Siebert explain to me what he tried to explain to you.

CHAIR VIGIL: No. You can have a personal contact with him with regard to that.

MR. MARTINEZ: Can I look at the exhibits?

CHAIR VIGIL: Sure. Is there any testimony you would like to provide as a result of your viewing of the exhibits?

MR. MARTINEZ: I'd like to have a couple of questions asked, answered. Has there been any change since the last meeting over there?

CHAIR VIGIL: In the proposal? I think that Mr. Siebert, you might be able to answer that just for his purposes. There has been some recommendations on behalf of your clients to have some additional conditions, but that would only be considered on the next item. What we're actually doing right now is we're just going to be voting on whether or not we will consider this again.

MR. SIEBERT: Madam Chair, the overall nature of the request really hasn't changed.

CHAIR VIGIL: Okay.

MR. MARTINEZ: My point is there hasn't been any change from then to now. Reconsidering this proposal is just a waste of time. I've sat over there from the beginning to now and my time is valuable too. And I don't want to go into what this County can and can't do, because you know darn good and well you don't have the manpower to police that area, and these people just clarified that. I think another question I'd like to know is this, Mr. Polk's property an addition to mine? And they got - I think it is, from seeing what I saw there. And they want piecemeal authorization. If you're going to do anything else or anything you have to remember what they talked about, you and the City coming up with some proposals that have been tabled time and time again. And I think this should be addressed before this.

CHAIR VIGIL: Thank you very much, Mr. Martinez. Is there anyone else that

would like to testify on this? Okay. We are just voting on whether or not we are going to reconsider this item. We had already taken action on it and turned it down. The applicant came to us and requested that we consider reconsidering it. We gave direction to the applicant that we would reconsider it. So we're taking action now on just reconsideration. I hope that's understood clearly. So are there any further questions from the members of the Board?

COMMISSIONER HOLIAN: Madam Chair.

CHAIR VIGIL: Commissioner Holian.

COMMISSIONER HOLIAN: I move for reconsideration of BCC Case #MIS 11-5140.

COMMISSIONER ANAYA: Second.

CHAIR VIGIL: There's a motion for reconsideration. Is there any discussion? I can't support this. I see some of the representatives of the Town & Country area having been involved in all the hearings that we went through with them with regard to keeping the area rural residential and how we tried to respect that request through the rural residential ordinance. This is one of the strongest areas in support of a rural residential and my concern is that this might be an opportunity to open floodgates for further zoning change to that rural residential. So I can't support it. Are there any other discussions or comments? Seeing none, we have a motion to reconsider it.

The motion passed by majority [3-2] voice vote with Commissioners Anaya, Holian and Mayfield voting in favor and Commissioners Stefanics and Vigil voting against.

- XIII. A. 6. **CC Case # MIS 11-5140 Rezoning of Polk Property. Polk Rodeo Properties, Ltd. Co., Applicant, Jim Siebert, Agent, request a Review of a Future Application to the City of Santa Fe for the Rezoning of .63 Acres of a 1.25-Acre Parcel From Rural Residential (RR) to General Commercial (C-2) for Consideration of Compliance with the Settlement Agreement and Mutual Release of All Claims Between the City of Santa Fe, Santa Fe County and Las Soleras, Dated May, 2008. The Property is Located at 2910 Richards Avenue at the Southwest Corner of Rodeo Road and Richards Avenue within Area 12 of the Presumptive City Limits, within Section 8, Township 16 North, Range 9 East (Commission District 5) Jose E. Larrañaga, Case Manager**

MR. LARRAÑAGA: Thank you, Madam Chair. On May 10, 2011, a proposal to consent to the City's potential rezoning of the Polk property was presented to the Board of County Commissioners. The decision of the BCC was to deny the request. The owners of the Polk property located at the intersection of Rodeo Road and Richards within Annexation Area a12 have applied to the City of Santa Fe for the rezoning of their property from the Rural Residential zoning, the zoning assigned by the Extraterritorial's Land Use Authority, to

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a commercial designation.

The existing zoning in the immediate area is commercial along Rodeo Road and Richards Avenue and is primarily residential in the neighborhoods behind the intersection and generally in the Town & Country Subdivision. A settlement agreement and mutual release of claims was established by the City of Santa Fe, Santa Fe County and Las Soleras in May 2008. Section 2.C of the Annexation Settlement Agreement states Area 1 and 12 shall be annexed but the rural residential zoning prevalent to the area shall be respected by the City following annexation and urban density shall not be established within Area 1 or Area 12 during the term of this agreement. Appropriate zoning shall be developed for the City for these areas prior to annexation.

The City of Santa Fe is awaiting consent by the BCC to amend the settlement agreement specific to Area 12 and Section 2.C so the City may take the same action along with the request to rezone the identified portion of the property through the City process for review and final decision by the City Council.

The City of Santa Fe created an RR classification within the City Code and the ELUA classified properties in Ordinance No. 2009-01 using the newly created RR zoning classification. Although portions of Areas 1 and 12 received RR zoning other areas received R-1 and still others received a variety of other classifications, including commercial. The zoning classifications signed by the ELUA were pragmatic, property by property decisions based on evidence of the use and probable future use of the property consistent with the settlement agreement. It was not the view of the ELUA or of the City and County Legal staff that Section 2.C require that only the RR zoning designation be applied within Areas 1 and 12. Such a view would be consistent with the multiple tenants of common law.

During the development of the zoning ordinance for the Extraterritorial Zone the ELUA recognized that uses and development patterns other than rural residential existed and must be respected. The key phrases in the settlement agreement were viewed by the ELUA and the City and County staff as permitting rezoning of areas within the Extraterritorial Zone with the zones of the agreement and common law. The view of Section 2.C of the settlement agreement, if accepted means that the settlement agreement should not preclude the Polk property owners from seeking commercial zoning along a major collector within the area planned for rural residential so long as the overall objectives of the agreement are adhered to by the City when addressing the request. For example, if commercial zoning on the parcel would create urban densities or be inconsistent with the prevailing character of the area the City might deny the request. Also if a major commercial center were planned within an area now zoned RR the City might deny the request as well. But given the fact that the proposed rezoning adjoins multiple other commercial uses that were previously recognized by the ELUA and two major collectors at a major intersection it does not appear to be inconsistent with the settlement agreement to describe this property as both appropriate for commercial development and consistent with the prevailing historical use of the general vicinity.

Recommendation: The following facts support consent by the BCC to amend the settlement agreement specific to Area 12 and Section 2.C. Portions of Area 12 received RR zoning; other areas received R-1 and still others received a variety of other classifications, including commercial. The intent of the settlement agreement was not to limit Area 12 to a zoning designation of RR. The ELUA recognized that uses and development patterns other

than rural residential existed and shall be respected. The proposed rezoning adjoins multiple other commercial uses that were previously recognized by the ELUA and two major collectors at a major intersection. The proposed rezoning is consistent with the settlement agreement for commercial development and consistent with prevailing historical use in the general vicinity.

A review of the settlement agreement, Section 2.C specific to Area 12 and Ordinance No. 2009-01 has established findings that the settlement agreement should not preclude the Polk property owners from seeking commercial zoning on a major collector within the area planned for rural residential. The overall objective of the agreement shall be adhered to by the City when addressing the request and appropriate zoning shall be developed by the City for this area prior to annexation. Madam Chair, I stand for any questions.

CHAIR VIGIL: Questions for Mr. Larranaga. Commissioner Holian.

COMMISSIONER HOLIAN: Thank you, Madam Chair. This is actually a question for Steve. Are there – if we were to approve this would there be any ramifications for the annexation agreement? In other words, would this set a precedent for piecemeal reversal of rural residential zoning?

MR. ROSS: Madam Chair, Commissioner Holian, I'll answer the first question first. No, there wouldn't be any ramifications. In fact this procedure was devised by the City to ensure that there would not be any ramifications with the City-County settlement agreement. The second one on whether this kicks open the door for other applications that are similar, I really can't speculate on that. We haven't had – this is the first one we've had in a couple years.

COMMISSIONER HOLIAN: Okay. Thank you, Steve.

COMMISSIONER MAYFIELD: Madam Chair.

CHAIR VIGIL: Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, Mr. Ross, on Commissioner Holian's point, do we have a letter from the City stating that? That there won't be any repercussions if there would be approval of a zone change?

MR. ROSS: Madam Chair, Commissioner Mayfield, we have a letter from the City requesting this action, requesting that we undertake this review. Yes.

COMMISSIONER MAYFIELD: Madam Chair, Mr. Ross, maybe I'm just not asking it right but we got a letter asking for us to look at it, but is there a letter saying whatever action this Commission takes that there would be no reason for them to maybe renege on the annexation proposal that has been agreed upon right now? This couldn't be an action where they say, look, we want to scrap the annexation plan?

MR. ROSS: Madam Chair, Commissioner Mayfield, the whole idea of what the City's proposing here is to make sure that there aren't any ramifications for the annexation settlement agreement.

COMMISSIONER MAYFIELD: On our side.

MR. ROSS: Well, City and County side, in the sense that they wanted to ensure that we didn't have a problem with this rezoning before they undertook it, because they were concerned about the viability of the settlement agreement. In other words, they like the settlement agreement and they would like to keep it in place and they don't want to violate it, so they just wanted our advice as to whether this action was appropriate on their

process?

MR. ROSS: Madam Chair, Commissioner Anaya, well, it might be better put as a recommendation than a condition, because a condition is, number one, you'd be conditioning what is essentially permission under the settlement agreement to engage in a rezoning on a requirement – that the City impose requirements on a business that isn't even subject to their jurisdiction because there's nothing going on there. There's no application pending. So it might be better put as a recommendation and then the City can throw that into the zoning process and see if they can get approval of the applicant on a condition like that.

COMMISSIONER ANAYA: Madam Chair, I'll wait if there's other comments from Commissioners.

CHAIR VIGIL: Other comments, questions?

COMMISSIONER MAYFIELD: Madam Chair.

CHAIR VIGIL: Yes.

COMMISSIONER MAYFIELD: Madam Chair, a little earlier you were talking about some of the lot line adjustments. Let me just – and I'm looking in our packet. I don't know if you have the same information I have here. But I am on – I don't know if it's an exhibit labeled here, but it's a smaller breakup of the tract. Exhibit B. I'm sorry. There's an Exhibit B down there. It's your exhibit. As I understand it, right now where the existing car wash is and the gas station, that's zoned C-2.

