

1932400

SANTA FE
BOARD OF COUNTY COMMISSIONERS
REGULAR MEETING
May 8, 2001

Paul Duran, Chairman
Paul Campos
Javier Gonzales
Jack Sullivan
Marcos Trujillo

1932401

SANTA FE COUNTY
REGULAR MEETING
BOARD OF COUNTY COMMISSIONERS
May 8, 2001

This regular meeting of the Santa Fe Board of County Commissioners was called to order at approximately 4:10 p.m. by Chairman Paul Duran, in the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

Roll Call preceded the Pledge of Allegiance and indicated the presence of a quorum as follows:

Members Present:

Commissioner Paul Duran, Chairman
Commissioner Marcos Trujillo
Commissioner Javier Gonzales
Commissioner Paul Campos
Commissioner Jack Sullivan

Members Absent:

None

IV. INVOCATION

An invocation was given by Pastor Jimmie Sandoval from Grace Community Church.

V. APPROVAL OF THE AGENDA

A. Amendments

1932402

B. Tabled or withdrawn items

CHAIRMAN DURAN: We have a pretty lengthy meeting and I think what I'd like to recommend so that we get to the land use issues early and that we actually hear as many as we can, hopefully all of them, tonight. I'd like to ask that we work on the administrative items from 4 to 5, at 5 o'clock, we'd go into executive session. At 5:30 we'd begin the public hearings and at 10:00 we would adjourn the meeting until Wednesday the 16th at 4:00 p.m. Does that sound reasonable?

COMMISSIONER CAMPOS: Mr. Chairman, a question.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER CAMPOS: We have a fast track item on the telecommunication ordinance. I'd just like comment from the attorney, Mr. Kopelman, or Mr. Graeser.

STEVE KOPELMAN (County Attorney): Mr. Chairman, Commissioner, I think that matter comes up fairly early tonight in the proceedings so I don't think there should be a problem in being able to deal with. I think it's the second matter under Public Hearings.

I also, Mr. Chairman, Commissioner, I don't think there would be a problem if that matter were dealt with in the adjourned meeting anyway. I think that still would fulfill our time table.

CHAIRMAN DURAN: We'd be fine on the 16th?

MR. KOPELMAN: Mr. Chairman, Commissioner, that's correct. That would not be a problem.

COMMISSIONER GONZALES: Mr. Chairman

CHAIRMAN DURAN: Commissioner Gonzales.

COMMISSIONER GONZALES: I'm in concurrence with the direction you're asking for. I would also submit that item E. under Section VIII of the Public Hearings on the La Cienega Growth Management plan could also be deferred in the interests of time, to the recessed meeting, to take place on the 16th.

CHAIRMAN DURAN: Anyone have a problem with that? Are there any other items on the agenda that the Commissioners think that might be worthwhile tabling till the next meeting, till we reconvene?

COMMISSIONER TRUJILLO: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Trujillo.

COMMISSIONER TRUJILLO: Under number VIII, item A. the solid waste ordinance, I see that Jill's here but I don't think there's that much of a hurry to look at that. We can wait till the next time to look at the comprehensive solid waste management first public hearing.

CHAIRMAN DURAN: Why don't we table that to the next one?

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: Question for Mr. Kolkmeier. The TDR ordinance. How important is it that we hear it tonight?

JACK KOLKMEYER (Planning Director): Mr. Chairman, Commissioner Campos, extremely important.

CHAIRMAN DURAN: So we'll just keep that on.

COMMISSIONER GONZALES: Mr. Chairman, for clarifications from staff, what is item D, the ordinance procedures for ordinance amendments. Is that something that we could postpone until the 16th as well?

MR. KOPELMAN: Mr. Chairman, Commissioner Gonzales, that would not be a problem at all. Also, just for clarification, we're just talking about these matters that you're bringing up now would be continued from this meeting to the adjourned meeting on the 16th, that portion of the meeting.

COMMISSIONER GONZALES: Mr. Chairman, I would submit item D also as an item that could possibly be tabled until the 16th.

CHAIRMAN DURAN: Okay, if there's no other amendments, move to approve the agenda as amended.

COMMISSIONER GONZALES: Mr. Chairman, just for the interests of the record, could you tell us which public hearings you're asking to—

CHAIRMAN DURAN: So we're going to table until we reconvene, item VIII. A., VIII, D, VIII E. I guess that was it, wasn't it?

SAMUEL MONTOYA (County Manager): Mr. Chairman, did you mention item B? Is that right?

CHAIRMAN DURAN: Oh, right. Which one's that?

MR. MONTOYA: Mr. Chairman, the notations I had taken were VIII. A, B., D., and E.

CHAIRMAN DURAN: And then we're tabling CDRC Case Z 00-5965.

MR. MONTOYA: Correct.

CHAIRMAN DURAN: Okay. The chair will entertain a motion.

COMMISSIONER GONZALES: So moved.

CHAIRMAN DURAN: Is there a second?

COMMISSIONER TRUJILLO: Second.

CHAIRMAN DURAN: Any other discussion? Those in favor of the motion, signify by saying "aye." [Unanimous] Opposed? Motion carries.

VI. APPROVAL OF THE MINUTES: April 10, 2001

CHAIRMAN DURAN: Are there any changes to the minutes?

COMMISSIONER TRUJILLO: If not, Mr. Chairman, I move to approve the minutes of April 10, 2001.

COMMISSIONER GONZALES: Second.

CHAIRMAN DURAN: There's a motion and a second. Any further discussion? Those in favor of the motion, signify by saying "aye." [Unanimous] Opposed? Motion carries.

VI. STAFF AND ELECTED OFFICIALS' ITEMS

A. Land Use Department

1. Resolution No. 2001-64. A resolution supporting a Rail Trail Event for National Trails Day

ROBERT GRIEGO (Planner): Chairman Duran, Commissioners, the County will be sponsoring an event on the rail trail, which is a joint project with the Santa Fe Conservation Trust and the City of Santa Fe. The County Rail Trail is 11 ½ miles from Old Agua Fria Road to Lamy and is used by equestrians, pedestrians and bicyclists. The trail easement was purchased from the Santa Fe Southern Railroad in October of 1997 and the County participated in an inaugural event for the rail trail on National Trails Day in 1998. The event will be held on National Trails Day on June 2, 2001. The event will begin at the Santa Fe Southern Depot and will include live music and festivities. Adoption of this resolution will promote awareness of the trail and stewardship of the trail system.

CHAIRMAN DURAN: Any questions of Robert?

COMMISSIONER GONZALES: Move for approval.

CHAIRMAN DURAN: Is there a second.

COMMISSIONER CAMPOS: Second.

CHAIRMAN DURAN: Those in favor of the motion, signify by saying "aye."

[Unanimous] Opposed? Motion carries.

Thank you, Robert.

VII. A. 2. Resolution No. 2001-65. A resolution clarifying the appointment of members to the County Development Review Committee

ROMAN ABEYTA (Deputy Land Use Administrator): Mr. Chairman, members of the Commission, on April 10, 2001, the BCC directed staff to draft a resolution clarifying how CDRC members are appointed. Attached is a resolution requiring at least one nomination for appointment per County Commissioner. The resolution also requires that one CDRC member reside in the City of Santa Fe and the other six in Santa Fe County.

Upon adoption of the attached resolution, staff will request letters of resignation from the current members of the CDRC. Appointment of a new CDRC will be made at the June 12 BCC hearing. Thank you, Mr. Chairman.

CHAIRMAN DURAN: Any questions of Roman?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: This would appoint five of the members. Then how would the other two be appointed?

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, the resolution requires that at least one County Commissioner get to nominate one, so it's possible that a County Commissioner can nominate more than one, but the intent is so that when the CDRC is appointed at least everybody on the Commission got at least one appointment. Some may get more than one. But the minimum is that at least one is nominated from a member of the Commission.

1932405

SFC CLERK RECORDING 08/13/2004

COMMISSIONER TRUJILLO: Mr. Chairman.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER TRUJILLO: Roman, can you give us a list of the existing committee, by district, so that we can take a look as to who's there now and whether we want to make the appointments from that list or identify somebody else?

MR. ABEYTA: Mr. Chairman, Commissioner Trujillo, did you want that list this evening or do you want me to just get you that list?

COMMISSIONER TRUJILLO: Yes, before the 12th.

CHAIRMAN DURAN: How about this evening? How about if we just set this aside. We can do it later.

COMMISSIONER GONZALES: We're not due to—if we pass this resolution, we're not due to appoint until June 12th. But off hand, Mr. Chairman, Roman, do you know if every Commission district is currently represented?

MR. ABEYTA: Mr. Chairman, I believe every Commission district is represented.

COMMISSIONER GONZALES: So is the point of the resolution to allow the sitting Commission to have appointed members or is it to have each district represented by members of that area?

MR. ABEYTA: Mr. Chairman, Commissioner Gonzales, based on the previous discussions, I think it's both. Right now we currently do—at one point we didn't have all the districts represented. The last appointment we did but again, based on the recent discussions, I think part of the intent is to allow the new Commission or the sitting Commission to make appointments of their own.

COMMISSIONER GONZALES: So basically by passing this resolution in effect we'd be asking for everyone's resignation.

MR. ABEYTA: Mr. Chairman, Commissioner Gonzales, yes.

COMMISSIONER TRUJILLO: With the understanding that they might be reappointed. Whoever's on the committee now.

MR. ABEYTA: Yes.

COMMISSIONER GONZALES: Aren't members of the CDRC currently at-will appointments or are they bound by term?

MR. ABEYTA: Mr. Chairman, they have term limits but I believe they are at-will appointments.

CHAIRMAN DURAN: Why don't we just figure which two we want to remove and let Commissioner Sullivan and Commissioner Campos appoint two?

COMMISSIONER GONZALES: It seems a little difficult.

CHAIRMAN DURAN: Why doesn't everyone get one and I get three.

COMMISSIONER SULLIVAN: As you know, Mr. Chairman, currently I have three. One from Lamy, one from Edgewood and one from Stanley.

CHAIRMAN DURAN: I guess what would happen this is that we'd all appoint one and then the Commission, the other two would be appointed by majority. How else could we do it?

COMMISSIONER GONZALES: I guess I'm interested in wondering how this

resolution came about. I understand the need for Commissioners to make appointments, to have representation from the districts, but if we're there now, is there a point where we're wanting to basically tell individuals half way through their terms that they may or may not be reconsidered? Is that something that—or can we accommodate the same thing that this resolution is asking for as expiration of terms come up. So if someone in District Five, there's three of those individuals, they all have different terms expirations, maybe at the point that one of those terms concludes then we know that that may be going to an at-large appointment and work it through that way, as opposed to basically wiping out the whole board and then reappointing.

MR. ABEYTA: Mr. Chairman, Commissioner Gonzales, the issue first came up when we discovered that there were three appointments from one district, one didn't have anybody and I think another district was lacking somebody. So the discussion came forward, I believe Commissioner Campos had raised it, and asked what the Code requirements were for appointments. The Code is really general as far as appointment goes so we propose that we bring forward a resolution that would assure that each Commission at least get one appointment.

COMMISSIONER GONZALES: So I was wondering, Mr. Chairman, could we accomplish the same thing by establishing that each individual that represents a district will be the Commission's, that Commissioner's choice and we'll have a term on that so that at the end of this year, they're going to be up for renewal, and then we would try and find where the two at-large would be amongst the current CDRC. Clearly, an at-large is going to come out of Commissioner Sullivan's district, it sounds like if he's got three appointees. I'm not sure. What other districts have more than one appointee?

MR. ABEYTA: Mr. Chairman, Commissioner Gonzales, right now we have one member from Commission District One, one from Commission District Three, three from Commission District Five, one from District Two and one from District Four. And Mr. Chairman, the Board, if you wish, you can adopt this resolution this evening but we don't have to have the CDRC resign. Maybe we can adopt the resolution and then when the first set of terms expire, then we would do the reappointment based on the resolution that got adopted.

COMMISSIONER CAMPOS: Question for Mr. Abeyta. Paragraph number 3 says that six shall be from the county, which means not from the city, right?

MR. ABEYTA: Mr. Chairman, Commissioner Campos, we had a discussion right before this meeting began and yes, the intent, and we'll clear up the language, but the intent is that those members do not live within the city.

COMMISSIONER CAMPOS: Now, the current composition is how many in the city, how many out of the city?

MR. ABEYTA: Mr. Chairman, I believe at least one, maybe two live within the City of Santa Fe.

COMMISSIONER CAMPOS: Which are they?

MR. ABEYTA: Louie Gonzales lives within the City of Santa Fe, and I'm not sure if Brian Gallegos does or not.

COMMISSIONER CAMPOS: And the others definitely live in the county?

MR. ABEYTA: Mr. Chairman, Commissioner Campos, yes, the others are definitely in the County.

COMMISSIONER CAMPOS: Comment. I would like to proceed with this ordinance. I think it's fair. I think we're going to provide for better diversity of representation on a geographic basis, which is required by the ordinance, and certainly, the Commissioners can reappoint people on the current CDRC that they like if they're doing a good job. I don't see that as a major problem

CHAIRMAN DURAN: I don't see a number 6. You said number 6? Well, I'm opposed to—I don't see why we can't appoint someone that lives in the city.

MR. ABEYTA: Mr. Chairman, the existing language just requires at least one reside in the city limits. It doesn't prohibit more than one from being appointed. But the resolution as we've amended that would prohibit that. It would only allow one within the city and then six outside of the city.

CHAIRMAN DURAN: Then I'm opposed to this resolution. My thought on this is that my appointment to the CDRC is based on someone that I think represents my philosophical approach and this individual may not live in my district but he's there to kind of represent my thinking. I think that all of us probably would like to have someone that represents their thought.

COMMISSIONER TRUJILLO: Mr. Chairman, I think what the resolution says is that at least one should be from the city. That does not preclude all of them from the city if that's the discretion of the Commission, right?

MR. ABEYTA: Mr. Chairman, Commissioner Trujillo, that's correct. The resolution in your packet doesn't prohibit it, but again, there was discussion before the meeting today as to whether or not we should do that. But it's up to the Commission if they want to limit it or restrict it to one member in the city you can do that but the way the language is written right now it doesn't prohibit that; you could have more than one that lives in the city. All the resolution does is allow each Commissioner to have at least one nomination of the CDRC.

CHAIRMAN DURAN: And it doesn't have to be someone from their district.

MR. ABEYTA: No. The resolution does not require it be someone from their district.

COMMISSIONER CAMPOS: Mr. Chairman, if you delete paragraph 3 you could accomplish your purpose. That's the only one that goes to the rule that would require in the county, actual county outside municipal limits.

CHAIRMAN DURAN: I'm okay with that.

COMMISSIONER GONZALES: Mr. Chairman, I guess, and to your point, I think that that maybe goes to the heart of what Commissioner Campos was talking about. If we want individuals on this committee that reflects each of our individual philosophies and what we would like to see done, it may be appropriate that this new Commission have the opportunity to appoint individuals that reflect the new Commission's views.

Mr. Chairman, I'd move for approval of this resolution and ask that an amendment be put in place that would eliminate number three, which states the other six County Development Review Committee members shall be residents of the County of Santa Fe.

COMMISSIONER CAMPOS: Second.

CHAIRMAN DURAN: There's a motion and a second. Any further discussion?

COMMISSIONER SULLIVAN: Mr. Chairman.

1932408

SFC CLERK RECORDING 08/13/2004

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: A clarification then. Are we going to follow the staff's suggestion that everyone resign and then appointments be redone, or we going to just wait for attrition?

COMMISSIONER TRUJILLO: I guess, Mr. Chairman, I don't see the purpose of having everybody resign. I know who I'm going to appoint; I'm going to appoint the person that's in there now, Mr. Romero, John Paul Romero. So I don't see any purpose for having him resign. We can appoint, each one of us appoint one, and then the two that are not appointed, have those resign and then have a majority of the Board select two more to complete the seven.

COMMISSIONER CAMPOS: I think waiting for attrition would somehow nullify the purpose of the whole resolution. That's my reading of it.

CHAIRMAN DURAN: Well, I like your idea.

MR. ABEYTA: So Mr. Chairman, if I'm correct, or what maybe I could suggest is that I'll give each of you a list of the members in your district, a list of the entire CDRC, and I'll allow each one of you to tell me whether or not you'd like that person to stay on. The members that I don't get an okay to stay on, then I'll request their resignation.

COMMISSIONER TRUJILLO: That sounds good.

CHAIRMAN DURAN: Sounds good. So the direction is that we'll adopt the resolution with the understanding that you will bring forward a list at the next meeting, telling us which ones we're going to be asking to resign.

MR. ABEYTA: Yes.

CHAIRMAN DURAN: Based on input that we have given you.

MR. ABEYTA: Yes, Mr. Chairman.

COMMISSIONER CAMPOS: Last question, Mr. Chairman.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER CAMPOS: Should we do public notice to ask persons interested to submit applications?

CHAIRMAN DURAN: I think after we ask the people to resign.

MR. ABEYTA: Mr. Chairman, we do that as a matter of course. Once we get the two vacancies, we'll do a public notice advertising it, which is what we do now when we have vacancies.

CHAIRMAN DURAN: It sounds like it's going to be an interesting process. Any further discussion? Those in favor of the motion, signify by saying "aye." [Unanimous] Opposed? Motion carries.

- A. 3. **Request Authorization to Public Title and General Summary of an Ordinance Amending Ordinance No. 1996-10, The Santa Fe County Land Development Code, Article III, Section 3, Home Occupations.**

MR. ABEYTA: Thank you, Mr. Chairman. In January of 2001 the State of New Mexico Taxation and Revenue Department sent a list of businesses to our finance department that

are paying Santa Fe County gross receipts' tax. The finance department discovered that over 2000 of these businesses did not have a county business license. As a result, the finance department in conjunction with the land use department started mailing letters to these business owners notifying them of the need to obtain a county business license.

Since then the Land Use Department has received numerous business license requests. A number of these requests are for low intensity types of businesses such as artists who work at home but sell in galleries and computer internet sales.

The only process the county currently has for these small businesses is our standard home occupation. The requirements including submittals are not essential for these types of businesses. In an effort to streamline the process for small business owners, staff is proposing to amend the home occupation regulations by adding a section to simplify the process for such businesses.

Staff requests that the BCC grant authorization to publish title and general summary of the above-referenced ordinance amendment. The proposed amendment will be scheduled to be heard by the BCC on June 12th and July 10, 2001.

Thank you, Mr. Chairman.

CHAIRMAN DURAN: I'd just like to make a comment. I asked Roman to bring this forward to us to consider, because I got a call from someone who was an artist that painted in her house, had no one come in to visit her or she didn't sell any of her goods from her home, just painted there. And our code required her to come in and apply for a business permit; is that correct?

MR. ABEYTA: That's correct, Mr. Chairman, and in order to get that business permit, there was a lengthy process that she would have to follow. And that's, I think, where some of the concern was. We're requiring a lot of things for these small businesses really aren't essential to the type of business they're conducting.

CHAIRMAN DURAN: I think that if they have employees or if they have people that come to their residence, to buy some of their goods, that they should have a business occupation. But if they're just working out of their house, and then taking it some place else to sell, I don't think that that's really necessary. So that's why we brought this thing forward.

COMMISSIONER CAMPOS: I move for authorization to publish title and general summary.

COMMISSIONER TRUJILLO: Second.

CHAIRMAN DURAN: So there's a motion and second. Any further discussions?

COMMISSIONER SULLIVAN: Mr. Chairman?

CHAIRMAN DURAN: Roman, a quick question. This is for permits for individuals who are operating outside the city limits, correct?

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, that's correct.

COMMISSIONER SULLIVAN: And does it include people in the extraterritorial zone?

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, we will have to ask the EZA to grant the same authorization at the end of the month so that we can do a similar amendment because this does not include businesses in the extraterritorial zone.

COMMISSIONER SULLIVAN: Because I've run across a home occupation,

either ordinance or regs, in the EZ and I was just looking at the sign. The sign size here is 9 square feet in this ordinance. And I've seen another sign size for home occupation of one square foot; does that ring a bell?

CHAIRMAN DURAN: Through the city.

COMMISSIONER SULLIVAN: Is that in the city?

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, I believe that's in the city.

COMMISSIONER SULLIVAN: So the 9 would be county.

MR. ABEYTA: Yes.

COMMISSIONER SULLIVAN: EZ or outside?

MR. ABEYTA: Yes.

CHAIRMAN DURAN: Even outside of the scenario that I just mentioned there is no sign. So if there's a sign, then they have to get a home occupation license. Right?

COMMISSIONER SULLIVAN: Well, not according to this. Not under home occupations, they're allowed a sign up to 9 square feet.

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, that's correct. Under home occupation, you're allowed a sign. But the sign limit, is 9 square feet.

COMMISSIONER TRUJILLO: Maybe under this same ordinance we can look at the protocol on how we enforce compliance with the ordinance. Because I've gotten a lot of calls from my constituents that there's a lot of businesses out there that are not complying with this ordinance. Is that the case? Are we coordinating with the County Assessor's Office to make sure that everybody that needs to comply complies with the ordinance?

MR. ABEYTA: Yes, Mr. Chairman, Commissioner Trujillo, and in fact, again, this is what's driving this is we've discovered over 2000 people that are not complying with the ordinance. And so this is why we want to have regulations that will address not only the larger businesses, but also the smaller ones that do require a license.

COMMISSIONER TRUJILLO: Cause that has a direct impact on the county.

MR. ABEYTA: Yes, Mr. Chairman.

CHAIRMAN DURAN: There's a motion, a second. Any further discussion?

[Motion passed by unanimous voice vote]

VII. A. 4. Update and Recommendations on the Future of the Eldorado Moratorium.

KATHERINE YUHAS (County Hydrologist): Mr. Chairman, Commissioners, this report is in response to your request for an update on the status of the moratorium in Eldorado. My intent was to briefly recap the reports that you heard from John Shomaker on April 24th, and then go into staff's recommendations on some changes that we thought we could support.

CHAIRMAN DURAN: Katherine, can you just start with number 1?

MS. YUHAS: Certainly, I can just start with number 1.

CHAIRMAN DURAN: Great. Thank you. As I started reading the back, the summary, maybe you should start with that too.

MS. YUHAS: Fine. Thank you for your understanding.

As the information presented by Dr. Shomaker indicates that in time, it would not be prudent or in the best interest of the residence of Eldorado to remove to moratorium on development utilizing Eldorado utilities. It is evident, however, that there have been many requests for development of commercial services in the Eldorado area and that the moratorium has restricted this development for moving forward for quite some time.

In addition, some of the proposers are water neutral and would not negatively impact the Eldorado utilities water system. Based on this, staff has investigated and evaluated many options for the development in Eldorado.

After consideration and debate, staff feels that the following three alternatives are supportable and would not place a further burden on the water supply of the Eldorado utility system.

The first is that the current moratorium does not allow creation of residential lots smaller than 12.5 acres when private wells are used. We propose that this portion of the moratorium be lifted. Developers of residential lots would be allowed to develop, based on the 100 year proof of water requirement of the county code. Lots could be created which are as small as 2.5 acres if adequate water could be demonstrated, appropriate water rights were obtained and a geo-hydrologic evaluation was made that would show other wells would not be impaired.

Second, if developers have wells and water rights which are transferred to the Eldorado utilities water system, they can then take service for the development of the amount of water donated minus 20 percent to account for leakage.

CHAIRMAN DURAN: Excuse me, read that once more. I don't have anything to read.

MS. YUHAS: If developers have wells and water rights which they transfer to the Eldorado utility system, they could then take delivery of that water minus 20 percent to account for leakage from the system for their development.

CHAIRMAN DURAN: Thank you.

MS. YUHAS: A requirement from this provision would be that the developer furnish funds for the county to hire an independent hydrologist to evaluate whether production from the developer's well would impair Eldorado utilities ability to produce water.

Only those wells which did not impair Eldorado utilities or any other well user would be allowed to proceed forward.

CHAIRMAN DURAN: Excuse me, Katherine. What if this hydrologist that this party used was acceptable to the county. I mean, are you saying that --

MS. YUHAS: Mr. Chairman, we put this provision in so that it would be an independent evaluation. So that the County of Santa Fe would be making a selection of someone. I have heard many complaints from many constituents that they have concerns that when the developer hires their own hydrologist that there's a bias towards finding out that there's plenty of water and there's no impairment.

And so I thought that this might give people more confidence if I was the one making the selection and it was sort of an independent evaluation rather than the money coming straight through the developer. It's the same money that would get spent, I mean it's the same evaluation,

1932412

SFC CLERK RECORDING 08/13/2004

it's just sort of a different process for making that.

CHAIRMAN DURAN: But wouldn't you say that you would be qualified enough to make that assessment on your own? I mean if you read a hydrology report and decided in your own professional opinion that we needed another one, maybe you could make that call but I'm sure that there are some that you would feel were adequate.

MS. YUHAS: Mr. Chairman, I am confident in my ability to evaluate those proposals that come in. This was just something that staff came up with in our discussions. And certainly if we're bringing something forward to publish title and general summary, that could be removed if that was your pleasure.

CHAIRMAN DURAN: That would be a reasonable amendment to this?

MS. YUHAS: Sure. I think that would be fine.

CHAIRMAN DURAN: Thank you.

MS. YUHAS: Finally, the third condition would be developments which already exist and are using Eldorado utilities could re-allocate the water they receive from EDU on their property without being subject to the 100 year proof of water as required by the County Code.

The developments that exist, however, must continue to exist. So a developer couldn't close a store and build houses and they couldn't do the reverse. They couldn't kick some people out of their houses and set up a store.

The amount of water which development has for this purpose would be based upon some average of water used by the development in past years. And I have further looked at that and thought that it could be an average over the past three years with some review, by me, to determine that the amount of water they've been using over the past three years has not been excessive for their proposed development.

And with that I'll open it to discussion as to how we'd like to proceed with this.

COMMISSIONER SULLIVAN: Mr. Chairman?

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: On that last one, Katherine, the thing that comes to mind, to me, first of all, is when you say developments, I assume from your example that you mean commercial developments, is that correct?

MS. YUHAS: Mr. Chairman, Commissioner Sullivan, that's correct. I did mean commercial development.

COMMISSIONER SULLIVAN: But we're not talking about residential transfers of water from a subdivision development to some other purpose, a commercial development or another subdivision development?

MS. YUHAS: Mr. Chairman, Commissioner Sullivan, that is correct. We were looking at commercial development only on that one.

COMMISSIONER SULLIVAN: Okay.

MS. YUHAS: But it could be re-evaluated and we could come back with another recommendation if there was some way that for residential that could be. I'd have to think about it.

CHAIRMAN DURAN: Commissioner Sullivan, before you move onto the next one, why wouldn't you allow that? What was your reasoning for not letting that to occur?

COMMISSIONER SULLIVAN: Well, I think the issue here is that we don't want

to get into the bartering of individual residential wells. There's a number of residences in Eldorado that are not on the Eldorado Utility System. They're on wells. And they're not in the utility service here. And if we start getting into the buying and selling of 3 acre-foot residential water rights, or portions thereof, you know I only use a third so I'll sell you 1 or 2.67 acre feet of water rights. I think we're getting into a hornet's nest.

I think the issues that have come up and I believe you've mentioned them too. How do we provide commercial services for a growing area within the limitations of Eldorado Utilities which has been unable to bolster up its system apparently. This appears to be one way to do it to solve that commercial problem. I think if we get too deep into the residential area we're going to find a lot of difficulties.

CHAIRMAN DURAN: But if you look at number three, it doesn't say anything about wells. It says, "development which already exist and are using EDU can relocate the water." So it doesn't specifically say that residential lots on the EDU system couldn't transfer those water rights out.

COMMISSIONER SULLIVAN: I'm trying to envision how it would occur. I mean it would have to be a subdivision receiving water from EDU and someone would be speaking for that subdivision and then saying, okay, we're going to transfer our subdivision water to some other project.

MS. YUHAS: Mr. Chairman, Commissioner Sullivan, I don't think that was quite the intent of staff.

COMMISSIONER SULLIVAN: I don't think so either.

MS. YUHAS: Our idea was on a property where you had a project if you could use your water more efficiently, that you could expand your project. So if someone, I suppose if someone had a house and they wanted to put a gallery on their house and they could use their water more efficiently that might fall under this provision. But really, I don't see how you could do it except for a commercial development. Because mostly if you were going to reuse your water, you'd have to have a sewer system to do it.

COMMISSIONER SULLIVAN: I think the other thing, Mr. Chairman, that we'd want to clarify in this item too is that this would not involve any sales or transfers. This is a self-sufficient type of thing. You're using X acre-feet of water. And if you feel you can use it more efficiently and expand your square footage then we'll look at the favorably.

MS. YUHAS: Mr. Chairman, Commissioner Sullivan, that was what staff was evaluating when we looked at this.

COMMISSIONER SULLIVAN: I don't think we want to let Business A sell its unused portion of its water to Business B or something like that.

MS. YUHAS: That was not our intent.

CHAIRMAN DURAN: And why not? I'm trying to understand this.

COMMISSIONER SULLIVAN: Well, it's based, Mr. Chairman, as I understand it, it's based on a period of usage. So if Business A was using 4 acre feet of water on the average a year, then we're saying here, I guess, that they are going to continue to use 4 acre feet of water but they're going to expand their area and use their 4 acre feet more efficiently.