MR. SIEBERT: Correct.

CHAIR VIGIL: That's City zoning.

COMMISSIONER MAYFIELD: City C-2. The adjacent property just to the right, which I believe is a .63 acreage is right now zoned the R-1. Correct?

MR. SIEBERT: Correct.

COMMISSIONER MAYFIELD: And then this bottom yellow tract that you have down here, it's a whole separate piece of property, correct?

MR. SIEBERT: It is not now. It's all one parcel at this point.

COMMISSIONER MAYFIELD: I'm showing it's not contiguous on some of my stuff. You had a .63 and a 1.45.

MR. SIEBERT: I think what we've shown you is the steps in this process. Currently all this is one parcel of land. If we were to proceed forward to the City, what we would do, the first thing we would do is a lot line adjustment which would take this parcel away from this piece of land and incorporate it into the existing C-2. The remainder parcel, which is .82 acres would continue to remain rural residential.

COMMISSIONER MAYFIELD: So the yellow part would be rural residential.

MR. SIEBERT: Correct.

COMMISSIONER MAYFIELD: You're just asking for that little portion there.

MR. SIEBERT: So the only thing that would be the C-2 would be the .62.

COMMISSIONER MAYFIELD: Okay. And just a question from my observation of the property. I've grown up in that area. The .63, that seems like a huge arroyo.

MR. SIEBERT: No, actually the arroyo, if you notice there's a drainage

easement right down through here. The culvert that comes under comes under right here, so actually what is referred to as the drainage issue is the one that really remains under rural residential.

COMMISSIONER MAYFIELD: But that property up on top, adjacent to Richards Avenue, what's the slope or the grade of that property?

MR. SIEBERT: Really, it's all relatively flat. It slopes down to the south at this point. The Richards Avenue is elevated from this property, but this property is really relatively flat.

COMMISSIONER MAYFIELD: Do we have maybe an aerial photography picture of that, or maybe just a – as I recall that property –

MR. LARRAÑAGA: Madam Chair, Commissioner Mayfield, I did go out there and look at the property. The last time I presented this I didn't have the opportunity to do that, although I did take some photos because there was some questions on the arroyo and so on. So I do have some photos, unfortunately I don't enough for everybody but I can bring them up and you can see them.

COMMISSIONER MAYFIELD: If I could see them that would be great. Mr. Siebert, let me ask this question. If this is approved by this Commission will there be any fill dirt that is needed to be put into that piece of property?

MR. SIEBERT: Towards the south there may be a need for some fill on the property. That would be an issue that would be addressed in the rezoning process. The one thing we did say in terms of the conditions is that I heard this concern before regarding the traffic and the access from Richards Avenue. I think one condition that could be imposed on the property is that no access, no vehicular access would be permitted from Richards Avenue directly to this property.

COMMISSIONER MAYFIELD: Thank you, Madam Chair, Mr. Siebert. I don't know if anybody else cares to see these photos or not. But what – are they proposing to expand the car wash, I don't know if they want to share that or they have to, or what's the thought of this.

MR. SIEBERT: There are two possibilities. It could be expansion of the car wash or the car wash would go away and a retail building would be replacing it.

COMMISSIONER MAYFIELD: But that entrance would be coming off of Rodeo Road, where the existing gas station is.

MR. SIEBERT: Yes, correct. All future development of it would be limited to the existing access from Rodeo Road.

COMMISSIONER MAYFIELD: Okay. Nothing off of Richards Avenue.

MR. SIEBERT: Nothing off Richards.

COMMISSIONER MAYFIELD: Thank you. Thank you, Madam Chair.

CHAIR VIGIL: Isn't that the current requirement for the Richards Avenue, because it's so close to a turn from Rodeo Road to Richards? You're not really making any concessions here.

MR. SIEBERT: I'll be honest with you. The City Traffic Engineer would never permit an access off Richards Avenue.

CHAIR VIGIL: What other conditions is your client willing – what other concessions is he willing to make?

MR. SIEBERT: I think one thing there was a concern about is whether this would set a precedent for other rezoning action and my only suggestion is that included in the motion could be something that would indicate that this is a very unique parcel of land where it's bounded on two sides by major arterial streets and adjoined by immediately an area that's been commercial for a significant period of time. So it's really not setting a precedent. It's something that's really an extension of the existing commercial. The one thing that's kind of unique about this parcel is that within the Town & Country Subdivision, on the covenants, this particular lot was specifically excluded from the covenants, the idea that at some point it would be used for commercial purposes. Thank you.

CHAIR VIGIL: I guess, Mr. Siebert, my concern with this opening the floodgates, so to speak, for lack of a better word, would be to ask would your client be willing to live with a condition that he not bring forth the 1.43 for commercial zoning?

MR. SIEBERT: You mean the remainder of the parcel? The .82?

CHAIR VIGIL: Right.

MR. SIEBERT: Yes. He would agree to that condition.

CHAIR VIGIL: Okay. Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, on that point I had raised several questions and comments in particular about that adjacent, or the same piece on the other side of the arroyo and I had the same concern and the information provided provides clarity for me on that point. I'm ready to make a motion, Madam Chair, when there's no other comments.

CHAIR VIGIL: Okay. This is a public hearing. So let me – we are going to take action on whether or not the .63 acres that are being considered would or would not violate the settlement agreement for the rural protection ordinance. Is anyone wanting to testify on that. Please step forward. You've already been sworn in.

MR. LOSHBAUGH: Madam Chair, I'm not sure what you question is. This is Luz Loshbaugh. Could I point out a few things on the map here?

CHAIR VIGIL: Sure.

MR. LOSHBAUGH: Okay. As we pointed out this dotted line down here is a water drainage area and this lot here is the one that goes right behind by property and this is Mr. Montoya's property over here in the corner. So what's going to happen here if this becomes approved? By the way, I disagree with what was said about this being flat; it's not very flat at all. If you stand over here you'll see it slopes down this way and it slopes in from Richards Avenue very, very much. So to do anything over here it's going to have to be backfilled, if you're going to do anything on that property. So that's where the concern is, the slope going down and the construction of anything in that area, is a real concern. Because there was already the water drainage, the new drainage that was put in across Richards just a year or so ago, not too long ago. So all this area here would either be in a drain belt anyway. That's what it is now. It almost has to be. Because this is too sloped to build on. This part also would need a lot of backfill. And like I said, that's why I agree with Mr. Martinez, like I said earlier, if we have to go continue with this with the City we'll be there also because we're going to express our concerns all the way. We'd rather just get this thing put to bed tonight along with the rest of us. Thank you.

CHAIR VIGIL: Thank you. Anyone else? Mr. Gonzales.

MR. GONZALES: I'm sorry I wasn't able to make it to the previous hearing

on this matter but the more I have learned about it the more I am opposed to the approval at all, because, as you stated, Madam Chairwoman, there was a lot of discussion prior to this in regards to protecting the status of our neighborhood, which is about 40 years old. It was always designed to be rural residential, which is what it has become. And when we moved in there 25 years ago there was no gas station or car wash; there was a nursery, the Lolama Nursery and it was a natural greenbelt that protected us from the Rodeo Road traffic, which there wasn't very much of in those days either, and Richards Avenue was dirt, a dirt road.

And so a lot of changes happened and we're being impinged upon more and more, the subdivisions to the south and Richards being paved and all the traffic. And so we really do deeply desire to keep our peace and quiet in that neighborhood. We love it there. All the neighbors do. All the neighbors are concerned; they're not all here tonight. But it's a beautiful, quiet neighborhood. Some of us have horses. In fact that's why we moved there, for that kind of an atmosphere. Families, most of the people, I'd say at least 75 percent of the people there are still original owners. That's the kind of neighborhood that it is. And some people, some of us are hoping to retire some day and we don't want to lose the quality and the character of our neighborhood.

CHAIR VIGIL: Thank you, Mr. Gonzales. Anyone else? Mr. Martinez. You've already been sworn in. You can just take the mike with you.

MR. MARTINEZ: This property that is shown here, this property here is adjacent to my property which is over here. And I understand that the City and the County has something going. What is it that they're working on, Mr. Ross? Some kind of an agreement between the City and the County.

CHAIR VIGIL: Are you referencing the annexation agreement?

MR. MARTINEZ: Yes.

CHAIR VIGIL: Okay. That agreement is in place and this is what this hearing is all about.

MR. MARTINEZ: Okay. Have you people done anything with the City to bring that about?

CHAIR VIGIL: Yes. We've actually entered into the agreement. What the City is asking us tonight, Mr. Martinez, is to reconsider .63 acres of that annexation agreement so that the applicant can zone that commercial.

MR. MARTINEZ: Well, yes, but this is what I call piecemeal authority or permission. When the consider the whole thing between the City and the County, and that's been going on for a long time and I don't see why they can make any exceptions, either the City and/or you. I call this piecemeal authorization and I don't agree with it. Since I was here the last meeting what has changed? What has the County done to improve the conditions over there that exist right now? Next to my property there's a person that is working on a business with cess pools. What is the City doing to make sure that that cess pool business doesn't stench the air and everything else? They don't have the manpower. The City and the County are in the same boat. The City has laws that says you can't hear, see, listen to a cell phone. How many of you use cell phones when you're driving? I'm not saying you don't. You don't, but I've seen millions, and there hasn't been one citation that I know of.

It's the same thing with the City. They haven't cited anybody over there for any violations. So this piecemeal agreement is not in my way of thinking honorable.

CHAIR VIGIL: Thank you, Mr. Martinez. Anyone else, please step forward.

MR. LUJAN: Thank you, Madam Chair. I want to go back to saying what continues on the traffic situation there on Richards Avenue. .63 acres is not much and I don't know why we're arguing here to annex it. We don't even know if they're going to use it for an expansion of a building, of a car wash, what have you. I think that we should look at this, you guys should look at this and there's – I mentioned to you about the traffic, the round-outs that are going down there, the slow navigation process about the traffic that takes certain periods of the day going the college and Rancho Viejo. Eventually what is going to happen has to happen is that you have to address the fact that you're going to have to widen Richards Avenue at some point or another at some time. So that's going to take some right-of-way. That .63 of an acre is going to be part of that, so I don't know why we're arguing this right now. Thank you, Madam Chair.

CHAIR VIGIL: Thank you, Mr. Lujan. Any further testimony? Okay, in that case I will close the public hearing and ask for any further discussion or direction.