The only other way that they transfer water would be to use less. And that would be a

closing down of the business, in essence. That would be saying, "Okay, we normally use 4 acre feet of water. We're going to close down half of our business and now we only need 2 acre-feet of water so we can sell or transfer that other two to somebody else. And I think we're overstepping the bounds of what we're trying to do here if we get into that detail.

COMMISSIONER GONZALES: Mr. Chairman?

CHAIRMAN DURAN: Commissioner Gonzales.

COMMISSIONER GONZALES: I'd like the fact and I appreciate the fact that the staff has tried to find a way to try to bring some sensibility to the moratorium. And it looks like what you proposed, Katherine, is pretty reasonable.

And Mr. Chairman, in the interest of time, unless there's any holdup, I'd like, to provide direction to the staff, to work this into an ordinance and bring it back so that we can continue to move out there try and treat all residents of that area with some type of equity.

And so if the Chair concurs, I'd like to ask the Commission to provide that direction so we can begin to debate this and allow the people of Eldorado to take a look at it in its format and allow them to debate it and offer some input.

CHAIRMAN DURAN: I'm in favor of that direction.

COMMISSIONER CAMPOS: I would concur.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Just one last thing. On the hydrologist issue, that, I think, is an issue. And I think although I have not problem, certainly, with the expertise that we have on staff to review these hydrology reports, I do think, like anything, you can investigate certain information or not investigate certain information and the report just becomes -- has a lean one way or the other.

So if we decide that this would not be the way to do it, then I would like the staff to think about some other provisions. Either you provide a standard format or you have a right of rejection or something to just standardize these reports for your use and to have some objectivity to them.

I think that's good direction. I think there's some good ideas here, Mr. Chairman. And I agree, Commissioner Gonzales, that I think we want to encourage conservation and some of these ideas do that and we'd like to see how this would work. And if it works in Eldorado, it could work in other areas.

CHAIRMAN DURAN: I think it's very pro-active. I commend you. So you have direction. Thank you very much.

MS. YUHAS: Thank you.

VII. B. Matters from the County Manager

1 Discussion Regarding the Scope of Work for a Proposed County Road Improvements Strategic and Operating Plan.

MR. MONTOYA: Mr. Chairman, members of the Board, the member of the

Commission directed the staff to work on a proposal that was brought forth by Commissioner Sullivan for discussion at our last meeting. The intent, Mr. Chairman, is to drive towards the drafting of a scope of work that would go towards an initiative that Commissioner Sullivan would like the balance of the Commission to consider. And that is there are many arterials and roadways in our county that require some definitive work to bring them up to minimum compliance standards that would match the minimum county standards for county roads.

And this issue relates to the fact that many of these particular roadways are private roadways and they carry a lot of county traffic into major arterials. And the concern, and I believe the direction, is that we would like to draft an operational plan that would first of all give some clarity to the issues.

Secondly, attempt to determine how or what type of procedure would need to be put in place to address these minimum standard issues. And thirdly, to look at a thorough venue for underwriting the construction of these upgrades to these roadways.

Now relative to the financing of this initiative, Mr. Chairman, there are many possibilities for developing partnerships to make these arterial improvements to actually come to fruition. And those include the possibility of bring private dollars along with public money to advance this project.

There are also some initiatives that could include bringing in some of the communities or some of the neighborhood associations into this particular type of development. Mr. Chairman, this is not a new idea. Some of the roads that have been built in some of our neighborhood areas have been done with injection of private cash from the neighborhood associations. And I think the idea is to formulate a policy that would aggressively seek to continue to do these things where feasibly possibly.

Mr. Chairman, the other intent is that we look at all of the taxing possibilities, gross receipts' structure. Also Mr. Chairman, I want to point out that as County of Santa Fe moves to a new designation in terms of the status of the county that we currently are, we are currently a Class B county. We'll be, in effect, going to a Class A status after the census has been approved by the congress and sent down to the state and local level. We will effectively become a Class A county.

What actually happens at that venue, Mr. Chairman, is that we are able to impose additional gas tax, road tax, initiatives that could go to a program such as this. So I believe an anticipation of that new classification, the Commission is asking the administration to work on a plan that would bring to the forefront off of these issues, bring the operational plan to the Commission, share it with the public and try to work out all the particular details that need refinement.

COMMISSIONER TRUJILLO: Mr. Chairman, Sam, you're talking, just to clarify, you're talking about mixing public monies and private monies to enhance roads that are not designated county roads that are public access roads or school routes. They serve subdivisions and communities. If that is the case, then how does that conflict with the law?

MR. MONTOYA: Mr. Chairman, Commissioner Trujillo, that's a very good point. Currently because of the anti-donation statute that is currently on the books, public money cannot be invested in private roads. However, I believe the intent that is being brought forth is that there be some kind of an analysis, some kind of a study done to determine what type of legislative change might be required based on the fact that we are using to a great degree a private arterial

dumping into a public access road.

So, Mr. Chairman, I think the underlying purpose is to solidify, to strengthen the health and public safety issues relative to transportation within our county that somehow overlaps or correlates to a private road. And I'll be the first to tell you this is a complex issue and it brings with it a lot of different analysis that is required.

But in lieu of the fact that we do have lots of overlap in this area, in terms of private roads to public, that there needs to be some thoughtful study put in place to determine what would be the best process.

Mr. Chairman, this being the first discussion of this particular item, we simply wanted to point out to the Board that we're beginning to lay out the procedure and the issues that are relative to this matter. We do have for you some comments that were provided to us by Commissioner Sullivan looking into many of the specific areas that I've just mentioned to you. And we have also exhibits that tell you how many county road miles we currently have. We have approximately 577 county road miles of which only 133 are paved.

So, Mr. Chairman, obviously we want to focus on county roads and improve those particular roadways, but at the same time, keep an open mind to the process or procedure to work in engaging some of the private roads that do flow into public roadways.

Mr. Chairman, with that, I would defer to Commissioner Sullivan for any additional comments to or any of the other Commissioners that might want to provide some information or to Mr. Lujan who is our Public Works director.

I also want to point out, Mr. Chairman, that about three pages deep into this particular section of your book, we have some road maintenance costs that relate to how much it does cost for the county to do road blading as approximately \$1,300.00 per mile. We have breakdowns for mowing of county roads, pot-hole repair, snow removal and road striping, just to give you a basic analysis of cost related to road improvements in those various areas.

Mr. Chairman, simply in a nutshell, I wanted to provide for the Board the simple fact that we are moving on this initiative and wanted to show you that we've begun to develop the process and will require a lot of discussion with you and with the general public as well. Thank you.

CHAIRMAN DURAN: Thank you Sam. I think in order to -- it's 5:00 now, and we need to move on. When you have it all figured out, why don't you bring it before us once again so we can have some discussion after you've been able to resolve the concerns that Commissioner Trujillo has raised. Thank you.

COMMISSIONER CAMPOS: Mr. Chairman, a quick question.

Mr. Montoya, I would just ask that you keep it preliminary at this point. I'm really concerned about the fiscal impact. I think it could be tremendous. And I'm not sure what tax revenues. I'd like to know more about how much we're bringing in from the general fund, from special funds to work on the roads. It seems like it would be a big burden to the county.

MR. MONTOYA: Mr. Chairman, I want to point out that that is a major concern. The cost related to this is major. However, I think that in order for us to really consider this thoroughly, that we need to do a good analysis and provide it to the Board and the I think based on that we can make some clear decisions.

Thank you for the guidance, Mr. Chairman.

1932417

B. Matters of Public Concern

CHAIRMAN DURAN: Is there anyone out there in the audience that would like to address the Commission on any matter? Please step forward and state your name and address for the record, please.

CAROLYN SIGSTED: Caroline Sigsted. I just want to respond. I think it's good that we're beginning to take a look at the moratorium in Eldorado, but I would be very, very cautious. There were two things that struck me when the county hydrologist was speaking. One, I actually thought that it was responsible on her part to suggest an independent hydrologist that she would appoint. I lived out in Ojo De La Vaca for 20 years -- that's an illegal subdivision with very, very fragile water systems, including sulphur water and contaminated surface water.

The way people got development out there was by reaching into deep pockets and spending that money on hydrologists that would literally buy them the development. And I'm not saying that that always happens. But I have seen it happen many times in the twenty years that I lived out there. And those wells were approved now no longer function in year or drought years.

So I'd be very cautious of that and I believe that water studies belong in the public domain. And I'm not trying to put a whole industry out of business so I realize I must compromise, but that's what I believe.

Secondly, in the county, our 3 acre-feet. It states it's up the 3 acre-feet. We aren't just given 3 acre-feet. So the idea is not to use it all. It's up to -- it's even in your jurisdiction to determine how much of that acre feet should be used. They have up to 3 acre-feet. There's a big difference there.

The second matter of concern, I'd just like to ask your support as community leaders. And I'd also like to take this opportunity so that we all pass this on. A word to the wise. And this is for young people. If you have any thought of getting your high school GED, it's only going to get tougher come January, 2002 and after. I urge any young adults who have not completed high school or who are in the process of completing their GED to finish their high school equivalency tests by December, 2001. Make your scores count this year or lose them.

There are over 1,000 New Mexicans who have partially completed their GED process. On January 1, 2002, this standards go up. And only test scores from a new test will count towards earning a GED diploma. Now is the time for us, a county leaders and its citizens, to spread the word and begin a statewide drive to encourage young New Mexicans to begin and complete their GED this calendar year.

For more information contact New Mexico GED Testing Office, State Department of Education, 827-6702 or contact our local community colleges.

CHAIRMAN DURAN: Thank you. I would just like to let anyone out there that came for the Telecommunications Ordinance that it has been tabled to the 16th at 4:00 p.m.

Please state your name and address for the record.

GINA TORICELLI: Yes, my name is Gina Toricelli. I'm not quite sure how to go about this particular issue. But what I would like is to petition this governing body to consider

making a statement or making it possible for the County of Santa Fe to remove the place of execution from the state penitentiary or to not have any executions here in Santa Fe County.

I feel that the overwhelming majority of Santa Fe County would not want to have an execution here. The last time we had one, it's been about 40 years. This puts a stigma, a cloud over a community. It's very, very upsetting.

I know as someone who works out in the penitentiary that even just the thought of that door being opened of the execution chamber is just very traumatic. And I think that we should have the right to vote on whether this act would be performed here in our yard.

And I think if maybe we could put together a resolution asking that state to remove this impending doom from Santa Fe County, I would be willing to work with anybody up there in drafting a resolution. And hopefully we could not have this happen here. Thank you.

CHAIRMAN DURAN: Can you help us with that, Steve.

MR. KOPELMAN: Yes.

CHAIRMAN DURAN: Anyone else out there that would like to address the Commission, please come forward.

JOELLEN SHUMAHLE: I live at 27A Caballos Trail. Chairman Duran, Commissioners, thank you for this opportunity to speak. I'd like to speak today about the question of these proposed amendments to the moratorium in the Eldorado area. This is a community that has been very interested in following this issue for a long time. We're very concerned about how it might affect our future.

We're a very involved community. We are participating in the county's corridor planning process. We are working towards the county contemporary community. We also have a fair number of members, including myself, that are involved with the state regional planning for water.

I would like to suggest that in order to provide an opportunity for the community to be well enough informed, to speak at the public hearings, that between now and the first public hearing to address these amendments, this would be an excellent time for a public meeting in our community to address these particular amendment and how they might affect us.

And I would like to suggest that some of the community members work with Katherine Yuhas to coordinate a public meeting of this kind. Thank you.

CHAIRMAN DURAN: Thank you. Why don't you get a hold of Katherine and see if she can work that out with you. Okay. We're going to...

COMMISSIONER TRUJILLO: I think Jack Paule is here for the cell tower ordinance. Are you here for that Mr. Paule? That's been postponed until next Wednesday.

MR. MONTOYA: Mr. Chairman?

CHAIRMAN DURAN: Sam.

MR. MONTOYA: One additional item before the Commission moves to the executive session. Mr. Chairman, I want to point out that we did receive some correspondence from the city relative to the water summit, Mr. Chairman, that is being proposed between the city and the county leadership. And Mr. Chairman, I want to point out that the date is still May 16th, I believe next Wednesday and will commence at approximately 8:00 to 8:15.

It will be held at the Sweeney Convention Center and should go for the better part of the day, Mr. Chairman, with many presentations and discussion relative to water issues based on a

1932419

regional format. Thank you Mr. Chairman.

CHAIRMAN DURAN: Thank you Sam. I'd also like to just mention to those who weren't here earlier, the La Cienega Community Plan has been tabled until next Wednesday at 4:00. So continuing with matters from public's concern. Please step forward and state your name for the record.

GLORIA MENDOZA: My name is Gloria Mendoza. Good evening, Commissioners. It's been a long time since I've addressed this Commission. Recently I've had numerous calls regarding several different issues that are taking place in the upper La Cienega and Cienaguilla areas. You have a few that are in your agenda which we will address as they come about. However, I find it necessary to address you on an issue that has recently been neglected, disrespected and violated.

This issue is about your public process, about community input, about ensuring our constitutional right to have an opinion, about common courtesy to educate the public on certain issues and about the people of Santa Fe County having a phase on how the taxpayer money is being spent.

I'm referring to the partnership which this Commission made with the Horse park and the purchase of 75 percent of the Hagerman wells. You see, it doesn't matter whether the county or the Horse Park uses these water rights, the point is that whomever puts this water to use, it will have a devastating effect on all the people in upper and lower La Cienega and Cieneguilla on their domestic wells.

As a matter of fact, we are ready to challenge the fact that this well was not used for a period of more than 4 years and should have been retired by the state engineer. Not only that, but that well is for whatever used it's supposed to be used for.

I believe that they are going to agenda on both the Horse Park and on the county for the use of this water. And you haven't even told us why you're purchasing this water.

CHAIRMAN DURAN: Do you want me to tell you? I can tell you now or I can wait till you --

GLORIA MENDOZA: After I finish, please.

CHAIRMAN DURAN: Oh, okay.

GLORIA MENDOZA: Knowing this, the County Commission made a movida, and I call it a movida, and I never call anything a movida, unless our elected officials blatantly and purposely take a vote on things without public notice. And so what you did was a "movida." Big time.

This has angered the residents of La Cieneguilla and Upper and Lower La Cienega. You held a meeting on this issue at 10:30 in the morning and voted to spend taxpayer money without any public notice and without enough notice of a public hearing. I did speak to my representative out in that area and was told that Elaine Cimino and Robbie Romero knew about it. Excuse me? They do not represent and they are not the majority of that community.

This commission is getting a little too comfortable. The new Commissioners should have known better. Or did you think that because it was not affecting your Eldorado area and your Lamy and your Stanley area, that it was okay to violate the public process, because it didn't involve your constituents.