COMMISSIONER ANAYA: Madam Chair, a couple quick questions of staff relative to the EZA area that's now changed and things are changing over time, but it's my recollection based on the current code that we have right now in the County that we utilized commercial nodes in intersections. Did that same principle apply in the EZA area? Do we use those same parameters when we're looking at commercial development? Intersections and the commercial nodes, I think was the term?

MS. COBAU: Madam Chair, Commissioner Anaya, in the Extraterritorial Zoning Ordinance that was in place when we had the EZ Two-Mile jurisdiction I believe we did have commercial nodes. There was one provision in the EZO that I remember in particular that allowed for a small commercial that was sandwiched between two other previously zoned commercial pieces of property to be rezoned through administrative action on small parcels of less than one acre. That was in the Extraterritorial Zoning Ordinance.

COMMISSIONER ANAYA: This intersection would have constituted a commercial node, or would it? Help me out. What parameters did we approve the car wash or did the EZA approve the car wash and the gas station off of?

MS. COBAU: It would have been an action of the EZC and the EZA. It probably went through master plan process, just like we're going through now. I don't know if there was a commercial node there. I'd have to get the commercial node map out.

COMMISSIONER ANAYA: Madam Chair, based on the size of the tract and based on the fact that it does not cross over to the other side of the arroyo I would move approval of the reconsideration which still constitutes that the applicant has to go through the entire City process for approval. I would in my motion say that this decision cannot be viewed in my estimation of setting a precedent or piecemeal approvals. It is a logical commercial area given the commercial that's immediately adjacent to it and I do not believe it sets a precedent to do away with the rural residential zoning intent within the agreement. I would add in my motion for approval that a condition be set on this parcel of 12 midnight for operation and I would recommend to the property owner, to Polk, that they consider adjusting their hours of operation in the car wash.

CHAIR VIGIL: Okay. What we're being asked to take action on is only to allow the City to consider this rezoning for the purposes specifically does it or does it not

violate the settlement agreement. So we've already taken action on the reconsideration. We are voting on saying the County is wanting to say it does not violate the settlement agreement because of its uniqueness and that in fact the conditions of approval – well, I would add some conditions of approval, but you would recommend that when the City consider this for zoning that they consider setting limitations on times of operation for the car wash. Is that not correct?

COMMISSIONER ANAYA: Madam Chair, you're correct on the recommendation on the time of operation for the car wash, but based on a question I asked Mr. Ross we can set a condition on the time of operation for the .63 acres.

CHAIR VIGIL: Okay. But we don't know what that's going to be, do we?

COMMISSIONER ANAYA: My motion, which Mr. Ross is telling me we can, we can limit that in this motion. And that's what I'm moving.

CHAIR VIGIL: Okay. Would your motion also include no vehicular access through Richards Avenue?

COMMISSIONER ANAYA: Absolutely.

CHAIR VIGIL: And would it also include that the remaining parcel remain rural residential?

COMMISSIONER ANAYA: Absolutely.

CHAIR VIGIL: Okay. Those are the considerations that have been discussed here. There's a motion. Is there a second?

COMMISSIONER HOLIAN: Second.

CHAIR VIGIL: Okay, I have a motion and a second. Is there any further discussion?

COMMISSIONER STEFANICS: Just a comment, Madam Chair. I know that there's really two issues here. One is the rural residential and the other is the residents of Town & County. And so annexation has not – and all the plans for annexation have not been made clear, have not really provided yet for everybody living in those areas, so I understand any concern about making changes at this point in time. Thank you.

CHAIR VIGIL: I have a question. Mr. Siebert, where was your client when we were going through these hearings? The rural residential zoning hearings? Was he not aware that he was impacted?

MR. SIEBERT: Well, actually I can tell you from personal experience what's happened in these particular cases. That it would take a lot split or to segregate the .63 from the remainder of the tract and at the time that the City and the County – the City was going through the presumptive city limits, neither the County would accept lot split applications nor the City would accept lot split applications. We were stuck in this no-man's land. I don't know, you're probably not familiar with the Leeder request. It took me a year and a half to go through the Leeder request for a lot split and that was only after the City adopted the presumptive city limits. So we just didn't have the ability to do it.

CHAIR VIGIL: Okay. Any further questions? We have a motion to send the message to the City that we do not consider this a violation because of its uniqueness, with conditions and a second.

The motion passed by majority [3-2] voice vote with Commissioners Anaya,

Holian and Mayfield voting in favor and Commissioners Stefanics and Vigil voting against.

XIV. ADJOURNMENT

Having completed the agenda and with no further business to come before this body, Chairwoman Vigil declared this meeting adjourned at 10:25 p.m.



Valerie Espinoza
VALERIE ESPINOZA
SANTA FE COUNTY CLERK

Approved by:

Virginia Vigil
Board of County Commissioners
Virginia Vigil, Chairwoman

Respectfully submitted:

Karen Farrell
Karen Farrell, Wordswork
227 E. Palace Avenue
Santa Fe, NM 87501



XI. B. 2

Memorandum

To: Santa Fe Board of County Commissioners

From: Donna Morris, Fire Department

Thru: Katherine Miller, County Manager

Date: July 12, 2011

Re: *Requesting BCC Approval to Authorize an Indefinite Price Agreement with Cummins Rocky Mountain.*

CAPTION:

The Santa Fe County Fire Department is requesting BCC approval to authorize an indefinite Price Agreement with Cummins Rocky Mountain for 25kw and 30kw generators. Bid award 2011-0276-FD/TRV. (CSD/Fire)

BACKGROUND:

The Santa Fe County Fire Department has received an Assistance to Firefighters grant #EMW-2009-FO-06361 to purchase four fixed station generators to be installed at the Pojoaque, Agua Fria, Hondo and Eldorado fire stations. There was a facility needs analysis done and it was concluded that the large heavy bay doors present a delay in response and potential firefighter injury when they must be lifted manually due to a power outage.

This purchase was put out to bid and the delay and changes in this award is due to the self-disqualification for the first two lowest bidders. The bid specified no price increase. The lowest bidder had a price increase in their proposal. The second lowest bidder refused to sign the contract stating that they had intended to include a price increase. The bid award 2011-0276-FD/TRV was given to Cummins Rocky Mountain as the lowest responsive bidder.

SUMMARY:

Please approve the request to enter into an indefinite price agreement with Cummins Rocky Mountain for the purchase of fixed station generators for the Pojoaque, Agua Fria, Hondo and Eldorado fire stations.

**PRICE AGREEMENT
BETWEEN SANTA FE COUNTY
AND CUMMINS ROCKY MOUNTAIN LLC
FOR GENERATORS**

THIS AGREEMENT is made and entered into by and between Santa Fe County, New Mexico, a New Mexico political subdivision, (hereinafter "**County**") and Cummins Rocky Mountain, LLC, a Colorado Foreign Limited Liability Company, registered to do business in the State of New Mexico (hereinafter "**Contractor**").

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. DEFINITIONS

- A. "**County**" shall mean the County of Santa Fe, New Mexico
- B. "**Using Department or Department**" shall mean department, office or division of Santa Fe County.
- C. "**Purchase Order**" shall mean a fully executed Purchase Document issued by the County that specifies the items to be provided by the Contractor at the prices stated in this Price Agreement.
- D. "**Agreement**" means this Agreement which requires the Contractor to provide and deliver generators to a using department identified in a Purchase Order.
- E. "**Prices**" means the prices paid by the County for the supply and delivery of the generators that are the subject of this Agreement and as specifically described in Attachment A.

2. GOODS TO BE PROVIDED

- A. **Purchase.** The prices listed on Attachment A of this Agreement are the prices for the supply and delivery of generators. Attachment A also indicates all specifications included in the prices for each the generators.
- B. **Items Listed on Attachment A.** The County will issue Purchase Orders to the Contractor for the supply and delivery of the items listed on Attachment A. Any item ordered by the County must be an item listed on Attachment A. All orders issued hereunder must bear both an order number and the number of this Purchase Agreement (**#2011-0276-FD/TRV**).
- C. **Quantities.** It is understood that this is an indefinite quantity Price Agreement and the County or Using Department may purchase any quantity of the items listed on Attachment A, on an as needed basis. The Contractor is required to accept the Purchase Orders and furnish and deliver the item(s).
- D. **Specifications.** The items furnished under this Agreement shall be new and meet or exceed the specifications provided in the IFB# 2011-0276-FD/TRV and all Addendums. Orders issued pursuant to this Agreement must show this Agreement number, a description of the item(s) ordered and prices.
- E. **Delivery Instructions; Late Delivery; Acceptance and Return of Items.**
 - 1. The Contractor shall provide with each item delivered an invoice listing the order number and the number of this agreement. Unless otherwise designated by the County, the Contractor shall ship all items F.O.B. destination. Except for loss or damage directly attributable to the negligence of the Department, the Contractor shall bear all risk of loss

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- or damage until products have been accepted by the Department. Destination charges shall be included in the product price.
2. The Contractor shall provide and deliver items ordered by the County no later than thirty (30) calendar days of the date of the Contractor's receipt of a Purchase Order(s). Unless otherwise agreed to or waived by the parties, any item not delivered within the time stated herein will be considered late delivery.
 3. Whenever the Department does not accept any item and returns it to the Contractor, all related documentation furnished by the Contractor shall also be returned.
 4. A Using Department will inform the Contractor within five (5) business days that a delivered item(s) is unacceptable by the Department.
 5. Prices listed in Attachment A, for each item, shall be the fixed prices for supply and delivery of the items.

F. Warranties and Operating Manuals

1. Contractor warrants that the items provided under this Agreement are covered by the most favored commercial warranties the Contractor gives to any customer for such items. The Contractor shall not disclaim any warranties of fitness for a particular purpose or warranty of merchantability.
2. For all items provided and delivered by Contractor, Contractor shall furnish a written warranty for workmanship and parts and service for a minimum period of one (1) year from the date of delivery.
3. For all items provided and delivered by Contractor, upon delivery the Contractor shall furnish the Using Department with a set of all operating manuals, warranty information, maintenance instructions and the names and phone numbers of contacts for all service and maintenance information.

3. INSURANCE

- A. General Conditions.** The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.
- B. General Liability Insurance, Including Automobile.** The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,050,000 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. The County of Santa Fe shall be a named additional insured on the policy.
- C. Workers' Compensation Insurance.** If applicable, Contractor shall comply with the provisions of the Workers' Compensation Act.
- D. Increased Limits.** If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

4. **PAYMENT.** All payments under this Agreement are subject to the following provisions:
- A. **Inspection.** Final inspection and acceptance of delivered items shall be made by the Using Department.
 - B. **Acceptance.** In accordance with NMSA 1978, Section 13-1-158, the Using Department shall determine if the items meet the specifications and will accept the items if they meet specifications and are as ordered by the Department. No payment shall be made for any item until the item has been accepted in writing by the Using Department. Unless otherwise agreed upon, between the Department and the Contractor within thirty (30) days from the delivery and receipt of items, the Using Department shall issue a written certification of complete or partial acceptance or rejection of any item(s) or service. Unless the Using Department gives notice of partial acceptance or rejection within five (5) days from the date of delivery by Contractor, the items will be deemed to have been accepted.
 - C. **Issuance of Orders.** Only written, signed and properly executed Purchase Orders are valid under this Agreement.
 - D. **Payment.** County shall pay Contractor on an invoice received from Contractor within thirty (30) days from the date the County approves the invoice. Full payment for all accepted items will be issued by the County. No payment under this Agreement shall be conclusive evidence of the Contractor's performance of this Agreement, either wholly or in part. No payment made by the County shall be construed as an acceptance of defective or unacceptable items or service and shall not relieve the Contractor from correcting any defects or curing any unacceptable items. Should any such circumstances become evident, the County shall have the right, notwithstanding acceptance and payment, to cause the properly working new items to be delivered by the Contractor at the Contractor's expense.
 - E. **Contractor to Replace Defective items** Any item delivered by Contractor that is deemed defective in that the item does not meet the specifications shall be timely replaced by the Contractor at no cost to the County.
 - F. **Taxes.** Applicable gross receipts taxes or local option tax(es) shall be included on each invoice and shown as a separate item on each invoice. The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and must be reported under the Contractor's federal and County tax identification number(s). If the Using Department is exempt from the New Mexico gross receipts tax or local option taxes for the transaction, the Using Department shall provide the Contractor written evidence of such exemption(s).

5. **TERM OF THIS AGREEMENT.** This Agreement shall not become effective until approved in writing by all the parties as shown by their signatures below (the Effective Date). The term of this Agreement shall be two (2) years, unless terminated earlier pursuant to Paragraph 7.

6. **CANCELLATION.**

- A. The County reserves the right to cancel without cost to the County all or any part of any order placed under this Agreement if the items fail to meet the requirements of this Agreement.
- B. The failure of the Contractor to perform its obligations under this Agreement shall constitute a default of this Agreement.

- C. The Contractor may be excused from performance if the Contractor's failure to perform arises out of causes beyond the control and without the fault or negligence of the Contractor, unless the County shall determine that the item, to be furnished by a sub-contractor, is obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.
- D. Such causes of excuse include, but are not limited to, acts of God or the public enemy, acts of the County or Federal government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above.
- E. The County may cancel all, or any part, of any order without cost to the County if the Contractor fails to meet material provisions of the order and the Contractor shall be liable for any excess costs incurred by the County that is associated with such default.
- F. It shall not be considered a cancellation or breach of this Agreement if the County determines that due to emergency circumstances, the County must order items from another source.

7. TERMINATION.

- A. **For Convenience.** Consistent with applicable New Mexico laws, this Agreement may be terminated by the County, without penalty, at any time prior to the Termination date of this Agreement. County will provide at least thirty (30) days prior written notice to the Contractor of the date of termination. Notice of Termination of this Agreement shall not affect any outstanding order(s) issued under this Agreement prior to the effective date of termination for convenience by the County.
- B. **For Cause.** Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If, within thirty (30) days, after receipt of a written notice, the breaching party has not corrected the breach or, in the case of a breach which cannot be corrected in thirty (30) days, begin and proceed in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

8. AMENDMENT. Except for amendment of prices, this Agreement may be amended by mutual agreement of the County and the Contractor upon written notice of either party to the other. Any such amendment shall be in writing and signed by the parties hereto. Unless otherwise agreed to by the parties, an amendment shall not affect any outstanding Purchase Order(s) issued, by the County, prior to the effective date of the amendment.

9. ASSIGNMENT. Contractor shall not sell, assign, pledge, transfer, or otherwise convey any of its rights or interests in this Agreement.

10. NON-COLLUSION. In signing this Agreement, the Contractor certifies it has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with its offer and this Agreement.

11. RECORDS. During the term of this Agreement and for three (3) years thereafter, the Contractor shall maintain detailed records pertaining to the items supplied and delivered under this Agreement. These records shall be subject to inspection by the Department, the County and State Auditor and other appropriate County authorities. The County shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the County or Using Department to recover excessive or illegal payments.

12. APPROPRIATIONS. The terms of this Agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the Board of County Commissioners for the performance of this Agreement. If sufficient appropriations and authorization are not made, this Agreement, and any orders placed under it, shall terminate upon written notice being given to the Contractor. The County's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

13. CONFLICT OF INTEREST. The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with any performance required under this Agreement. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

14. APPROVAL OF CONTRACTOR'S REPRESENTATIVES. The County reserves the right to require a change in Contractor representatives if the assigned representatives are not, in the opinion of the County, serving the needs of the County adequately.

15. SCOPE OF AGREEMENT, MERGER. This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

16. NOTICE. The New Mexico Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199 imposes civil misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose penalties for bribes, gratuities and kickbacks.

17. INDEMNIFICATION. The Contractor shall hold the County and its Departments, agencies and employees harmless and shall indemnify the County and its agencies and employees against any and all claims, suits, actions, liabilities and cost of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees, or sub-contractors. The Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the County, its Departments, and County officers or employees.

18. THIRD PARTY BENEFICIARY. This Agreement was not intended to and does not create any rights in any persons not a party hereto.

19. NEW MEXICO TORT CLAIMS ACT. No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by the County and its Departments or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

20. APPLICABLE LAW. This Agreement shall be governed by the laws of the State of New Mexico.

21. CHOICE OF LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico. The parties agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be in the First Judicial District Court of New Mexico, located in Santa Fe County, New Mexico.

22. INVALID TERM OR CONDITION/SEVERABILITY. The provisions of this Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court or department or commission having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of the Agreement, which can be given effect without the invalid provision.

23. ENFORCEMENT OF AGREEMENT. A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by party or any of its rights under this Agreement shall be effective unless express and in writing, and not effective waiver by a party of any of its right shall be effective to waive any other rights.

24. SURVIVAL. The Provisions of the following listed paragraphs shall survive termination of this Agreement: Delivery & Billing Instructions; Records and Audit; Indemnification; Applicable Law; and Survival.

25. NOTICES. Either party may give written notice to the other party in accordance with the terms of this Agreement. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

To the County:
Santa Fe County
102 Grant Avenue
PO Box 276
Santa Fe, NM 87504-0276

To the Contractor:
Cummins Rocky Mountain, LLC
ATTN: Chris Tornillo
1921 Broadway Blvd., NE
Albuquerque, New Mexico 87102

Contractor's Agent for Service of Notice of Process:

CT Corporation
123 E. Marcy Street
Santa Fe, New Mexico 87501

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Agreement. The carrier for mail delivery and notices shall be the agent of the sender.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by:

SANTA FE COUNTY

Virginia Vigil, Board of County Commissioners
Santa Fe County

Date

ATTEST:

Valerie Espinoza, Santa Fe County Clerk

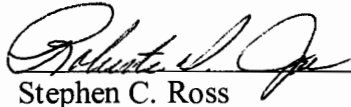
Date

FINANCE DEPARTMENT APPROVAL

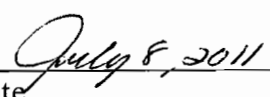
Teresa C. Martinez
Santa Fe County Finance Director

Date

APPROVED AS TO FORM



Stephen C. Ross
Santa Fe County Attorney



Date

CONTRACTOR

Signature

Date

Print Name and Title

Contractor's Agent for Service of Notice of Process:

CT Corporation
123 E. Marcy Street
Santa Fe, New Mexico 87501

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Date

FINANCE DEPARTMENT APPROVAL

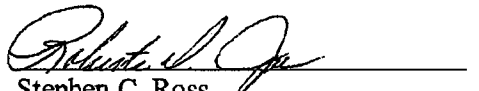


Teresa C. Martinez
Santa Fe County Finance Director

7/8/2011

Date

APPROVED AS TO FORM

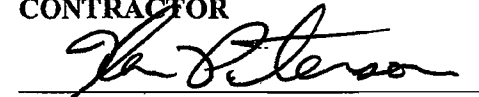


Stephen C. Ross
Santa Fe County Attorney

July 8, 2011

Date

CONTRACTOR



Signature

7/8/11

Date

Ken Peterson; EVP-PC

Print Name and Title

SFC CLERK RECORDED 06/18/2011

Tax Identification Number:

84-1586651

SEC CLERK RECORDED 08/18/2011

Attachment A

IFB #2011-0276-FD/TRV

IFB #2011-0276-FD/TRV

Please offer your best price, for each item as outline below. Bidders shall complete the following bid sheet in full, for Bid No. 2011-0276-FD/TRV, including signature at the bottom as stated. Be advised that award may be made without discussion with bidders on offers received. Offers will be accepted until 10:00 am on the bid due date specified.

Item	Description/Requirements
1	New 25 kw generator with Automatic Transfer Switch (ATS) that is powered by liquefied petroleum gas (LPG) with appropriate battery back-up.
Make/Model: <u>GGMC, RSS200ATS</u>	
Price per Unit (Base Bid): <u>\$9,250⁰⁰</u> Each	
Written in Words (Base Bid): <u>NINE THOUSAND TWO HUNDRED FIFTY DOLLARS</u> Each	
Estimated Delivery Date: <u>5 WEEKS, ARO</u>	

OR

Item	Description/Requirements
1	New 30 kw generator with Automatic Transfer Switch (ATS) that is powered by liquefied petroleum gas (LPG) with appropriate battery back-up.
Make/Model: <u>GGPA, RSS200ATS</u>	
Price per Unit (Base Bid): <u>\$10,785⁰⁰</u> Each	
Written in Words (Base Bid): <u>TENTHOUSAND SEVEN HUNDRED EIGHTY FIVE DOLLARS</u> Each	
Estimated Delivery Date: <u>6 WEEKS, ARO</u>	

Bidder's Name: CHRIS TORNILLO

Bidder's Phone: 505-248-9533 Fax # 505-243-0488

Signature of Authorized Bidder's Agent: *La Peterson*

Title: SVP - Power Gen

2

Santa Fe County

**Infrastructure and Capital Improvements Plan
Fiscal Years 2013-2017**

ICIP Implementation Schedule

- **BCC Update on Process Implementation** July 12, 2011

- **Community Meetings**
 1. **Southwest and Northwest Metro Area** July 25, 2011

Includes opportunity for participation of residents from the Agua Fria area, La Cienega area, La Tierra area, Airport Road area, etc.