What a shame that a group of elected officials can continue to insult the people of the La Cienega area. You know, we're getting tired of this. We've been insulted since 1992 and even before that. You don't even care about the people of La Cienega. You don't care about our water. You don't care about anything that goes on over there.

You're working with a group, a handful of people out there. And you think that represents all of the area. Well it doesn't. If you think that purchasing the Hagerman Well is going to help you get your water system going, you better think twice.

If we, the residents of Cieneguilla and Upper La Cienega were successful in our opposition to a world class golf course, and greedy multi-millionaire developers, you better be prepared for trying to undermine our intelligence, our water, our community and our public process. And I'm telling you right now, I am so disappointed with this Commission. You should have known better than to do that to the people of La Cienega. Cause we're not going to sit back. We're not going to sit back and take this. We're not going to let you vote on things, we're not going to let you spend taxpayer money without letting us have a say on it.

So we will challenge you. We will challenge you at the State Engineer level. Thank you.

CHAIRMAN DURAN: Thank you Gloria. Is there anyone else out there in the audience that would like to address the Commission.

E. MATTERS FROM THE COUNTY ATTORNEY

- 1. Executive session**
 - a. Discussion of pending or threatened litigation**
 - b. Discussion of possible purchase, acquisition or disposal of real property or water rights**

Commissioner Campos moved to go into executive session pursuant to NMSA Section 10-15-1 (1) to discuss the matters delineated above. Commissioner Trujillo seconded the motion which passed upon unanimous roll call vote with Chairman Duran and Commissioners Campos, Trujillo, Gonzales and Sullivan all voting in the affirmative.

[The Commission met in executive session from 5:17 to 6:05.]

Commissioner Gonzales moved to come out of executive session having discussed only the matters outlined in the agenda, and Commissioner Trujillo seconded. The motion passed by unanimous voice vote.

CHAIRMAN DURAN: We discussed threatening and pending litigation, discussion of possible purchase, acquisition or disposal of real property or water rights. And where the Commission gave staff the direction to enter into the purchase agreement for a 14.66 acre parcel of land located in the Village of Agua Fria and owned by Richard P. and Shirley Cook for the purchase price of \$295,000.00 And the money is being expended from the COLTPAC Fund.

1932421

SFC CLERK RECORDING 08/13/2004

COMMISSIONER CAMPOS: Second.

[Motion passed by unanimous voice vote.]

- VIII. C. Ordinance No. 2001-to be determined and Ordinance Amending Ordinance No. 1996-10, the Santa Fe County Land Development Code Creating a New Article, XVI, Provide for Land Use and Zoning Regulations for the Transfer of Development Rights.

JACK KOLKMEYER (Planning Director): Mr. Chairman, Commissioners, good evening. Jack Kolkmeier, Planning Director, Santa Fe County. We're here before you tonight with the first public hearing for the so-called transfer of development rights program. And I have a couple of other new pieces of information that I'd like to hand out to you before I begin tonight.

CHAIRMAN DURAN: Jack while you're doing that, I'd like to let the public know, for those that just showed up, that some items have been tabled from the agenda or on the agenda. And those are items VIII. A. which is the solid waste management ordinance, VIII. B. which is the telecommunications ordinance, VIII. D. which is the procedures for ordinance amendments and VIII. E. which is the La Cienega Community Plan. Those have been tabled until the 16th at 4:00 p.m. Thank you.

MR. KOLKMEYER: Thank you Mr. Chairman. Before I begin, I would just like to let anyone from the public know what information we have before them regarding the transfer of development rights program. This is the ordinance that will be discussing this evening. It's up here on the front table, as well as paper that's entitled, "Options" on the front page, which is a complete history of the work that we've done over the last year.

With me this evening is Mr. Rick Pruetz who has been with us throughout the process. We'll also have staff help this evening from Roman Abeyta and Ann Lovely from the Attorney's Office.

I want to begin by make it real clear before we start that our discussion tonight is the first of two public hearings. This will be the first one this evening and the second one will be a joint public hearing with the EZA on the 30th and that's on your schedule. And also that this will not constitute a rezoning of any kind. We had talked a couple of weeks ago about actually rezoning one of the properties as a receiving area and, in fact, sent out notifications to property owners adjacent to the receiving area no. 5. We'll get into this in a little more detail. But we were advised by the county attorney that this is from the county's perspective, enabling legislation and we should consider and adopt this ordinance and enabling legislation without it being a rezoning.

So just so there's no confusion because some of the property owners have received notifications in the mail that this would be a rezoning, it is not, according to the way that the ordinance has now been written.

The additional information that I gave to you -- well in your packet you have a copy of the ordinance, first of all, with two maps. The map that shows the receiving area which is the highway corridor map. Well talk about that in whatever detail you want to. And then the receiving area map which delineates areas 1, 2, 3, 4, and 5. And a sketchy map attached to your ordinance but

1932422

we have now a GIS map of that area which Earle Wright provided for us this evening.

What I just handed out to you in your packet is, first of all, a schedule for the review and public hearings that we've put together so far. We had our third and final community meeting, community workshop last night. This is the first public hearing, May 8th. We have a public hearing scheduled for the EZ on May 10th, that's this Thursday. We have a public hearing schedule for the County Development Review Committee, the CDRC, on Thursday, May the 24th. And as I mentioned to you earlier, we have a joint EZA/BCC public hearing, the second and final one, potentially final one, for Wednesday, May the 30th.

Also with the information that I just gave you, we have put together a new version of frequently asked questions and we've done this all the way through the process over the past year to simplify some of the questions that come up over and over again and give very discreet and as clear answers as we can to some of those questions knowing that the documents, some of the information that we have, is somewhat complex.

So this is only a couple of pages and we think this will help guide us through the discussion, both from the public, and with you as well.

The piece in there is also entitled, "Proposed Process for Transfer of Development Rights." We've been asked, on a number of occasions, to describe, as simply as possible, exactly what happens when somebody gets TDRs and what they do with them and how the process would operate for them to take their TDR and send them to a receiving site. And that's also just on two sides and it goes through the process.

Along with the ordinance that we gave you, at the last meeting when we requested authorization to publish title and general summary, Commissioner Sullivan asked for information on fiscal impact. And we've put together a document entitled "TDR Manager and Work Duties." And that outlines all the actual work that would required to operate the TDR program from its inception then through running it on a regular basis.

We've now done almost, I believe, it's nine presentations over the last year on what the TDR Program is and how it operates. And we're not prepared or we don't think that it would be appropriate to go into the kind of detail that we have in the past.

But I want to make two points before we entertain questions from you and from the public. And that is that the purpose, the undertaking to do a TDR Program goes back almost six years to the county general plan when we were looking for ways to try to acquire open space.

And since that time we've passed a bond issue for the COLTPAC Program to acquire public open space and we have begun the initiation of this program which has had a lot of debate already because one of its aspect has to do with shifting densities.

Well, we want to remind ourselves, you and ourselves, as well as your staff, that the intention of the -- was to find another tool to acquire open space. How it handles the open space and how it deals with density is part parcel of the package, but it is an open space program. And it's geared specifically to acquire an open space in something that's going to become very significant in 10 or 20 years from now. And that's the highway corridor. Because that highway corridor, for all the blood, sweat, and tears that we shed to put that plan together, is the real buffer between the urban area and the non-urban area. Call it, an area, whatever you want, suburb, traditional villages or whatever, this is our last stand, to buffer and separate an urbanizing area and

1932423

a non-urban area.

And how we do that, we're going to need every tool that we have at our disposal to be able to do that. And the transfer of development rights is one opportunity that allows us to take development off of that corridor and keep it open, in perpetuity, for ever, to keep that space open.

The tradeoff is to be able then to take that from the highway corridor, where do we put it and how do we determine where we're going to put it. Because the immediate criticism to us comes, Oh, you guys are just going to take that off of there and slam it down somebody's throat and put in some neighborhood that doesn't want it. And that's a criticism that we've had to talk about in great depths and detail with your constituents and our fellow residents. But I want to point out one thing about how we decided or how we would like to decide where it goes, is that we actually haven't made that decision. The decision of what are the growth areas around the urbanizing area have already been made, or at least made in a certain way. And they have been made by the City of Santa Fe, in its general plan, and Santa Fe County in its general plan.

And those designated growth areas are this area south of Villa Linda Mall, which is in our general plan called "Growth Area No. 1." "Growth Area No. 2" is the area south of Tierra Contenta. "Growth Area 3" is what is known as the redevelopment district along the highway corridor at Airport Road and 599 and the Airport Development District which is west of that and north of the airport. And there's a fifth area that has come into play here as a potential receiving area for residential because it is at a location that makes it a possible good location of higher density and possibly affordable housing. Those decisions weren't made as part of this process, growth areas No. 1 and 2 are in the city's future land use plan. In fact, they're in the city's land use plan at densities between 6 and 8 dwelling units per acre. And they're not in the city yet.

So we think it's very appropriate for county to be taking a position to say, "if there is going to be growth there, of that density, we have the right to have a say in what that might be along with the neighbors in those neighborhoods. To be able to do some future planning and that if we can get in the process of future planning, the preservation of the highway corridor, to buffer all of us from growth. Than that's an opportunity that we've never had before and that we should take very seriously at this juncture in trying to determine how best to use the Transfer of Development Rights Program.

That's my last piece on the merits of this. Because I think the other merits depend on whether those values and having said things that way are of priority to this Commission, and again also, how they are perceived by the community.

What we'd like to present to you, tonight, we'd be happy, the four of us as your staff and Mr. Peuetz is with us this evening to answer any questions that you may have now or to let the public comment and we can answer questions after that, if you care to. And that we will be prepared to make any adjustments to this that we might need to. And we look forward to the public hearing this evening. And then to our second meeting with you on the 30th. Thank you very much.

CHAIRMAN DURAN: Any questions of Jack?

COMMISSIONER GONZALES: Mr. Chairman?

CHAIRMAN DURAN: Commissioner Gonzales and then Commissioner Sullivan.

COMMISSIONER GONZALES: Jack, just a couple of general questions we were

1932424

prepare for the presentation which I think is helpful to understand for a lot of people out there who haven't followed this process.

For those property owners in the sending areas and those property owners in the receiving areas, because if so by this ordinance they are designated to be such properties, will they be required to absolutely participate in this program?

MR. KOLKMEYER: Commissioner Gonzales, the Transfer of Development Rights Program is entirely voluntary. And there have been some people who have said, "we don't want to be in the receiving area, we don't want to be in a sending area." And they can be in that and not have to participate either as a sender or a receiver. The option will be up to them. And part of that depends on they'll be allowed to develop what they get right now.

COMMISSIONER GONZALES: So the current code will apply in both sending and receiving areas?

MR. KOLKMEYER: That's correct. But if development is going to occur in those receiving areas, for example, at least as long as it remains in the county to exceed a certain amount of development, they would be required to take -- to participate in the TDR Program.

COMMISSIONER GONZALES: So, is it fair to assume that when developing this TDR Program, these other programs across the country that are developed, that there's got to be some incentives to get individuals who are sitting on scenic corridors or areas that the county would like to preserve, that there should be some built in incentives to at least get them to look at the TDR Program as a program that they might want to be a part of. That's so they can transfer their development rights off areas of land that the county would like to protect in perpetuity.

MR. KOLKMEYER: That's correct Commissioner. Any incentive would be that density that they would be able to acquire.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Jack, a concern I have is No. 1, that one of the receiving areas, of course, is in my district, District 5, is on just north of I-25, Richards Avenue and the Governor Miles area which is heavily congested area now. And the criteria for the sending areas, I get the sense that the benefits of this program go to those who are in the sending area because they are able to obtain payment or some type of payment for not developing much like land subsidies or crop subsidies, not growing corn and the federal government pays you for it. And those in the receiving area who are getting the brunt of the increase density get nothing except the increased density.

So there seems to be an inequity here. But it boils a little further down to the actual sending areas themselves. And I understand that we want to protect the corridor. And the question is how do we best protect the highway corridor which is both a city and a county ordinance now.

I'm wondering why we can't protect the corridor with existing ordinances. Why do we need some additional incentive to do that. But in looking at the sending area, let me be a little more specific in my question. Specifically, on the proposed ordinance, starting on the bottom of page 3, you define...the one's that give me some questions are the former potential nodes that are eligible for 12 TDRs per net sending area. These nodes are areas that are previously identified as potential, not existing, but potential commercial districts in section VI. B. 4 of the Santa Fe Extraterritorial Zoning Ordinance and Article 3, Section 4 of the Santa Fe Land Development

1932425

SFC CLERK RECORDING 08/13/2004

Code. I looked those up and in the Section VI. B. 4 of the Santa Fe Extraterritorial Zoning Ordinance, it refers to types and locations of commercial/industrial districts and VI. B. 4 is neighborhood or small scale center districts which are or may be located in intersections of local rules or in traditional community areas. Use is similar to those which may be established in local or village center districts may be established.

So a TDR can come from a neighborhood or small center district in the EZ. And then it refers to the Santa Fe Land Development Code just in general to Article III, Section 4. All of Article III, Section 4 is commercial and industrial non-residential districts. That includes major center districts, community center districts, local or village center districts and neighborhood or small scale center districts.

So I interpret this and correct me if I'm wrong, to mean that basically everything that could possibly be a potential commercial district within the corridor, either the desired or the required setback, is a "potential zone," that's eligible for the most benefit, the 12 TDRs. Now it seems that puts the Extraterritorial Zoning Authority and this Commission in a position of having, in each case, to determine, gee, was this a potential area." Because it seems to cover every single possible intersection, whether it's neighborhood, local, community, regional, or whatever, that could be envisioned in that area. Am I missing something here?

MR. KOLKMEYER: That was a long sentence.

COMMISSIONER SULLIVAN: Even a longer question.

MR. KOLKMEYER: So let me back up a little bit and I'll try to answer it as best I can and may need some help from Roman and Mr. Pruetz.

Let me back up to what you first said when you started about what the benefits and the equities are. Because, first of all, don't forget that by a receiving area taking in certain amount of development, the whole community benefits, as well. Not just the sender and the receiver because we're gaining the open space. And then your sentence went on further than that.

But there is large community benefit that, again, at the root of the TDR Program. Now in terms of, for example, area 1 that you single out, we have to look at that in a different way also. If we don't do this program, for example, the county's TDR Program, and that's annexed by the city, what happens to area 1. Six to eight DUs per acre and all the traffic problems that you described.

Now it's likely that that is going to be annexed at some point in the future. But we think there is an opportunity to say that if we are going to get persensity there, why don't we also get something for the community good as well. Because then the receiving area benefits and so does the whole entire community. So I think we have to look at it in a kind of larger perspective as well. Because not forgetting, that when that's annexed, there will no choice it will just be zoned 6 to 8 DUs per acre. There won't be choice.