Location: Nancy Rodriguez / Agua Fria Community Center – 6:00 p.m.

 2. **Southern Metro Area Meeting** July 27, 2011

Includes opportunity for participation of residents from Community College area, La Cienega area, NM Hwy 14 area, Cerrillos area, Madrid area, etc.

Location: SF County Fairgrounds – 6:00 p.m.

 3. **Eldorado and Eastern County Area Meeting** July 28, 2011

Includes opportunity for participation of residents from Eldorado area, Glorieta area, Canoncito area, Arroyo Hondo area, Lamy area, etc.

Location: Ken and Patty Adams / El Dorado Senior Center – 6:00 p.m.

 4. **Edgewood Area Meeting** August 2, 2011

Includes opportunity for participation of residents from the Southern County area including the Stanley area, Edgewood area, San Pedro area, Lamy area, etc.

Location: Edgewood Fire Station – 6:00 p.m.

 5. **Northern County Area Meeting** August 3, 2011

Includes opportunity for participation of residents from the Northern County area including the Nambe area, the Tesuque area, the Pojoaque area, Arroyo Seco area, La Puebla area, Chimayo area, Arroyo Seco area, etc.

Location: Pojoaque Satellite Office – 6:00 p.m.

- **Board of County Commissioners Public Hearings**
 1. **First Public Hearing** August 9, 2011
 2. **Second Public Hearing and Resolution Approval** August 30, 2011

- **Final Plan Submittal Due Date** September 30, 2011

Santa Fe County Forensic Examination Consulting Engagement Summary for County Commission Tuesday, July 12, 2011

Introductions

Examination Highlights

- ✓ Walk through the report sections for overview
 - Objective and Scope
 - Detail Work In Two Phases Covering 3 Main Areas
 - Region III Drug Task Force
 - County Assets
 - Evidence Safekeeping
 - Findings, Recommendations and General Comments
 - Reviewed internal controls and offered valuable recommendations to strengthen access, evidence and inventory controls
 - Misappropriated assets sold on *ebay* with a cost to the County of \$73,364
 - NMSP & our interviews and testing did not uncover collusion
 - Finance and Sheriff's Office were very responsive
 - Many recommendations already implemented to prevent future fraud or abuse

Thank you for the opportunity to assist you in this difficult situation.



MOSS ADAMS LLP

Certified Public Accountants | Business Consultants

Acumen. Agility. Answers.

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SANTA FE COUNTY

**FORENSIC AUDIT
CONSULTING REPORT**

December 15, 2004 -2010

SFC CLERK RECORDED 08/18/2011

SFC CLERK RECORDED 88

June 15, 2011

To Board of County Commissioners and
Katherine Miller, Santa Fe County Manager
Santa Fe County
and
Mr. Hector Balderas
New Mexico State Auditor

Subject: Santa Fe County Forensic Audit of the Sheriff's Department

Dear Board of Commissioners:

Thank you for the opportunity to perform the forensic audit consulting procedures for Santa Fe County (County) and the New Mexico State Auditor. This report summarizes our procedures, findings, and recommendations as it relates to our assistance with your forensic evaluation of the Sheriff's Office (SO) from December 15, 2004 through December 15, 2010.

This engagement was performed in accordance with Standards for Consulting Services established by the American Institute of Certified Public Accountants as outlined in our engagement letter dated January 11, 2011. The scope of this engagement is outlined in the body of our report. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

County and SO management are responsible for maintaining the accounting records for the SO and for establishing and maintaining effective internal control over compliance with applicable New Mexico State Statutes and procurement policies of the SO. We were not engaged to, and did not conduct an audit examination, the objective of which would be the expression of an opinion on the procurement, controls, and activities of the SO under attestation standards. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

To Board of County Commissioners and
Katherine Miller, Santa Fe County Manager
Santa Fe County
and
Mr. Hector Balderas
New Mexico State Auditor

This report was developed based on information obtained from our interviews with employees of the County, our observations of property and processes, and our review of selected supporting documentation and records.

This report is intended solely for the use of the Santa Fe County Board of County Commissioners, the New Mexico State Auditor, Santa Fe County management, and parties identified by the County's management and their designated legal counsel. This report should not be disclosed to, used or relied upon by any other third party. Moss Adams LLP does not accept any responsibility to any other party to whom this report may be shown or into whose hands it may come.

We appreciate the opportunity to help you audit and achieve stronger internal controls. Please do not hesitate to call me at (505) 878-7200 if you have any questions or need further assistance regarding this important matter. Moss Adams would like to sincerely thank the County's and Region III's staff for their help in assisting us with our procedures.

Sincerely,



James Thompson, CPA, CFE
Partner for Moss Adams LLP
Albuquerque, New Mexico

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**SANTA FE COUNTY
FORENSIC AUDIT**

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**SANTA FE COUNTY
FORENSIC AUDIT
CONSULTING REPORT
JUNE 15, 2011**

EXECUTIVE SUMMARY

Santa Fe County (County) management and the Board of Commissioners (Board) are responsible for providing the public reasonable assurance that the County has adequate controls to safeguard inventory and assets. An adequate system of internal accounting and operational controls is necessary to meet these responsibilities.

The purpose of the consulting engagement was to conduct a limited scope forensic examination of the Sheriff's Office (SO) to determine whether the County had suffered from theft, fraud, or embezzlement by former Sheriff Greg Solano, and to what extent, for the period covering the six years ended December 15, 2010. Phase I of the engagement consisted of an assessment phase to gather information on available data sources and internal controls, focusing specifically on property, evidence safekeeping, and the Region III Drug Task Force. Phase II included a more detailed examination of transactions and source documents with deeper testing on the areas identified in Phase I as higher risk.

In summary, in November of 2010 former Sheriff Greg Solano confessed to taking County property and selling the property online. Our examination indicates the estimated, known cost to the County was \$73,364 for the equipment, inventory, and other assets sold on eBay. The majority of the items were not purchased with federal funds, but rather from general funds and state grants. There were other items sold on eBay; however, documentation was insufficient for us to trace these items into County records. We have no conclusive evidence of collusion. Our testing did not uncover theft of Evidence or Region III Drug Task Force funds. We did note policy violations and internal control weaknesses at the SO and at the end of this report we have summarized our recommendations to implement and strengthen processes and procedures.

This report summarizes our findings discovered during test work to accomplish the goals of the forensic examination. We have included our recommendations to further assist the County with internal control consultation. County management is dedicated to implementing these safeguards to further secure property and inventory at the SO and has already implemented some of the recommendations to prevent future theft, fraud or embezzlement.

Our examination was limited to the areas and periods described and limited to the documents available and interviews performed. Had we reviewed other periods or areas or documents, other matters may have been identified warranting the County's attention.

**SANTA FE COUNTY
FORENSIC AUDIT
CONSULTING REPORT
JUNE 15, 2011**

OBJECTIVE AND SCOPE

The procedures listed below were designed to review specific activities at the County in order to determine whether the County had suffered from theft, fraud, or embezzlement and to identify internal control weaknesses over property, evidence safekeeping, and the Region III Drug Task Force. We performed the procedures listed below on the processes and activity of the County's Sheriff's Office (SO) from the period of December 15, 2004 through December 15, 2010 based on available supporting documentation.

This engagement is incorporated into two phases. The following procedures were completed during Phase I of this consulting engagement unless otherwise stated.

- ✓ Gather information on available data sources and internal controls, focusing specifically on property, evidence safekeeping, and the Region III Drug Task Force.
- ✓ Apply data mining and analytical techniques.
- ✓ Interviews with County personnel will be conducted to gain an understanding of what existing controls are in place and where weaknesses might lie.
- ✓ Provide a written report and review of all findings discovered during testwork.
- ✓ Have discussions with representatives of the County to reach a consensus on how to proceed and scoping options for Phase II testing.

The following objectives were completed during Phase II testing:

1. Continue interviews and tests of Phase I details as deemed necessary.
2. Perform and inventory evidence barcodes for all unfiled evidence backlog and inquire of remaining missing bar code sequences.
 - This task is pending due to timing differences in the records available and not all backlog has been entered into the evidence tracking system. In order to determine if there are missing barcodes, we recommend reexamining the barcode listing after all backlog is entered into the evidence tracking system.
3. Test ten high risk items from the Evidence listing of "O" items – items checked out and follow through on released amounts tested with no explanation.
4. Select a sample of ten items from the capital asset detail and ten items from the inventory exempt listing and observe them.
5. Review listings of disposed items, including fleet vehicles, and compare 10 items from the listing to the Office of the State Auditor (OSA) disposition reporting.

**SANTA FE COUNTY
FORENSIC AUDIT
CONSULTING REPORT
JUNE 15, 2011**

- ✓ Obtain reconciliation from Sheriff's Department and DWI grant personnel of bullet proof vests, cell phones, ink cartridges, CDs, flashlights, holster, and cameras and quantify the amount of unaccounted for items. With Finance, trace a sample of ten reconciling items to invoices and available supporting documentation.
 - County personnel were unable to provide reconciliations since inventories of SO exempt inventory and supplies were not taken as required by County policy. We did, however, trace unaccounted for items to supporting purchasing documentation with Finance, as documentation allowed.
- ✓ Obtain a copy of the eBay listing with pricing from the County and agree pricing and description of items to supporting invoices to quantify known losses to the County. Identify the sources of funding for these items.
- ✓ Obtain copies of the County Finance confirmations that were sent to external parties and inquire of any differences.
- ✓ Continue to review samples of SO emails for irregularities and collusion.
- ✓ Attend certain NM State Police interviews of SO staff who may have colluded in the fraud.
- ✓ Review the County's general ledger of funds paid to Region III and agree a sample of 25 payments between the two accounts.

**SANTA FE COUNTY
FORENSIC AUDIT
CONSULTING REPORT
JUNE 15, 2011**

DETAILED WORK PERFORMED

This section describes the procedures performed to accomplish the objectives of the forensic audit.

Phase I Assessment

The following procedures were performed as required in Phase I of our engagement letter and Professional Service Agreement. Although we have obtained additional information and performed additional review and testing, we have incorporated some of the more important information herein.

Gather information on available data sources and internal controls, focusing specifically on property, evidence safekeeping, and the Region III Drug Task Force;

- ✓ Reviewed the County's audit reports from FY2005-2010 for internal control findings or areas of risk.
- ✓ Reviewed Region III Drug Task Force (Region III) site visit/progress assessment reviews.
- ✓ Obtained copy of former Sheriff Solano's resignation letter with his confession of items taken.
- ✓ Obtained copy of eBay list of items sold from New Mexico State Police (NMSP).
- ✓ Reviewed samples of emails from former Sheriff Solano's emails and noted items for sale on Craigslist. NMSP did not have details of items Solano may have sold from Craigslist but per County management, these items did not appear to be County property.
- ✓ Obtained copies of the SO Organizational Charts.
- ✓ Obtained copies of budgets.
- ✓ Obtained copies of available minutes related to Region III.
- ✓ Reviewed sources of funding for the SO.
- ✓ We obtained copies of internal controls and performed interviews/walkthroughs of the following:
 - ✓ Property/Purchasing exempt < \$3,000, and supplies)
 - Capital assets (> \$3,000)
 - Fleet
 - Exempt inventory (< \$3,000)
 - Unit equipment
 - Ammunition
 - Officer's Equipment
 - Office Supplies
 - IT Supplies
 - IT Equipment

**SANTA FE COUNTY
FORENSIC AUDIT
CONSULTING REPORT
JUNE 15, 2011**

- Cell phones
- Donations
- ✓ Evidence safekeeping.
- ✓ Region III.

Apply data mining and analytical techniques;

- ✓ Obtained downloads of evidence database, inventory or supply property, SO procurement and Region III general ledgers.
- ✓ We applied data mining and analytical techniques of evidence and of supplies/property/purchasing and of Region III ledgers.
- ✓ Evidence sort indicated missing barcode sequences.
- ✓ Identified users with access to the evidence tracking software (Que Tel).
- ✓ Fleet backup from the SO was compared to Fleet information to determine completeness and accuracy of their controls.
- ✓ C Funds and Travel expenditures to Solano and Solano's payroll activity.
- ✓ Performed ACL and Benford analyses on Evidence database and GL detail.
- ✓ Crosschecked key words from the Evidence database to the eBay listing, found 13 possible matches, tested these to the Evidence room and ensured these items were still in Evidence and not sold on eBay without exception.

Interviews with County personnel will be conducted to gain an understanding of what existing controls are in place and where weaknesses might lie;

- ✓ Entrance meeting with County management and NMSP.
- ✓ Entrance meeting with SO.
- ✓ Fraud risk interviews of the SO.
- ✓ Finance Department Approval/Purchasing.
- ✓ Region III Task Force.
- ✓ Computer Forensics.
- ✓ SO Supplies/Purchasing.
- ✓ DWI Grant Coordinator.
- ✓ Fleet Vehicles.
- ✓ Human Resources.
- ✓ Walkthrough interview procedures documented.

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Phase II Extended Work

Continue interviews and tests of Phase I details as deemed necessary;

- ✓ Interviewed SO staff further.
- ✓ Finance Department Procurement.
- ✓ IT Director and IT Systems Analyst Supervisor.
- ✓ Tested general ledger access.
- ✓ Reviewed Finance Department's inventory of evidence.
- ✓ Continued gathering purchasing evidence.
- ✓ Inventory barcodes for evidence backlog.
- ✓ Performed data mining on purchases.
- ✓ Completed Phase I testing.

Test ten high risk items from the Evidence listing of "O" items – items checked out and follow through on released amounts tested with no explanation;

- ✓ Selected items of greater risk such as cash, firearms, high value or desirable items, and drugs.
- ✓ Tested with Evidence Specialist.
- ✓ Noted recommendations to improve controls over released evidence.

Select a sample of ten items from the capital asset detail and ten items from the inventory exempt listing and observe them;

- ✓ Selected items from fleet and inventory using auditor judgment.
- ✓ Worked with Finance and SO to trace to backup.
- ✓ Physically observed the assets in County's possession.
- ✓ Tested the existence and location of SO's trailers, as there were allegations of misuse by Solano.
- ✓ Noted recommendations to improve controls over capital assets and inventory.

Obtain reconciliation from Sheriff's Department and DWI grant personnel of bullet proof vests, cell phones, ink cartridges, CDs, flashlights, holster, and cameras and quantify the amount of unaccounted for items. With Finance, trace a sample of ten reconciling items to invoices and available supporting documentation.

- ✓ County personnel were unable to provide reconciliations since inventories of SO exempt inventory and supplies were not taken as required by County policy. We did, however, trace unaccounted for items to supporting purchasing documentation with Finance, as documentation allowed.

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Obtain a copy of the eBay listing with pricing from the County and agree pricing and description of items to supporting invoices to quantify known losses to the County. Identify the sources of funding for these items.

- ✓ Obtained listing from NM State Police.
- ✓ Agreed pricing to backup records, as available.
- ✓ See Attachment I for quantification categories and funding sources.

Review listings of disposed items, including fleet vehicles, and compare 10 items from the listing to SAO disposition reporting;

- ✓ Selected items from the SO capital assets disposed by type listing.
- ✓ Worked with Finance to trace to backup and notification to the Office of the State Auditor.
- ✓ Some items selected were surplus sold at auction and parts of fleet units, such as accessories, therefore documentation was limited.

Obtain copies of the County Finance confirmations that were sent to external parties and inquire of any differences;

- ✓ Reviewed the three confirmations sent to external parties to verify donations from the County to the other entities and noted no differences.

Continue to review samples of SO emails for irregularities and collusion;

- ✓ Reviewed emails and searched for key words in various SO staff emails, including the former Sheriff's.
- ✓ Noted corroborating purchasing evidence within the emails.

Attend certain NM State Police interviews of SO staff who may have colluded in the fraud;

- ✓ Attended three interviews - no confessions of collusion.
- ✓ Obtained further evidence regarding donations and County property the former Sheriff Solano sold on eBay.

Review the County's general ledger of funds paid to Region III and agree a sample of 25 payments between the two accounts;

- ✓ Reviewed County's general ledger activity of Region III funding.
- ✓ Agreed a sample of 25 payments from the County to the deposits into the Region III accounts.
- ✓ Noted recommendation to improve timeliness of deposits.

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We performed Phase I & II assessment procedures as noted above and documented these procedures, including: information gathering, interviews, data mining, internal control analysis, analytical techniques, and observations in our work papers. While conducting these procedures we noted findings and recommendations which have been included in the following section of this report.

FINDINGS & RECOMMENDATIONS

In planning and performing the forensic audit of Santa Fe County (County) for the period December 15, 2004 through December 15, 2010, we reviewed the County's internal control structure and operating procedures for the purpose of generating recommendations to management intended to strengthen controls and operating efficiency, and to prevent and detect theft, fraud, and embezzlement. The following list summarizes our findings and comments regarding those matters. We have not tested management's corrective actions or implementation of new controls noted.

Cash

- During our interviews of the Region III Narcotics Taskforce, we noted that for the examination time period, \$472,730 in County checks were written to the former Sheriff, under the standard policies and procedures. The former Sheriff endorsed these checks and the Region III Director deposited them into the Region III bank account. Checks were then written from the Region III bank account to the Sergeants who distribute funds to their agents. Although our testing did not reveal that these funds were misappropriated, future checks should be written or transferred directly to the Region III bank to prevent the Sheriff or any other individual from cashing the check and never depositing the funds into the bank account. The Finance Department has already implemented this change.
- During our interviews of the IT staff and testing of AS400 access, we noted many obsolete system access categories that are no longer in use and should be removed. AS400 access duties should be checked more frequently to ensure accounting records are accessible for recording and adjusting transactions only by appropriate personnel, considering segregation of duties.
- Per our review of the findings in audit reports from 2004 through 2009, we noted that the County had findings related to the lack of controls over cash, receivables, disposals, contracts, and other areas. Per discussions with management, these instances were not under the former Sheriff's control; however, it is important to note that these findings do exist and the County continues to work on the cash controls finding, even though the external auditors cleared this finding during the June 30, 2010 audit.

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Evidence

- The Sheriff's Office (SO) has assigned one individual as the Evidence Specialist who is responsible for all duties related to the evidence room. Due to the daily work load in the evidence room and only one person to perform those tasks, it is often difficult to complete assigned tasks timely. The work piles up whenever the Evidence Specialist is sick or on vacation as the SO does not assign a backup person to fulfill the daily tasks. Although there is a backup Lieutenant for the Evidence Specialist, the Lieutenant does not perform daily tasks and does not have access to the locked evidence rooms.
- The SO has not adequately addressed the backlog of evidence needing to be logged, filed and properly secured. As a result, this evidence is not as secure as the items in the evidence room where sign in/out is required to handle evidence. This situation affects the reliability of evidence for court cases as the chain of custody is not adequately tracked in the evidence offices. After backlogged evidence is entered into Que Tel, we further recommend inventorying barcodes to ensure there are no gaps in barcodes issued
- The controls over the chain of custody log in/out system were periodically overridden by those knowledgeable of the need for a chain of custody that will hold up in the court system. The alarms and backup tapes revealed there was at least one instance of when the Evidence Specialist was out that officers entered and exited the evidence room without recording their access or activities. Based on interviews of SO employees, the former Sheriff and one Sergeant periodically overrode controls by walking in and out of the evidence locker room area without signing in/out.
- To verify completeness of Que Tel evidence tracking software, we chose three evidence tickets from officers. Two of the three evidence tickets were not logged into Que Tel. To verify completeness of the system, we chose three case files from records. Two of these three evidence items chosen from three case files were not logged into Que Tel, dating back to 2008. These items were identified in the backlog. To strengthen controls and tracking, evidence tickets should be pre-numbered. One of three case files pulled did not report evidence in their report as required.
- The SO has not addressed the clutter and disorganization of the evidence room, the evidence offices, and the officers' supplies room. While this situation was noted as far back as 2001 in a previous Evidence Specialist's, staff evaluation; the problem seems to have progressed. As a result, it is generally difficult to identify and locate items.
- For evidence alone, there is a 600 page listing of items that should be destroyed as the case is completed or dropped and the evidence is no longer needed or unclaimed property, but which is difficult to match to the Evidence inventory

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because the listing does not have identifying numbers and is not in any particular order. It is our understanding that upper management needs to resolve many items with the Attorney General or District Attorney's Office (disposition sheets for cases that are closed and the District Attorney's Office no longer needs the evidence). According to State statute, found or unclaimed items may be destroyed after 90 days. The SO is not tracking this type of property and as a result, the evidence room contains old, disorganized items. Subsequently, items approved for destruction should be destroyed. All evidence destroyed should be managed under dual control, well-documented, and independently approved with signatures on the tracking forms. Files with signoffs should be maintained according to state statute record retention laws. We recommend developing, implementing, and monitoring a County-wide destruction policy. We recommend examining New Mexico Department of Public Safety's and other entities' practices as a guide. For example, each Supervisor may be responsible for following through with evidence destruction and release/return of evidence for the cases they are responsible for.