Then regarding the potential nodes, there's a similar way to look at that. If we do this program and give incentive, again, as Commissioner Gonzales, was pointing out earlier, to get that potential commercial development off of that highway corridor because that's what people all along had said to us in a development of the highway corridor is we don't want strip commercial development from one side up to the other.

This gives us an opportunity to give incentives to the people that own that property to take it off and put those development rights elsewhere. And it's not only just...it doesn't have to transfer

1932426

SFC CLERK RECORDING 08/13/2004

only as commercial development rights. And it also doesn't transfer as just a land use. You're not going to take a flea market from place and put a flea market in another place. There are rights that could be used for residential. Because the point is if we don't do this program then what happens? Then you go back to potential commercial nodes and you've got them anyway.

COMMISSIONER SULLIVAN: Jack, I'm still confused, I guess. I'm reading the your answer to my question to be yes. It's including every potential, every potential commercial node. Whether it's regional, community, local neighborhood. So it's essentially any intersections of roads could be a potential commercial district under our land use code. Now these aren't yet commercial districts -- these are potential?

MR. KOLKMEYER: They have to be still within the required and desired setbacks only.

COMMISSIONER SULLIVAN: But since the Santa Fe County Land Use Code was passed and adopted and the general plan, then the ordinance has come into play. Then the corridor ordinance has come into play. So those areas that aren't currently commercial nodes, can't become commercial nodes.

MR. KOLKMEYER: Excuse me there -- hold on just a second. I want to answer these things as quickly as they can so they're close together. There is no highway corridor ordinance, sir. There's only a plan. There is no ordinance. And that's why we're concerned about this because this is the opportunity to be able to get that we have not passed a highway corridor ordinance yet.

CHAIRMAN DURAN: Jack, I need to say something. Right now, the county code for commercial -- the code allows commercial development to occur at two intersections, the two major intersections. There is no other provision in our code to provide for commercial development other than those two streets, those two intersecting streets; is that correct?

MR. KOLKMEYER: I'm going to have Roman answer that.

MR. ABEYTA: Mr. Chairman, that's correct. However, there's other criteria you need to take into consideration when developing a commercial district at an intersection. Like for example, there needs to be a separation between districts. So the statement that at any intersection you could have commercial, that's incorrect.

CHAIRMAN DURAN: But I guess what I'm saying is the proposed nodes that we have right now qualify for commercial use based on the code as it exists today.

MR. ABEYTA: Mr. Chairman, that's correct. But if I could get into the intent of this section. What we're describing specifically, in the extraterritorial zoning ordinance, there are nodes listed. There are actually designated potential nodes. And that's what we're referring to in this. So we're not referring to any intersection.

I have the zoning ordinance in front of me. We're referring to, in the two-mile along the relief route, we're referring to the potential district, that County Road 62 in the relief route, the potential district, that's the relief route and Richards Avenue if there's ever an intersection. The potential district at Airport Road and the relief route and any potential district at the relief route and Camino La Tierra. So that's what our intent is to limit it to those locations. So not just any intersection along the relief route.

CHAIRMAN DURAN: What about along I-25?

1932427

MR. ABEYTA: Along I-25, our intent is to restrict it to the existing established districts. Cause I don't believe that you can create more districts than what's already been created out there.

CHAIRMAN DURAN: Oh, so those are established, not proposed.

MR. ABEYTA: Right, and maybe that's something we need to go back between these hearings and fine tune, add some language in there. But our intent is, again, that the districts listed in the zoning ordinance and the existing districts along I-25.

CHAIRMAN DURAN: Okay, Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Chairman, and Jack that are given in the ordinance are any previously identified potential commercial districts. The references are the ones I just read you. Maybe your references are wrong. I'm not sure. But it seems to me if we step back and look at the theory here, then why not just pass the highway corridor ordinance.

If we have a highway corridor master plan and we have mapping of it, why not just pass an ordinance. I understand where this program might be useful in nodes that have already been established and in areas where people have made investments, have purchased land assuming that it was zoned a certain way, and now are being asked to vacate the land or to no develop one. Some time of restitution seems appropriate there.

Why should we say that someone, because it's a potential which hasn't been zoned, has no plan, suddenly becomes de facto, an actual commercial zone. I think in those areas we're just creating more issues than we should have to deal with.

MR. KOLKMEYER: Commissioner Sullivan, you know you raise a good point. But what it boils down to is zoning doesn't preclude that it will stay open. And we know that and we've known that in this community for a long time. If we deeded in perpetuity as open space, maybe that's not even sacrosanct anymore either.

But we feel that if the point is to keep that corridor open, zoning may not do it. And a zoning ordinance may not do it. Because there are variances, there are special exceptions, somebody gets zoning one year and ten years later they come back and they get it rezoned. How would we know that would stay as perpetual open space?

And so I'm back to my original goal that I started when I began is the point of the highway corridor and the TDR Program has been to preserve as much open space along there as possible in perpetuity. And you can argue whether zoning does it or doesn't. I mean in some cases, you know when we're doing the 285 corridor plan in Eldorado area, for example, we're making sort of a different argument. We're saying let's go in there and let's do zoning because that gives us some certainty.

That's what zoning is good for. At least there's some certainty. You can say well we zoned that for light industrial. Okay and if we got it and that somebody comes in and they want to do heavy industrial, you can go back and you can say, "Well you didn't say that, you say light industrial." And you can argue whether the merits of that are good or bad. But zoning changes and perpetual land use...deed restricted land use does not change. And that would be the answer to that.

COMMISSIONER SULLIVAN: Two more items, Mr. Chairman, one a comment and one a question. No. 1, I don't see the fiscal impact. I see some hours listed there and late in

1932428

the game here we've been talking about this becoming a function of the county. Apparently they have a TDR manager until such time in the future we can find a non-profit entity that can take that over. I don't feel that's a county function. I feel that real estate has been amply and happily handled by the private sector for many years and they can continue to do that.

Then in the ordinance itself, a whole bunch of development standards have appeared. And I'm really confused and perhaps you can explain that to me. Beginning on page 6, "Uses and Development Standards," talking about minimum building sizes of 5,000 square feet and that's the other thing.

Are these separate building standards from the county's standards? Are they more stringent? Are they less stringent? Why are we rewriting the county code?

MR. KOLKMEYER: Commissioner Sullivan, those are the standards directly from the highway corridor plan. So in other words, if we do this TDR ordinance in effect, we are establishing by ordinance the design standards for the highway corridor plan. These come right out of the highway corridor plan.

COMMISSIONER SULLIVAN: But these are standards for something to be built in the highway corridor or for something to be built in the receiving area?

CHAIRMAN DURAN: Those are standard corridor.

COMMISSIONER SULLIVAN: But we're not building anything in the highway corridor. We're creating open space.

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, those are standards that are to be followed if you're going to develop in Receiving Area No. 5, which is outside of the desired and required area of the highway corridor but still within the highway corridor fringe.

COMMISSIONER SULLIVAN: Okay, so this only has to do, and I see back only for area 5.

MR. ABEYTA: Yes, Mr. Chairman, Commissioner Sullivan.

COMMISSIONER SULLIVAN: These standards for area 5 are highway corridor standards?

MR. ABEYTA: Yes.

COMMISSIONER SULLIVAN: Thank you.

CHAIRMAN DURAN: Okay. This is a public hearing. Is there anyone out there in the public that would like to address this issue. Please step forward and state your name for the record.

RICHARD BARELA: Commissioners, my name is Richard Barela. And I live in Receiving Area No. 2. I came to the workshop last night and one of the problems or questions that I have is why all of the sending areas are only in the southwest sector again? There was an indication that, or the answer given was that perhaps there's more scenic areas that want to be preserved.

I take issue with that because we're very proud of the area we live in and we want to protect it. The other thing is, there is no definition. You have a definition for the receiving areas. There is no definition, for the sending area is. The sending, I guess, could be anywhere.

So what you have here is you could manipulate. There could be a manipulation and there will be a manipulation. Since you don't define the sending areas, a sending area can be anywhere

1932429

in the county. Whether it is scenic as stated last night or not scenic. Some place out in the bush somewhere that nobody really wants, that's the place that will create the open space. No taxpayer is going to be available to really appreciate this scenic area since it's not defined. You end up sending the development at high densities to these areas that are identified here, Area 2, which is the area that I'm concerned with.

There were indications that there might be the densities as high as 144 units per -- right now it's one dwelling for 2-1/2 acres, as I understand it. So with these sending areas, receiving areas, basically, and a payment is purchased for a TDR, well in some areas you might be able to put a skyscraper. Because your densities basically what -- is being tried to accomplish here is create open space and create higher densities.

Create high densities in District 3 by the way. And I wondering why there were no... I think that has to be addressed as to why no other area, other than District 3, is a receiving area. And a lot of times, rather than be in the receiving area, like anybody knows, that's the wrong end to be on. But I really believe that this ordinance or this proposed law doesn't make sense in the first place. How are you going to get, it's very complex. I don't know how you're going to...you're going to have to have, I guess, somebody on board, another taxpayer expense that, you know, \$50,000.00, \$60,000.00 here somewhere, overseeing this transfer rights.

I really urge you to first of all get a definition of what a sending area is. Because right now it's anywhere in the county. And I don't know if you're trying to preserve open spaces. There's open spaces on your way to Lamy, on the Lamy highway there that if it's quite a ways off of the highway there, what accomplishment takes place there, by paying that individual and then transferring those rights into the receiving area where we're at.

And I just believe that it is not well thought out. I don't know where this is already been tried or what experience there is with it.

The other thing is that in area that I'm concerned with is Area 2. Part of the area that they have there is flood plain, a lot of it is flood plain. So let's say that you do get transfer rights. Are they going to be allowed to build in this flood plain. Traffic problems that you're going to have in some of these areas. Specifically the one that I'm concerned with as you off of Cerrillos Road onto the West Race Track Frontage Road. That's probably going to be one of the areas that will be looked at. There's going to be traffic problems. There's going to be flood plain problems. And of course, sewage, there's no sewage, sewer and garbage up there. So I don't know how you can get up to these densities, especially after you get out up into area 5 which is quite a ways from the current servicing of sewer and garbage. So I would ask that these be taken into consideration and give us a definition of what a sending area is and identify. Because clearly all of these areas that you have as receiving are clearly identified.

So the other is just, in my opinion, a blank check. You know a guy has a piece of property, can't really do anything with it, can't sell it, you know, well, now he can. If he takes advantage of this ordinance, if it is passed, the only persons, people that will suffer in here, in my opinion, will be the taxpayer and the people that are living in these areas.

Area 2 is already highly developed. We do have some pockets which are not and most of it is residential. At that point you might have any type of use. And I don't know if you're going to consider traffic and infrastructures situations. It would seem to me that you would have to address.

1932430

SFC CLERK RECORDING 08/13/2004

But as it is now, this ordinance is not...you know you don't have a definition for a sending area. So any questions that I might be able to ask on the points I've made.

CHAIRMAN DURAN: Thank you very much. Jack, please take some notes so that at the end of the testimony you can address some of their concerns. Thank you.

GLORIA MENDOZA: Gloria Mendoza again. I would like to agree with the gentleman that just spoke. I think we need to, as receiving areas, let's spread it out. Let's spread it out. Spread it to 1, 2, 3, and 4. And not just target in on one district of Santa Fe County. Thank you.

CHAIRMAN DURAN: Thank you.

MS. SIGSTED: Actually, I'd like to third that. I think the sending area does have to be specific. And I think the receiving areas need to be distributed between all county districts. And I actually think there should be an incentive for affordable housing.

CHAIRMAN DURAN: Thank you. Is there anyone else out there that would like to address the Commission. Jack could you come up and answer some of those questions or as many as you can.

MR. KOLKMEYER: I'd be happy to answer a couple of them. There's a very specific sending area. Very specific and it's mapped. And I'll show Mr. Barela. Is he still here. So that he can see it and understand because it's not true that it is...that there is no sending area. And again, this is the whole point of the program so if you don't get it then I can understand your point of view. And Gloria you can help me because you made the same comments and you can see it up close.

The sending area are the desired and required setbacks along the highway corridor. That's the dark green and the light green. Not only are they specific, they are mapped all the way along. No, we didn't in the public notice because it's in the ordinance. But the sending area is very specific. Why we don't have other sending areas yet, is because we want to get, as I told you before, we want to get one done and see if it works because then if this works, we'll pick other sending areas with the same intention of acquiring open space.

There was a second area that we have and it's still in the ordinance and those are the agricultural lands in La Cienega. We want to protect those areas too and those will be a sending area but those will only become a sending area when the community plan for the community of La Cienega specifically designates exactly what irrigated agricultural lands would be those sending areas. That has been stated in the ordinance as well.

The receiving areas are also very clear. And you ask why aren't there other receiving areas. Those are receiving areas are designated by the city general plan and the county general plan as growth areas. And they've already been designated as that.

Now part of this is what goes there and how will it go there is going to be dependent on future planning to determine the very questions that you raise and...

[Mr. Barela speaks away from the microphone]

MR. KOLKMEYER: Hold on, let me just get some of your things cleared as I can so I can remember them. There is a limit on density. It's 5 DUs per acre. So it's not unlimited

1932431

density that there would be skyscrapers in certain places as well.

Now the other part of your question, why aren't there receiving areas elsewhere. Well there may be. You know where the other area is that has been determined as growth areas in our county general plan, all of the traditional communities. Cause they are the ones that are growing fastest. Pojoaque Valley, Santa Cruz Valley, La Cienega.

And if you go back and you reference our general plan and how we decided to deal with growth in those area, is that each of those communities would do their own plan to determine how they would be developed. And that's why we haven't singled out some of those areas as potential receiving areas as well.

That's the answer to the three of you. And while you are here, if you've got some other ones let's do the go for it.

RICHARD BARELA: The thing is -- sending area, I thought that the sending area, we're going to be the receiving area in District 2.

MR. KOLKMEYER: You're not going to be "the" receiving area, you are a potential receiving area dependant, first of all, on future planning. The only receiving...

But a plan for your area -- don't forget the city already designates you as 6 to 8 DUs without any open space in that area as well. You're already on their plan. And there's opportunities to go through this. Area No. 2 is not the priority receiving area. Area No. 5 is.

[Mr. Barela speaks away from the microphone]

MR. KOLKMEYER: No, I did not say it was a sending area. The sending area is the highway corridor. The desired and required setback in the highway corridor area.

Because that's the whole growth area as identified in the county general plan. And your issue about the flood plain, you can't build in a flood plain anyway. So there'd be no development in the flood plain. People do but they're not supposed to.

[Mr. Barela speaks away from the microphone]

MR. KOLKMEYER: Yeah, there are actually parts of that that are within the desired and the required setback area. How did we deal with that? In a ... As a sending area. So how does that get protected, the desired and the required setback areas within...that they send out of that area. So there would still be sending areas within that area. That's the answer to your question, Mr. Barela.

[Mr. Barela speaks away from the microphone]

MR. KOLKMEYER: Yes potentially. Yes. Yeah, that's exactly correct. Possible. But you're going to receive more density anyway. That's the point I was making with Mr. Sullivan. You annexed into the city, your 6 to 8 DUs per acre. If we have an opportunity to make a possibility there where we can protect your corridor along the way and limit that to what we're proposing in the ordinance as 5 DUs per acre, do you gain or do you lose?

[Mr. Barela speaks away from the microphone]

MR. KOLKMEYER: You cannot do the TDR Project without community sewer or water either.

CHAIRMAN DURAN: Okay, Jack I think we're through debating this issue. Thank you very much sir.

CHAIRMAN DURAN: Thank you very much Jack.

1932432

COMMISSIONER GONZALES: But, Jack, can you just emphasize that last point. I think it's important about the infrastructure that would be required in the receiving areas prior to development. Will any Transfer Development Rights, off of the sending areas, will those rights equate to actual wells that will be dug in an area that has been designated as receiving or are they all required to have a community water system?

MR. ABYETA: Mr. Chairman, Commissioner Gonzales, the ordinance is going to require that they utilize city or county water and a community sewer system also.

Also, again, this -- has not zoned the property, all this will do will make an applicant eligible to come in and request the zoning. So they'll still to submit an application, come before the property review committees. They'll still have to submit a traffic impact analysis. They'll have to show us they have a contract for city or county water, a contract for city or county sewer, and comply with all the other requirements of the code. So this isn't automatic that you're going to see four or five or six dwelling units per acre once this is adopted. You still have to go do the proper procedures and meet all the submittal requirements that are in the code now.

CHAIRMAN DURAN: Now the densities proposed still have to the public process. I mean, do the public still have the ability to speak their mind.

MR. ABEYTA: Mr. Chairman, that's correct. They still need to submit a master plan and it could be denied by the Board if they don't feel appropriate at that time.

CHAIRMAN DURAN: Is there anyone else out there in the audience that would like to address the Commission on this issue?

DON BRAYFIELD: My name is Don Brayfield. And I live on Tierra Real which is a mobile home subdivision where we own our land and we own our homes. And I just like to point out, take this opportunity to put it on the record, that the county does not have the law enforcement capacity, the emergency medical capacity, or even the trash capacity to really service adequately the developments that are already under county jurisdiction.

And I think that this Commission really needs to look at the Airport Road area and see what is there already and see the poor service that's there already. And then do something about the poor service before you start transferring these higher densities. Like there's a big lot next, as part of the mobile home subdivision that I'm in, where you could make the densities much higher under this code. I think so because it has city sewer already and it has city water already.

And I do think it's very possible that the density there would be higher under this ordinance. Because you do, as I understand it, I've only had a cursory reading of it tonight. But all I'm saying, my point is, that this county has a big responsibility to provide service to the residents that are already here, and it's not being done well at all. Thank you.

CHAIRMAN DURAN: Thank you, sir. If there's no public comment, what's the pleasure of the Board. Okay. This is the first public hearing. We'll have another one next month, May 30th. Thank you. Items 8.D and E have been tabled.

- VIII. F. 1. LCDRC Case #Z 01-51010. Santa Fe Downs, Pojoaque Pueblo Development Corporation, applicant, Jim Siebert, agent request master plan zoning approval to allow for recreational/non-residential uses at the Downs at Santa Fe on 321 acres. Proposed uses include event activities, horse racing,**

1932433

betting allowed by Sate Law, equestrian events, car and dog shows, weddings and celebrations, musical concerts, seminars, conferences and meetings, arts and crafts festivals, circuses, rodeos, carnivals, motor events, plea market, golf driving range and public recreational fields. Phase 1 is to consist of reopening the historical use on the property including horse racing, equestrian events, concerts and celebrations. Phase 1 also includes additional uses, opening the restaurant to the public and 7,1000 sq. ft. of meeting and conference space. Phase 2 includes the addition of an amphitheater to accommodate up to 12,000 people and a golf driving range and pitch and putt. The property is located southwest of the intersection of I-25 and SR 599, within Sections 26 and 27, Township 16 North, Range 8 East . [Report and conditions on file with Land Use Division]

FRANK WHITE (Review Specialist): Thank you, Mr. Chairman, Commissioners, Penny Ellis-Green is unable to be with us tonight so our staff will be presenting her cases and trying to answer all the questions necessary.

The application in addition to your caption has been reviewed for access, parking, train management, water, fire protection, liquid and solid waste, archaeological, signage and lightage, landscaping which includes fencing and buffering. The applicant has also submitted a community benefit statement.

It is staff's position that this application is in accordance with Article 5, Section 5, Master Plan Procedure of the Land Development Code for master plan approval. Staff recommends approval of the master plan subject to the following conditions. and if I may turn them into the record, Mr. Chairman.

CHAIRMAN DURAN: Please.

MR. WHITE: With exception to Condition 11 which has added an additional statement to the very end which should read:

11. Provided that the development plan is in accordance with the county line extension and allocation policies.

Thank you.

CHAIRMAN DURAN: Are there any questions of Frank?

I have one Frank. A flea market is being proposed and in Phase 1 and Phase 2, there's no mention of that.

MR. WHITE: Mr. Chairman, that is part of the use list.

CHAIRMAN DURAN: What phase would that come under?

MR. WHITE: Mr. Chairman, that would be Phase 1.

CHAIRMAN DURAN: Is there any questions of staff, of Frank?

COMMISSIONER SULLIVAN: Mr. Chairman?

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: All of these uses, Frank, are these all uses that are proposed by the applicant?

MR. WHITE: Mr. Chairman, these are uses that will be proposed by the applicant.

1932434

SFC CLERK RECORDING 08/13/2004

And this is Master Plan Zoning so now is the time to either accept the uses or to set the uses that you choose is to the Board's discretion to do so.

COMMISSIONER SULLIVAN: Well, I notice there's several issues and individuals I assume will bring it up during their testimony regarding security, regarding the horse manure piles, and traffic and so forth, and the use, focusing just on the use issue, that bothers me the most is the motor events.

I think historically the Downs has had racing, has had gambling, it's had fireworks, it's had rock concerts, and so forth and so on. But to my knowledge, at least in memory, it's never had motor events before, mud bogs or stock car races or go cart races or whatever might come under the category of motor events. Mud bogs is the one mentioned in here. I don't know what other categories that might include.

That I think is pretty noisy. And not only the event itself, but the surrounding patrons and participants and spectators, as well. And so that's one of the uses that concerns me, And I've also looked through here that the applicant is suggesting that they be allowed to have six events and then monitor the noise levels in those six events. Am I correct, is that still the plan?

MR. WHITE: Mr. Chairman, Commissioner Sullivan, that is correct. And mud bogs was an issue at the LCDRC. And that's the reason for Condition No. 24 of your packet and it reads, "All activities shall cease by midnight. In addition, mud bogs events shall cease by 7:00 p.m.

COMMISSIONER SULLIVAN: Right and there was some other discussion about eliminating the mud bogs which I would agree with. But are any of these six events that they proposed to test the sound events, going to include any motor events?

TOM DOMINGUEZ: Mr. Chairman, I'll go ahead and address that Mr. Chairman, Commissioner Sullivan.

There was lengthy discussion at the LCDRC meeting regarding specifically the motor events and specifically regarding the noise levels. It was basically agreed equally among staff and the LCDRC and the applicant that it would be virtually not relative to give an analysis based on speculation or a DB level that might be generated by this. So they felt that it would probably be something that should be done once events took place.

The conversation relevant to the special uses, as far as it comes forward here, that would be a possibility of having a motor event as one of those...I believe the events that were listed were special events permits to allow six special events. I'm not sure if it was specific as to which events they would hold.

CHAIRMAN DURAN: Was it at the CDRC or --.

MR. DOMINGUEZ: LCDRC.

CHAIRMAN DURAN: LCDRC. What was the public comment relative to the flea market use?

MR. DOMINGUEZ: Mr. Chairman, I believe that one of the concerns that staff had and I believe the...I don't recall a whole lot of dialogue or discussion specifically on the flea market. One of the concerns that was voiced by staff was that they would not be allowed permanent structures for the use of flea market and that it would be limited to number of -- I can't remember if it was days or weekends that it would be allowed.

CHAIRMAN DURAN: So basically, these twenty times a year, we're going to have a flea market there every weekend during the spring and summer?

MR. DOMINGUEZ: I believe that twenty times a year was the max number that they would be allowed. Whether they had it twenty times or not, but the intent was that they would have it during summer months only and it would be on a temporary basis.

CHAIRMAN DURAN: So that would be almost every weekend for the summer.

MR. DOMINGUEZ: Correct.

COMMISSIONER TRUJILLO: Mr. Chairman?

CHAIRMAN DURAN: Commissioner Trujillo.

COMMISSIONER TRUJILLO: From a comparative standpoint, Tom, what are the intensity uses from the old use of the Downs and the new use? What is the traffic like, the water usage, the noise, everything like that? Has that comparison been made?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Trujillo, I believe that comparatively speaking, it's relatively the same as Commissioner Sullivan brought out. Probably the only thing that -- and I don't recall that they had motor events there before. That would be the only thing that might increase the noise.

From a traffic basis, I believe that they're not going to have anything more intense now than they had before. And we try to cover through the conditions the facts that they will notify the sheriff's department, the police and all of that for traffic control. And would try and contract or not try but would contract some sort of traffic control out there to better handle that traffic. But comparatively, I believe the only difference is the possibility of the motor events.

COMMISSIONER TRUJILLO: We've got a situation there with spontaneous combustion and manure and things like that. How is that going to be addressed?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Trujillo, currently there's an agreement in place for the removal of the manure. And the discussion has been relative to five year time periods. There's been a lot of discussion on that.

What we're requesting in one of the conditions is that a more detailed plan be submitted as part of this or part of the development plan as they come forward to show how exactly they're going to do it. There's been a lot of investigation. I'm sure that the applicant will address that a little further than I probably will now.

But what they're saying is they don't know the breath or depth yet of how much is actually there. But we are asking for a detailed removal plan. And Phase 2 of the development plan is tied to that removal.

COMMISSIONER GONZALES: Mr. Chairman, just specifically to that point, what has the county done from an environmental standpoint to access the impacts of the compost and what's occurring out there?

MS. YUHAS: Mr. Chairman, Commissioner Gonzales, the county staff has been out to the site three or four times, twice in conjunction with the New Mexico Environment Department. I have visited with New Mexico Environment Department about the discharge permit that is associated with the Downs. As far as ground water contamination goes, they have not found any from the manure piles at this point. Part of the discharge permit, my understanding is, that if ground water contamination is found a more immediate removal plan of the manure would be

required. So that's sort of where we are in working on the environmental issues.

Excuse me, I've been reminded that they have also placed signs around the parameter stating "Danger" and "No Trespassing" for the area.

CHAIRMAN DURAN: Any other questions of Frank?

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: Mr. White, there's been a lot of discussion about the county water system providing service to this development. How realistic is that? And how much water would they need to use or propose to use?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Campos, I'd like to defer to Doug Sayre.

DOUG SAYRE: Mr. Chairman, Commissioner, it's my understanding they have 50 acre-feet available from their existing water right which are basically in good standing with the State Engineer's Office up to, I believe, for 100 years. And based on their use projections, they do not indicate that they are going use that much water in their water budget.

Perhaps, Mr. Siebert can address that. I don't have that study in front of me but that's my recollection. Okay, Katherine tells me it 44 acre-feet that they propose to use in their water budget. So they have adequate water rights for what they're proposing.

COMMISSIONER CAMPOS: What about the county water system?

MR. SAYRE: Mr. Chairman, Commissioner Campos, we have discussed the possibility of extending the county water system across so that they could connect to it, possibly, which would also probably require them transferring their water rights to the county. Since we presently don't have the funding ability to do that, we are looking at methods that that could be accomplished.

That's why I think there's a requirement in there for consideration that at the time the county water system is extended there, that they would be required to connect to the county water system provided the line extension policy and the allocation policy can be met. And there is a consideration on that condition; is that right, Frank?

MR. WHITE: Mr. Chairman, Commissioner Campos, that is Condition No. 11.

COMMISSIONER CAMPOS: As far as the water rights are concerned, 44 acre-feet, do they own, lease or what's the status, what's the priority -- are they senior, junior?

MR. SAYRE: I believe that they own those rights, Commissioner Campos, but to my knowledge, I don't believe it's leased. It was transferred for a period of time and I believe it said that they were good for 100 years. That was established in conditions from the State Engineer's Office to us. And can let the applicant address that which is probably a good idea.

COMMISSIONER CAMPOS: As far as the landfill issue, there is a proposal here to wait seven years before taking serious action to remove the manure from the landfill which is apparently quite large. Does anybody want to address that? Why so long?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Campos, I'm not quite sure to the reference of the seven year period. I know that there is a concern with the environment requirements for the closure of that land fill and the cap hadn't been put on and I'm not sure with any certainty that that's the reason for it. But perhaps the applicant could better address that?

1932437

SFC CLERK RECORDING 08/13/2004

COMMISSIONER CAMPOS: Phase 2 says it's expected to start 2007-2010 and I think
s your schedule for the removal or the cleanup of the landfill.

MR. DOMINGUEZ: Mr. Chairman, Commissioner Campos, I guess I
misunderstood the question. When our condition is the removal of the manure. There's an existing
landfill on the property as well.

COMMISSIONER CAMPOS: Is that different?

MR. DOMINGUEZ: Yes.

COMMISSIONER CAMPOS: The landfill is different from the manure piles.

MR. DOMINGUEZ: As far as staff's issues are addressed, yes those are different
issues.

COMMISSIONER CAMPOS: Are you dealing with them differently or how are
you dealing with the landfill?

MR. DOMINGUEZ: The Environment Department, it deals with the landfill and
Roman might be able to answer a little bit more. But we are dealing with the manure pile removal.

COMMISSIONER CAMPOS: And that's what you're talking about Phase 2,
2007?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Campos, that's correct.

COMMISSIONER CAMPOS: What about the landfill?

MR. ABEYTA: Mr. Chairman, Commissioner Campos, the landfill is actually
owned by a different entity.

COMMISSIONER CAMPOS: Within this property?

MR. ABEYTA: Within this property. So the applicant does not own the landfill.

COMMISSIONER CAMPOS: What's their role in this proposal, if any, in this
master plan, if they're within the master plan?

MR. ABEYTA: Mr. Chairman, Commissioner Campos, technically it's not within
the master plan. It's a separate lot.

COMMISSIONER CAMPOS: It's outside...

MR. ABEYTA: Mr. Chairman, Commissioner Campos, it's within the property,
but it's a separate lot. It's a lot within a larger lot.