- Evidence lockers open from both the front and back. The lockers are locked from the officer's submission side but are unlocked on the evidence locker room side. This leaves evidence susceptible to theft, especially when the Evidence Specialist has stepped away from that area. We recommend locks on the evidence office side of the evidence lockers and dual control of receiving in evidence. This will help ensure proper handling of evidence before it is recorded in Que Tel.
- Backup of the Que Tel evidence software and data is performed occasionally by the Evidence Specialist. The USB with the backup file is stored in the evidence office. Having a reliable backup process helps ensure timely recovery in the event of a disaster. We recommend SO modify its procedures to cause backup of Que Tel software and data daily, for backup tapes to be stored in a secure off-site location, for periodic testing of the backup tapes to validate the reliability of the backup process, and for all backup tapes to be logged for easy identification.
- We noted one file pulled out during our walkthrough where cash out and guns were returned and no one signed in the file to release the evidence. Per our interviews, there are times that staff is ordered to release property without the proper paperwork completed and signed off. We tested three files of released evidence and noted that one file for a firearm released did not have the Triple I (background check) report. We then tested an additional ten released items and noted six had no form or documentation on file, nine did not have an explanation of why the evidence was released, and all ten did not have indication of follow up work. Releases should be made under dual custody and only after all approvals are documented. For found property for which the preliminary investigation failed to determine the owner, the Evidence Specialist should conduct a follow

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up investigation to ascertain the identity of the owner. If the property is returned to the owner, a receipt should be obtained. Anytime cash or other valuable property is returned, a second employee should witness the transaction and sign the property receipt.

- We tested three items from the destruction order listing approved by the District Attorney's office. Although there was documentation of what was destroyed, there were no signatures or other indication of review or approval. Two of the three items tested did not have barcodes and were not in the Que Tel evidence tracking system. The items were 10-11 years old.
- The safe with evidence cash should be accessed only under dual control and the cash should be counted periodically to ensure all amounts are still in the envelopes. There may be instances where Finance should deposit the cash in a separate account for safekeeping. From a memo prepared by the Evidence Specialist on February 17, 2009, we noted there is \$38,491.49 that should be forfeited to the County and deposited into the General Fund as required under current operating policies. While the Evidence Specialist created a Seizure and Forfeiture Policy, management has not yet implemented the policy.
- The SO has no knowledge of an evidence inventory count. The Finance department conducted its own inventory in December 2010. Finance's inventory revealed there were various items on the floor that were not in the report from Que Tel. This is due in part to older items maintained on a typed list and the backlog of items. The inventory resulted in 77 corrections to evidence, a 0.985% error rate. Finance was unable to trace evidence into the destruction list. There was 1 homicide item missing. There is a catch-all category (L-Main) from the prior evidence record keeper which consists of a three page listing of items that County Finance personnel were unable to trace to the floor, but which a complete inventory may find. There are 38 unaccounted for items, of which 21 are marijuana, and \$713 in cash and \$250 in cash. There were also various old items such as jewelry, currency, and weapons not on the Que Tel inventory listing that were in the cash vault. The County has indicated they have now updated Que Tel to the inventory account and continue to research old items.
- We noted the County does not have a scale to weigh the drugs upon arrival and for future inventories or verification. We recommend the SO use procedures similar to NM State Police where intake of drugs is measured and documented under dual control.

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- While officers now complete an evidence request form, no one is responsible for reviewing or approving the request and following up on returns. We tested 10 released evidence items. Six of the items indicated in the computer that the evidence was release but since they were older items, there was no signed release form on file. The existing files do not always identify the purpose and follow through of evidence released.

Access

- The SO does not maintain a listing of keys and master keys issued. To facilitate our procedures, the SO compiled a list however, it was incomplete. It was determined that Solano and other employees with master keys had complete access to all areas regardless of a demonstrated need to have such access. Management has considered installing a badge system for access and recording all entries/exits electronically. Access should be restricted to only necessary personnel with a demonstrated need to have such access.
- The SO does not adequately discourage theft in key risk areas such as in the supply, ammunition, inventory and asset areas. For example, the half door blocking the evidence offices and officers' supply room is not locked and we noted that at times, personnel enter restricted areas without question. We recommend installing cameras to capture not only the evidence room, but also the evidence and IT forensic offices and the officers' supply closet located next to the evidence room.
- The SO is not utilizing the security cameras currently in place as control but the cameras have become perfunctory and ineffective. The evidence room security camera tapes are overridden every six months, no one is assigned responsibility to periodically review the tapes, and backups are not currently maintained offsite. To act as an effective detective control, steps should be taken so that power outages and reviewing of activity does not cause erasure or stopping of the security recordings.
- Only the Evidence Specialist has the door codes to certain locked areas. We recommend that the codes be changed periodically and be kept confidentially on file in an appropriate secure location, in case of emergency. Only the Fleet Manager has keys to the shed maintaining unit equipment. Access should be under dual control and copies of keys should be held in a secure location for safekeeping.

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Office Supplies

- There is open access and no inventory of the supplies maintained throughout various employee offices and the supply closet since 2007 when Finance turned over responsibility for inventory exempt counts to the SO. According to our interviews, although the SO Executive Assistant and SO Accountant noticed items decreasing quickly, they did not report any concerns. According to SO staff, they were new, learning and were 'too trusting'. They stated that, "When an elected official tells you to do something, you do it." Employees should be trained on what to do and who to call should they suspect inappropriate activity.

Exempt Inventory (<\$3,000)

- There was open access and no inventory of the exempt inventory maintained throughout various offices. The SO is not in compliance with Santa Fe County Resolution No. 2007-81 (regarding fixed assets and exempt inventory policies and procedures) or the inventory trainings the Finance Department provides. For example, we tested the electronics and software tracking spreadsheet and noted that it was not up to date, did not include locations for all items, and there were two items in our sample not located. All equipment and supplies should have a designated, locked area with controlled access instead of being maintained in individuals' offices throughout the building. Inventory should be tracked (beginning balances, purchases, issuances, ending balances) and counted monthly. If items are appearing to run out quickly without reasonable explanation, employees should have a safe reporting mechanism to report concerns. The County's Departments should ensure compliance with the Resolution referred to above, as well as the following state statutes NMSA 1978: Section 12-6-10, Section 13-6-1, and Section 13-6-2.

Capital Assets

- There is no inventory maintained on the shed of unit equipment held by Fleet Management. There is no fleet and police and fire equipment destruction policy or procedures. The Fleet Manager stated she destroyed all light bars for the police vehicles as they were damaged or needed to be destroyed; however, there is no documentation of this. We noted there was a rotating police light sold by Solano on eBay as well as light-bar controllers and a light PA control box and a light panel. We recommend the County review the process and establish controls and a review process over the fleet and related equipment purchased to up-fit units. Items should be inventoried periodically and on a surprise basis. The County should continue training so that employees account for and properly handle purchases and monitor compliance with the County's Accounting Manual.

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Officers' Body & Unit Equipment

- Although there is a manual log of issued supplies to officers, there is no audit trail of replaced items. This listing should be reviewed and approved and inventoried periodically and on a surprise basis. Expired items should be tracked and destroyed appropriately.
- Employees stated in our interviews that cell phones and accessories were upgraded in FY07 and FY09 and this does not follow the protocol of the rest of the County. We recommend the County set reasonable replacement policies and follow Resolution No. 2007-81 (regarding fixed assets and exempt inventory policies and procedures) or the inventory trainings the Finance Department provides over replacing surplus items, damaged, or obsolete items.

Ammunition

- There was no inventory of the ammunition room until December 2010. A log has now been put into place so the Ammunition Custodian issues ammunition and marks it on a log that the recipient signs off on. However, this control as currently designed is weak since staff with access could take ammunition and then easily change the number on the log. An example of a stronger control would be: issuing ammunition with a tri-copy ticket with approval signatures, reconciled to the log monthly by the Major. Through reviewing purchasing emails, we noted that ammunition is scarce and difficult to re-order, making it an item of higher risk of theft. We recommend a thorough review of this process and tightening controls over ammunition.

Donations

- Per management, there have been 2 or 3 times where donations of County property were approved after the fact. Per the SO Accountant, there were cell phones donated without following the proper procedures; however, the SO Accountant did not report this. Even after repeated warnings by the County's Finance Division on following the proper procedures in the Accounting Manual, Finance discovered donations were still being made outside the policy. Staff also mentioned two specific instances of the former Sheriff asking for items to donate, and when questioned by the staff, he dropped the request. Although the SO was aware of the requirements, staff may need consequences for any transactions not following policies and procedures to strengthen enforcement and reporting. The County should ensure employees have access to a safe reporting mechanism to express concerns.

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Purchasing

- The SO receiving function is not centralized, leading to inadequate segregation of duties and easy override of controls. This situation increases the risk of theft, fraud, and embezzlement as items being ordered can be received by the same individual. County management has now strengthened controls and new policies and procedures are forthcoming.