COMMISSIONER CAMPOS: So this lot within the area of the master plan is not
part of the master plan?

MR. ABEYTA: Mr. Chairman, Commissioner Campos, that's correct. It is not
part of this master plan.

COMMISSIONER CAMPOS: Do you have any idea what these 4 or 5 acres are
going to be used for and who owns them?

MR. ABEYTA: Mr. Chairman, Commissioner Campos, I'm not sure who owns
them and according to our survey and the record we have, it's just designated as an abandoned
landfill area.

MS. YUHAS: Mr. Chairman, Commissioner Campos, according to the
Environment Department, there are, and I don't have the exact number of years, I'm going to say
an estimate of about 30 more years of monitoring on that landfill before it is officially designated as

a closed landfill. So nothing will happen on that property for at least another 30 years while they monitor and make sure that ground contamination is not occurring as a result of that.

COMMISSIONER CAMPOS: Last question, Ms. Yuhas as far as the 44 acres, do we need further studies to actually determine that there is water under there as opposed to paper water rights?

MS. YUHAS: Mr. Chairman, Commissioner Campos, at this point, this is just master plan and it's part of development plan what they'll be bringing forward is full information on all of their water rights. And I'll probably go over and visit with the State Engineer at that point. A detailed water budget and a geo-hydrologic report showing what the water availability beneath the property is for the 100 years.

COMMISSIONER CAMPOS: We if we approve the master plan today, and it turns out that they do not have actual water, then they cannot proceed?

MS. YUHAS: Mr. Chairman, Commissioner Campos, that's correct, yes.

COMMISSIONER CAMPOS: And they do own these water rights, on paper anyway?

MS. YUHAS: Mr. Chairman, Commissioner Campos, I have not fully evaluated that. They say that they do and I have to believe that for now.

COMMISSIONER CAMPOS: Thank you.

CHAIRMAN DURAN: How do they get their water right now? Do they have wells? One well, how many wells do they have?

MS. YUHAS: Mr. Chairman, I think they have one well that they are proposing to produce the water from. I'm not hearing or seeing anyone shake their head so that must be the answer.

COMMISSIONER GONZALES: And they have a contract with the city, is that correct?

MS. YUHAS: Mr. Chairman, Commissioner Gonzales, that's correct. They have an excellent contract with the city but I believe it's for 400,000 gallons per day right now. That's a little over an acre foot per day.

COMMISSIONER GONZALES: So on their master plan submittal, are they proposing that that effluent would be used for irrigation purposes?

MS. YUHAS: That is correct.

COMMISSIONER GONZALES: So what would the potable water actually be used for, non-irrigation?

MS. YUHAS: Mr. Chairman, Commissioner Gonzales, it would be for the domestic uses. It would be for the laboratories, for food service, things like that, drinking water for the animals.

COMMISSIONER GONZALES: So is their current contract currently enough to handle all the irrigations that is needed on the Downs property?

MS. YUHAS: I have to evaluate that as part of the water budget submittal that will come in with the development plan. And that's where we are.

COMMISSIONER GONZALES: Thank you.

COMMISSIONER TRUJILLO: Mr. Chairman?

1932439

CHAIRMAN DURAN: Commissioner Trujillo.

COMMISSIONER TRUJILLO: Out of the 50 acre-feet of water rights, what was the Santa Fe Downs budget regarding water usage? Did they use potable water to irrigate the end field and what percentage or how many of the 50 acre-feet of water did Santa Fe Downs use, do we know?

MS. YUHAS: Mr. Chairman, Commissioner Trujillo, I don't have the information on how much they used to use when they operated as the Downs. Or at least I don't have it in my head if they have submitted that to me. I can have that comparison available as part of the development plan, if you'd like.

COMMISSIONER TRUJILLO: Cause there might be a definite impact on the surrounding communities.

MS. YUHAS: Absolutely, and that would certainly be part of my evaluation of the water availability assessment when that comes in as part of the development plan is going to be that impact on the surrounding community.

CHAIRMAN DURAN: Okay, there's no other questions of staff. How about if we get the applicant up here.

[Duly sworn, Jim Siebert testified as follows]

MR. SIEBERT: Mr. Chairman, commissioners, my name is Jim Siebert. My address is 915 Mercer, Santa Fe.

Let me give you a little history first of all why we're here in the first place. The Downs was constructed and actually began operations in the 1970s. It operated through the 70s, 80s, and early 90s as a race track. In the 90s, kind of mid-90s, it ceased operation and ceased operation for two years. And during that time, it was considering a non-conforming use recreational purposes and non-residential purposes. I think the idea was to allow for those kinds of uses that had historically taken place on the site to continue to take place. The property consists of approximately 315 acres. This is the I-25 Frontage Road and Los Pinos Road coming around the back side. The Los Pinos Road or County Road 54 actually does have a small portion that's on the north side of the roadway. This is the existing stables area here. The main building sits here. These are the existing, in the light kind of golden color. are the existing parking area.

These are the much talked about manure area and I would like to point out that when the Pojoaque Pueblo Development Corporation or PPDC purchased the property, they purchased something that was really an inherited problem. The manure that's been collected over there is manure that's been collected for approximately the last 30 years. And that particular manure sits in approximately this area here. The landfill site that was pointed out earlier is the area in the red. And that is not part of this master plan because it's not under the ownership of the Pojoaque Pueblo Development Corporation.

It remains under the ownership of Santa Fe Racing, Inc., who is the previous owner to this particular property. They still remain responsible and liable for satisfying whatever NMED requirements are needed to finally clear that particular site. There is also in the same corner, an effluent holding pond. What happens is that the treated effluent water from the City of Santa Fe comes into the holding pond and then is lifted over and irrigates the interior of the race track and also the landscaping that's around the outside and the landscaping that you see as you come in along

1932440

SFC CLERK RECORDING 08/13/2004

the entry road on the inside of the track,

So on Phase 1, we're not proposing any additional improvements to what's there right now in terms of any additional building structure.

The Phase 2 area, which is the proposed 2007 - 2010, would be an amphitheater that would sit on the inside of the tract. It would be dug down and bermed along the track and lowered to flood the noise. These two ponds, by the way, are existing ponds. And then the driving range and the pitch and putt would be located here on the inside of the track.

In terms of utilities, let me address some of the issues that I think that questions came up in the staff report. There is a well that is located on the site. It's at the north end of the site. That's adjacent to the Arroyo Hondo, which is at the far north end. It's a substantial producer of water. The water from the well is then lifted to a 200,000 gallon tank. There is booster pumps that then both not only supply the domestic service, but the fire protection service, the fire hydrant's located around the site. There are 50 acre-feet of water rights that are owned by the Pojoaque Pueblo Development Corporation. We've submitted the change of ownership documents from the State Engineers Office. It was part of the plan submittal.

There was discussion regarding water use. Historically, water use has been anywhere during the time that racing took place at the site, water use was in the range of 40-50 acre-feet per year. We anticipate that if horse racing is not part of the event, that the water use will probably be on the order of somewhere between 10-12 acre-feet. If horse racing is re-initiated, then we anticipate that it would go back up to kind of historically what it's been in the past.

With some of the now required plumbing fixtures that would be reduced, and we anticipate instead of 50 acre-feet, it would probably be reduced somewhere around 40-45 acre-feet.

In terms of the effluent water, there was a contract that was for 1.2 million gallons a day. What happened is this contract was reduced to 400,000 gallons which is really kind of the present or the historic use or needed to provide irrigation to the existing landscaping. That contract with the city will continue through the year 2001. With regard to sewer, there is a treatment plant on site. In order to use it, it would require some rehabilitation. The concept is at first to, since the actual uses anticipated to be low for at least the first two years, to being operation with a septic tank and leech field.

In fact, the septic tanks and leech field has been permitted by NMED. At that time the waste water discharge begins to arrive at 2,000 gallons per day, there would have to be a different solution. And the solutions are two: either they can rehabilitate the exiting plat or they can put in a new advance waste water treatment system that would treat the waste water.

In terms of access, the access is limited to I-25. What would take place is what has taking place at past concert events is that there would be a contract with the county police and the state police, if necessary, to make sure that traffic flows in a reasonable manner after those events, into and after the events.

And also we've agreed to do additional traffic studies based on actual traffic counts from similar concert theater events in Albuquerque.

With regard to the noise abatement, I think there was a question of at what point would the noise study be conducted. The condition was that the noise study be conducted at the very first event. There was a question, is that first event a motor event and the answer is no, it is not a motor

event.

I can answer, there are some clarifications and modifications that the Pojoaque Pueblo Development Corporation would like the Commission to consider. Frank DeMali who is the legal representative for the tribe is here to present that. We can either go into that or I can answer any questions you may have at this point.

CHAIRMAN DURAN: Any questions?

COMMISSIONER CAMPOS: As far as the landfill, it's not owned by the Pojoaque Pueblo. Any ideas as to -- is it just a landfill that has to -- for 30 years or so before it's closed, is that it?

MR. SIEBERT: It's my understanding that this is a landfill that has, once again, been historically used to dispose of the waste mater that was generated during the racing season.

There are monitoring wells around the site. The New Mexico Environment Department, and there has to be a whole monitoring process associated with that. The Pojoaque Pueblo is really not involved in that process. In terms of clearance, I'm not sure of how long it takes in order to clear this kind of a site.

COMMISSIONER CAMPOS: Does this cause a problem for new developments?

MR. SIEBERT: No, it's -- the Pueblo would simply have to work around that particular issue. It is marked and defined and "No Trespassing" signs are posted on it.

COMMISSIONER CAMPOS: You state that you're going to have gambling as per "state law." Is that right; what does that mean state law?

MR. SIEBERT: Well, the state law presently, with in association and maybe I'm getting out of my league here and have to ask for legal clarification, but it's my understanding under state law, that there could be slot machines placed on the site and that the original law was 600 slot machines and what it's been increased too, I'm not sure. But that would be what would be permitted under present state law.

COMMISSIONER CAMPOS: At all race tracks?

MR. SIEBERT: At all race tracks.

COMMISSIONER CAMPOS: That's it?

MR. SIEBERT: Correct.

COMMISSIONER CAMPOS: Mr. Chairman, Jim, the reason for that is that this is -- this gambling site here would be outside of the compact that Pojoaque Pueblo has with the state, right? This is in conformance with what's allowed at --

MR. SIEBERT: Well, like I say, I think I'm getting in over my head when we start talking about gambling issues. Mr. DeMali is going to go over the conditions. And I will hand them out and he can address that issue at the same time.

FRANK DeMALI: Frank DeMali, Pueblo of Pojoaque Legal Counsel. I command for that last question first. The gaming operation out at the downs has nothing to do with the Indian Compacts.

All horse tracks currently, in New Mexico, can have up to 300 gaming machines. Therefore, Pojoaque Pueblo, if they opened horse racing and they received a license, through the state statutes, could also apply and be granted 300 machines. The other number that you heard, 600 machines, is if the new indian gaming compact passes. Then all tracks that have live racing

1932442

SFC CLERK RECORDING 08/13/2004

days will be eligible for 600 machines across New Mexico.

But Pojoaque Pueblo owns this, it has nothing to do with indian gaming. This is a total separate operation under state statute as opposed to indian gaming. And Commissioner, I hope that answers your questions.

COMMISSIONER CAMPOS: Thank you.

FRANK DeMALI: I do not know how you want to proceed. I can answer questions if you'd like to give me questions first, about specifics, or we can go into these recommendations that we received from staff and that we've received from La Cienega.

CHAIRMAN DURAN: Does the Commission have any questions of the legals?

COMMISSIONER CAMPOS: I have a quick question. Is there any circumstance under which this track could become subject to the indian country gambling compacts?

MR. SIEBERT: No, at this time one could --

COMMISSIONER CAMPOS: At this time, under any scenario?

FRANK DeMALI: Not in the scenario that I'm familiar with and I've studied the compacts pretty closely.

COMMISSIONER CAMPOS: How close is this track to Indian country?

MR. SIEBERT: I would say over 20 miles from Indian country.

COMMISSIONER CAMPOS: Okay, thank you.

CHAIRMAN DURAN: Sir, why don't you go through the conditions.

MR. SIEBERT: Thank you, Commissioner. We looked at the conditions for approval that were recommended by staff and that were recommended by La Cienega Development Review Committee. And we agree with the vast majority of the recommendations that the La Cienega Development Review Committee offered.

We have exceptions with seven of those conditions which are before you now. Condition No. 3, we recommend that the county staff recommendation be followed in this case. It states that the applicant shall submit a detailed landscaping plan to include buffering from an adjoining residential uses. Additional landscaping and berming may be required. Now, the LCDRC requested that the applicant install a 6-foot chain link fence with three strands of barbed wire on all property lines. We really didn't want to make it look like the state prison. And therefore we would like to defer to the staff recommendation in this case. We're happy to work with the staff on a detailed landscaping plan that will protect the community. But we did not see a reason to have a chain link fence around all the acreage.

CHAIRMAN DURAN: Was that to keep them in or keep them out?

FRANK DeMALI : I'll defer to other wiser people for that answer.

MR. DOMINGUEZ: That language is added to Condition No. 3 by the LCDRC. There was a presentation made by the public in regard to a lot of people jumping fences, in and out, to get to different...cutting through the different type of fence that they have now. So that was added as a security concern, I believe, for both in and out.

CHAIRMAN DURAN: Thank you. What was your next concern?

FRANK DeMALI : Moving on to Condition No. 4, we are recommending that the county staff recommendation be followed and that additional language be included to take care of the manure situation. And I'd like to first say, so that both public and the commissioners now what

1932443

SFC CLERK RECORDING 08/13/2004

exactly is happening out at the Downs. There's about 120,000 cubic yards of manure. That's from about thirty years. It's literally hills of manure. The Pojoaque Pueblo Development Corporation contracted with Wapaca, a national corporation, that removed the manure and goes and sells it. They have agreed to have it cleared out in five years. They think they can do 25,000 cubic yards a season. Of course, they can't do it during the winter.

They are coming in on June the 1st with their major operation. They've been out there with trucks already this year in the past month. But they will be coming in to move a total operation so that they can do it non-stop between June and September. And that's what we're trying to do is get it out there as quickly as we can. These are the people who we contracted with.

When we met with staff, we believe that we have included language now that will also preclude any stoppage of the manure removal should for some odd reason Wapaca go bankrupt, or something happened with Wapaca, so that we have to get another group to come in there and take the manure.

We are recommending the language that is before you. "The applicant shall submit details in the contract for the removal of the new and old manure. New manure shall be removed on a weekly basis. All manure on the site, including the area adjacent to the Garcia Subdivision, must be removed prior to the Phase 2 Development Plan submittal. The applicant shall also submit agreements with other companies to ensure that if any of the removal agreements are canceled, the removal of the manure shall continue."