Human Resources

- Former Sheriff Solano did not identify his relationships on the conflict of interest statements. During our testing, we also noted there was no conflict of interest statement on file for the previous Corrections Director. Annual conflict of interest and financial disclosure statements should include questions regarding hiring, working with, or contracting with anyone with a close relationship or relative by blood or marriage.
- There was no letter of resignation in the previous Evidence Specialist's file although resignation was made with notice. The employee, who was hired after the prior Evidence Specialist, was allegedly Solano's cousin who was an employee from April 30, 2005 to May 13, 2005. No relationship is marked on the application. The interview panel is unknown and undocumented. The interview questions of this hire were not submitted to HR as required. No pass/fail background investigation was on file at HR. The file on this hire was missing from the SO's filing cabinet and the SO could not explain why the file was missing. The SO did, however, find a backup file with a partial letter concluding upon the SO's background check that the individual was ineligible for hire. This background check letter was dated after the hire date and included a statement that the individual had admitted to bank fraud in Colorado some years ago. There is no documentation of this hire's resignation without notice. We noted that individual was commonly included as a recipient in personal emails to and from Solano and Solano's wife.
- We noted that there are no written or up-to-date notes or agreements between related parties. We recommend that there be formal documentation and disclosure of all related party agreements for transparency and accountability.

We recommend adding interview panel members to the HR form; require interview questions and completed forms before hiring; require documentation of resignation with notice; follow through on reasons for terminations; verification of completeness of files; verification that everyone completes a conflict of interest statement; and addition of related or close entities/parties to the annual statements. The County should also address the known instances of false disclosure or failure to disclose related parties and other such relationships.

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Region III Narcotics Task Force

- Bank accounts were not reconciled monthly, reviewed, and approved by a person independent of the process. Management noted, and our testing confirmed, that checks written from the County were not deposited into the Region III bank account timely. However, in our testing sample of deposits from County funds to the Region III bank account, there were no missing deposits. We recommend that Region III modify its procedures to ensure all funds are deposited timely. Additionally, Finance should periodically agree and document the total checks deposited into the Region III bank account to the bank reconciliations. We also recommend that Region III periodically agree and document the total checks written to officers to the confidential fund tracking spreadsheets to verify completeness of their tracking system.
- From our interviews, we discovered there was a book of checks missing from the Region III account that the Region III Director had questioned Sheriff Solano about. According to the Director, Solano replied that he lost the book of checks or that it was just missing out of his office. The Director validated and we observed that this check sequence was not negotiated. We recommend that checks be locked, tracked, and under dual-control.
- In the SO supply room there is check stock for the Region III bank account, closed after Solano's resignation, which should be destroyed.
- From NM DPS Grants Management Bureau's assessment on January 28, 2009, they noted that Region III did not maintain records that allowed for a comprehensive review of informant management. Out of ten records the State Police tested, only two pay records were found in informant files and Region III did not maintain receipts for the purchase of information in the informants' files. Per discussion with the Region III Director, they have taken corrective action.

Overall

- We noted there is an overall lack of policies and procedures at the SO. Management should further develop, modify, and document its policies and procedures in a prioritized order, documenting and obtaining approvals for changes, as well as monitoring compliance with policies and procedures internally throughout the year. Appropriate corrective controls or consequences should be established for non compliance with such policies and procedures.

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- According to SO management, they were all shocked with the fraud, and they feel that the biggest risk area that exists is: Trust. They stated that the former Sheriff betrayed their trust. The County should take future action to strengthen the tone at the top by adopted a policy and practice to 'trust but verify' that management's objectives are met and to take appropriate action for inappropriate behavior. The County should also design, implement, and monitor controls to identify and correct errors (caused unintentionally or otherwise) that could have a significant impact on its financial condition, operations, reputation, and employee morale. Finally, the County should continue encouraging employees to remain objective and to report any unethical or unusual behaviors, as well as violations of policies and procedures. According to the Association of Certified Examiners 2010 Report to the Nation on Occupation Fraud, an organizations best identification of inappropriate behavior is from a tip and employees are the best source for a tip.

We have discussed these comments and suggestions with various SO and County personnel, and we will be pleased to discuss them in further detail at your convenience, to perform any additional study of these matters, or to assist you in implementing the recommendations.

This report is intended solely for the use of the Santa Fe County Board of County Commissioners, the New Mexico State Auditor, Santa Fe County management, and parties identified by the County's management and their designated legal counsel. This report should not be disclosed to, used or relied upon by any other third party.

ATTACHMENT I

square foot yurt, a 225 square foot utility room, and a 225 square foot storage building on 2.52 acres., subject to the following conditions:

1. All Staff redlines shall be addressed, original redlines will be returned with final plans for Master Plan.
2. The Applicant shall comply with all requirements of the New Mexico Environment Department, the State Historic Preservation Division, County Fire Marshal, Public Works and County Utilities Department, which includes the following:
 - a. Permits for Advanced Liquid Water Systems must be reviewed and approved by the NMED
 - b. Kitchen facilities must be approved by the NMED and appropriate food service permits must be obtained.
 - c. Automatic fire suppression is required
 - d. Site address shall be clearly posted
 - e. 28' radius curb returns must be provided
 - f. Site triangles (30') must be maintained at both entrances
 - g. A Road Construction/Road cut permit must be obtained from the Department of Public Works.
 - h. The secondary access from Arroyo Hondo road must be paved with 3" of plant mix bituminous pavement
 - i. No parking signs shall be placed on Arroyo Hondo Road as required by Public Works
3. Master Plan and Preliminary Development Plan, with appropriate signatures, shall be recorded with the County Clerk.
4. It shall be noted on the Master Plan and on the Final Development plan that the nursery will only be utilized during services and events.
5. The Landscape, Lighting and Signing Plan indicates placement of flag poles near the temple entrance. Flag poles may not exceed 24' in height, and the banners placed on these flagpoles may be considered signage and must comply to the square footage restrictions for signage and placement of signage outlined in Article VIII of the Code. A separate sign permit will be required for all signage on this parcel.
6. The proposed trash enclosure must be fully screened with a 6' opaque enclosure and gated. The location as proposed does not provide adequate access for trash removal vehicles and the enclosure must be relocated on the Final Development Plan.
7. Pursuant to the review by GGI:
 - a. The Sludgehammer advanced treatment system shall be designed and installed with Bacillus bacteria (or equivalent method of augmentation) added to the system to reduce nitrogen concentrations in the effluent.
 - b. The Applicant shall be required to follow all operating and maintenance (O&M) requirements for the septic system.
 - c. No gray water reuse is currently permitted and all wastewater should be discharged to the septic system.
 - d. An ultraviolet (UV) light treatment module shall be installed in the discharge line after the septic tank as the Applicant's submittals state that DMT is broken down by light. The revised treatment system should be designed and stamped by a New Mexico registered professional engineer and UV light maintenance should be included in the O&M manual.

SFC CLERK RECORDED 08/18/11

buffers along roadway frontage areas as required by Article III, Section 4.4.4f(10) of the Code at the time of Final Development Plan application..

ARCHAEOLOGY:

This Application was reviewed by the New Mexico State Historic Preservation Division where it was determined that this site is located within an area with a high potential for archaeological sites. The tract is less than 5 acres and an archaeological survey and report is not required. It is recommended, not required by SHPO that an archaeological survey and report be conducted prior to the construction of the Temple and associated improvements. The Applicant has researched and provided information regarding archaeology on the site, and no pueblo, nor other significant sites were found.

REQUIRED ACTION:

The BCC should review the attached material and consider the recommendation of staff; take action to approve, deny, approve with conditions, or table for further analysis of this request.

RECOMMENDATION:

Staff concurs with the action of the CDRC and recommends approval of the Application. The Application has been reviewed for compliance with the Code and staff has found that the following facts presented support the request: (i) community service facilities are allowed anywhere in the County; (ii) the Code and Ordinance No. 2010-13 recognize a church as a community service facility; (iii) the use is compatible with existing development; (iv) the application is comprehensive in establishing the scope of the project; (v) the application satisfies the submittal requirements set forth in Article V, Section 5.2.2 of the Code and Ordinance No. 2010-13; (vi) the preliminary development plan substantially conforms to the master plan; (vii) the application satisfies the submittal requirements set forth in Article V, Section 7 (Development Plan Requirements) of the Code and Ordinance No. 2010-13; and (viii) the proposed structure is necessary to provide the UDV with a permanent place of worship in a place that is highly valued by the church members. Because the recommendation is for approval, it is unnecessary to address the factors under RLUIPA described earlier.

The review comments from State Agencies and Building and Development Review Services has established that the Application is in compliance with Article V, Section 5, Master Plan Procedures, Article 5, Section 7 Development Plan Requirements of the Land Development Code, and Ordinance No. 2010-13.

Staff recommends Master Plan Zoning and Preliminary Development Plan **approval**, with Final Development Plan to be processed administratively, for the Centro Espirita Beneficente Uniao do Vegetal (UDV Temple), to allow a 4,660 square foot structure to be used as a temple with a 1900 square foot covered portal type structure—to be enclosed for inclusion to the temple as part of a subsequent phase (total 6560 square feet), a 540 square foot portal, a 706

- e. If the number of events that serve at least 25 people at least 60 days per year is exceeded, the Applicant shall apply for permits for the appropriate type of public water supply system.
 - f. The Applicant is required to read the well meter monthly and post the meter data to its website monthly, an annual compilation of these readings shall be submitted to the Santa Fe County Utility Director. Following two years of readings which demonstrate compliance with water restrictions, reading shall be submitted annually.
 - g. The Applicant's water use should be restricted to 0.35 ac-ft per year.
8. Additional comments made by staff or other agencies, if any, must be addressed at the time of Final Development Plan submittal.

ATTACHMENTS:

- Exhibit "A" – Location Map
- Exhibit "B" – Master Plan and Preliminary Development Plan Report
- Exhibit "C" – Plans and Renderings
- Exhibit "D" – Water Resources Report
- Exhibit "E" – TIA excerpts
- Exhibit "F" – Building site analysis adjacent parcels
- Exhibit "G" – Real Estate Impact Report
- Exhibit "H" – Physicians Declarations
- Exhibit "I" – Referenced Code
- Exhibit "J" – Surrounding Uses Map
- Exhibit "K" – Agency/Staff Memorandums
- Exhibit "L" – Letters in Opposition
- Exhibit "M" – Letters in Support
- Exhibit "N" – Wastewater Information
- Exhibit "O" – CDRC Meeting Minutes
- Exhibit "P" – Revised Development Report Page 3
- Exhibit "Q" – Correspondence received subsequent to CDRC hearing
- Exhibit "R" – Applicant's Supplement Submittals (post well drilling)
- Exhibit "S" – Opposition's Rebuttal to Supplemental Submittals (post well drilling)
- Exhibit "T" – Glorieta Geoscience Review Report