So that's the best way we saw of taking care of this problem. And it's hills, it's thirty years worth of manure. Anyone who sees it, it was hard for me to believe when I first saw it.

CHAIRMAN DURAN: Is that a reasonable change, Tom?

MR. DOMINGUEZ: Mr. Chairman, I believe that, it was rather late and I didn't get all the wording but I understand that the intent was the same that the LCDRC. Their concern for adding this language was that because it was a contract with Wapaca, they felt that there is a termination clause in there and that there was no safeguard if Wapaca chose to end the contract. And so therefore they added this language.

COMMISSIONER CAMPOS: What he just mentioned kind of does that too?

MR. DOMINGUEZ: Yes it does.

COMMISSIONER TRUJILLO: Mr. Chairman, I have a question. What's the time span for completing the project?

FRANK DeMALI: Commissioner, they believe that they can take out about 25,000 cubic yards a year. So we're figuring five years is what it's going to take.

COMMISSIONER TRUJILLO: But you're saying after Phase 2, how long is the project going to take to be completed so that we know that it's not going to be there for ten years?

FRANK DeMALI: If they begin now, they should be finished in five years.

COMMISSIONER TRUJILLO: Five years.

FRANK DeMALI: Five years from now, this summer.

COMMISSIONER TRUJILLO: On the project itself?

FRANK DeMALI: That is correct.

COMMISSIONER TRUJILLO: Okay.

COMMISSIONER SULLIVAN: Mr. Chairman?

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I think there are two substantive things. One is that the changes proposed don't even put a limit, a five year limit on the removal process which, it seems to me, is excessively lengthy. They may be removing it in order to profit from the sale of it, but if it's a potential health hazard, it should be removed to the landfill or where ever it can go and be gotten rid of. So that's one change.

And the other is, if the contract is canceled, the county staff has been asking for a financial guarantee in that Condition No. 4. and that financial guarantee is removed. It seems like the applicant has brought forward an existing contract to show that they're working on it. But if that contract falls through, then I think the county has very limited recourse in dealing with the tribe to enforce much of anything. And to enforce them to get back on schedule to remove that would be a very difficult undertaking. So I think there's some substantive benefit to that financial guarantee.

FRANK DeMALI: Commissioner, if I can answer your questions. I heard three questions in there. Let me answer the first. I'm not an expert in manure removal. However, I do know that the contracting process we went to who was considered the experts. They say this is the quickest that it can get out. And so we're relying on the experts.

If there is a better way, Pojoaque would for positive, want to get it out there as quickly as we could, And so if we could work with the staff, we'll be happy to come up with any plan that anyone has to remove that any quicker than we can get it out right now.

The second is, there's talk of health hazard. To our knowledge, there has been no code violations, there has been no proven health hazard. The manure has been there for thirty years. To the best of our knowledge, and the best of my knowledge, no one has come forth with any violation of any law or code in having that manure there. So when people say health hazard, as an attorney, I'd like to know exactly what they're speaking about.

Now, we do know that there are hot spots in the manure piles. There's no doubt about that. What we have directed Wapaca to do is to get those places where the hot spots are occurring to remove that manure first so that we can address the fire issues.

We also have received a request from the community that the manure areas near the Garcia Subdivision be taken out. So we will transmit that to the Wapaca Corporation to get rid of the hot spots first and then get rid of the manure that's closest to the subdivision. So I think that answers most of the questions that you asked. As far as any bonding, we don't believe that that's necessary at this point. We have come forth and shown that we're trying to get out there as quickly as possible. We'd be more than happy to work with the county staff on getting it out there any quicker if there are any better ideas on how to do that.

COMMISSIONER SULLIVAN: Mr. Chairman, let me just ask then on that last question, if this organization did default on its contract, what legal recourse and channels does Santa Fe County have to encourage Pojoaque Pueblo Development Corporation to get a new contractor and to move forward?

FRANK DeMALI: Well, I hate to step into other attorney's shoes, but what I would do, obviously is Phase 2 would never come about.

CHAIRMAN DURAN: Right.

FRANK DeMALI: That's the first.

COMMISSIONER SULLIVAN: Phase 1 would continue and Phase 1 contained a number of use activities.

FRANK DeMALI: I believe that if these conditions are not met, to the best of my knowledge, that the even Phase 1 can stop.

MR. DOMINGUEZ: Mr. Chairman, commissioners, on that point, I've had the opportunity to review the condition as amended by the applicant, and that would be one point that I'd bring up that the major difference is they address the contract part of it, if Wapaca should cease their agreement, that they would also submit other agreements, but there is no financial guarantee that the county would have a recourse.

So that's the big difference between the two conditions and I would just leave that with you.

CHAIRMAN DURAN: That stuff is still good after thirty years?

FRANK DeMALI: My understanding is it's very valuable manure.

CHAIRMAN DURAN: Your next point.

FRANK DeMALI: Next point will be Condition No. 11. We are recommending that the county staff recommendation be followed and this concerns the water. We're requesting the applicant shall submit a hydrology report proving adequate long term water availability, water quality data, a water budget for full project build out and water conservation measures with the development plan for each phase.

The well shall be metered, annual water readings shall be sent to the county hydrologist. The applicant shall continue discussions with the county water utility regarding connection to the system.

On Condition No. 11, the language that was recommended by the La Cienega Development Review Committee is that the county hydrologist shall also have the right to verify the readings, the applicant shall connect the county system when it within 200 feet of the property line. And we would like that take out for now. We are trying to negotiate with the county on the water issue. And I'll leave it staff to explain what we've been doing.

MS. YUHAS: Mr. Chairman, commissioners, if we could I'd like to leave in the part that I could verify the water readings if that would be okay.

FRANK DeMALI: We have no objection.

CHAIRMAN DURAN: Next one?

FRANK DeMALI: Condition No. 16, we're recommending the following revision that all permanent new lighting shall be shielded. The details shall be submitted with the development plan, a lighting analysis for permanent fixtures shall be required for each phase. Details of portable and stage lightening shall be submitted with the preliminary development plan.

The only thing that we're asking for a change here is that it applies to permanent lighting. When someone comes in and sets up a stage, we won't know how that lighting...the shielding on the lighting. So we're just asking that it be done on permanent lighting that the development corporation would put on the Downs.

CHAIRMAN DURAN: My only concern with that is what kind of control are you going to have over some event shining lights out onto the surrounding communities.

FRANK DeMALI: Well, we'll be submitting the details of any stage lighting, we'll know the details and we'll just have to tell them that that will have to be shielded. That's

about the best I could do.

COMMISSIONER GONZALES: How would we make that a condition that you do that?

FRANK DeMALI: We could include that language if you would like, "that a lighting analysis for stage fixtures shall be required for each phase or for each event."

COMMISSIONER GONZALES: That sounds good.

FRANK DeMALI: Thank you, Commissioner.

CHAIRMAN DURAN: Thank you.

FRANK DeMALI: Condition No. 20, we are requesting the following revision, "that the applicant shall work with the fire marshall to identify an emergency access road from County Road 54 and that the plan shall be submitted with the development plan for Phase 1." We have already begun work with the fire marshall and we have identified those roads and we think that that will be sufficient for emergency access roads.

Condition No. 23, Commissioner?

COMMISSIONER SULLIVAN: Mr. Chairman?

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I recall reading the fire marshall's report. And in that report he required a one lane for emergency services in and out and was questioned about that. And the reason for that was that during exit time they dedicate all the egress lanes for exiting to get everyone out as quickly as possible and he doesn't have any way of getting in. So how could you say you're "working with them" when, unless I read it wrong, they're pretty clear, they want a lane.

Now there was some discussion also of alternate access point, but and unless I read the fire marshall's report wrong, that's what they want.

FRANK DeMALI: Commissioner, I'll refer that question.

MR. SIEBERT: Mr. Chairman, Commissioner Sullivan, there was a subsequent meeting held with the fire department. The fire department was unaware of the access in the back. Their preference, and if you'll see it, there's a condition that the emergency access be brought up to a standard that meets county code. Their preference is to have an all weather road, in other words, a road that can withstand heavy rains and heavy snows, that would come in from the back because they feel that that's a better emergency access than trying to squeeze in on one lane on the front of the property.

COMMISSIONER SULLIVAN: And so your client is committing to that all weather access from the back?

MR. SIEBERT: Correct.

COMMISSIONER SULLIVAN: I don't see that in this condition. You could change that condition to read, "including but not limited to an all weather alternate access acceptable to the fire marshall.

MR. SIEBERT: Yes, we've had discussions to that effect.

COMMISSIONER SULLIVAN: Okay.

CHAIRMAN DURAN: That's No. 17?

COMMISSIONER SULLIVAN: That's 20.

FRANK DeMALI: The last two conditions, on Condition No. 23, the La Cienega group recommended that the applicant shall grant an access easement to the effluent water line to the Ditch Association. And we recommend that we will work with the Ditch Association, but this would actually be a taking and it would be between the ditches -- if the Commission got involved in this and made us grant an easement to the Ditch Association and we feel that this would be a taking and it's something that should be worked out between the Pojoaque Pueblo Development Corporation and the Ditch Association, and we'll be glad to work with them on that, but we don't believe it should be a mandatory condition.

Condition No. 24 was on when the activities shall cease. And we are recommending that all outdoor activities shall cease by midnight. We did not want any restriction put on the indoor activities that may go on because they may go on beyond midnight. We did not see where that affected the community. So we are just requesting that outdoor activities be ceased by midnight would be sufficient.

And that's the end of the presentation. I stand for questions.

COMMISSIONER CAMPOS: Mr. Chairman?

CHAIRMAN DURAN: Commissioner Campos, and Commissioner Sullivan.

COMMISSIONER SULLIVAN: I've asked a couple of questions about the water rights, seniority of them, did you own them, were they leased?.

FRANK DeMALI: And we have an expert here, Kathy Radcliff, and I'll defer to her on the water rights questions.

COMMISSIONER CAMPOS: Before you go there, can you answer another question?

FRANK DeMALI: Certainly.

COMMISSIONER CAMPOS: Relative to Condition No. 23, No. 24, all outdoor activities shall cease by midnight. Does this also include weekdays, Monday through Thursday?

FRANK DeMALI: Well, we hadn't really considered Monday through Thursday midnight if there were any concerts, we felt that midnight was a reasonable hour to stop those activities.

COMMISSIONER CAMPOS: Well, it depends on how you affect the neighborhood.

FRANK DeMALI: Absolutely.

COMMISSIONER CAMPOS: Okay. The water rights.

[Duly sworn, Joseph Little testified as follows]

JOSEPH LITTLE: -- the water rights that we have were transferred to us under the previous owners. And our understanding of those previous owners secured those water rights from and earlier -- they're surface water rights initially, that were taken from ditches down in the La Cienega area. They were transferred under state law to the well, and that's how you got the water coming out of the well as opposed to just surface water.

There is a reduction schedule on that surface water, not the surface water, but a reduction schedule on retiring the land to accommodate that removal of the water. And that's the 100 year

period that's referred to. So at the end of that 100 year period the land is taken out of irrigation. It's not being irrigated now as there's a whole reduction schedule. As it occurs, at the end of that 100 year period, we will only be able to pump approximately 10 acre-feet out of that well. So it's to offset into the river system.

So the priority date on the ditch system is quite early as we understand it. I don't know that anything's been adjudicated in that valley to deal with that question, as yet. Obviously, if there was a priority call, we'd fall in line with that. I think we'd have a pretty high priority to deal with that, though.

COMMISSIONER CAMPOS: Do you have any idea what your priority date would be?

MR. LITTLE: It would have to be probably turn of the century, early 1920s, probably. We can have that information that will be transferred to the staff when we do the full reports on this.

COMMISSIONER CAMPOS: I would appreciate that Mr. Little.

CHAIRMAN DURAN: Thank you. Commissioner Sullivan?

COMMISSIONER SULLIVAN: My questions was not on the water so perhaps we'll get the other gentleman back. In Condition No. 24, and I have some problems with some of your changes in the conditions. I'm not...[inaudible] doesn't mean I agree with these things, but on Condition No. 24, so you want to continue mud bog events until midnight? They're not going to be indoors, right?

FRANK DeMALI: Not as far as I know.

COMMISSIONER SULLIVAN: All right, so what you're requesting is to allow all outdoor activities to go forward until midnight including the mud bog events. Because the other condition that you've taken out is, it says, "In addition, mud bog events shall cease by 7:00 p.m."

FRANK DeMALI: Yes, we saw no reason to start splitting the events up. So yes, that's what we're requesting is that all events end at midnight.

COMMISSIONER SULLIVAN: Thank you.

CHAIRMAN DURAN: I have a couple of questions. If the county water system gets within 200 feet of your facility, is the plan then to transfer those water rights to the county? Has there been any discussion about if we're not providing you water to get you off the aquifer, what were your plans for the water rights?

FRANK DeMALI: All that right now would be speculation. But we have entered negotiations and we're talking with county right now. What we don't -- there's a lot of -- the negotiations center around the term, what would the rates be from the county, would we have to transfer the rights or sell the rights to the county. And those details haven't been worked out. So we're really just in negotiations right now. Our intentions will depend on how the negotiations go.

CHAIRMAN DURAN: Well, I guess, for point of clarification, if you agree that if the county water system gets within 200 feet from the facility, that you will be...I supposed that you would be charged the standard rate for anyone, any commercial user, and you would cease to use those water rights. So whether you sold them to the county or you transferred it somewhere else, it really doesn't matter, well, it does matter but my understanding is that you would cease getting water from that aquifer. Is that your understanding also?

1932449

SFC CLERK RECORDING 08/13/2004

FRANK DeMALI: Yes, that is my understanding.

CHAIRMAN DURAN: Okay, great. Then I have a couple of other questions. I'm concerned about the flea market. I've had a lot of people call me on that and they've had some concerns that this could turn into a pretty ugly scene. And I'm wondering if you could tell me what your thoughts are relative to That.

That really is right in the view corridor and we've spent several years trying to protect that view corridor. We have architectural guidelines that we've adopted and I'm just concerned about the impact this flea market might have on those architectural guidelines and vistas and views that a flea market might disturb.

FRANK DeMALI: Commissioner, I'm not an expert on that phase. And I'll defer the question.

MR. SIEBERT: Mr. Chairman, the idea was that, first of all, there is a condition that they not exceed 20 flea market events per year.

CHAIRMAN DURAN: So that basically means you won't have them in the winter?

MR. SIEBERT: Well, not necessarily. I mean there are actually some nice days in winter that could occur. What will happen is that the even will occur for one day and whatever temporary structures were put up would have to be removed at the end of the day. So there would be no permanent structures associated with flea market.

CHAIRMAN DURAN: What about once a month?

MR. SIEBERT: Well, I'm not sure what the question is.

CHAIRMAN DURAN: Would you agree to a condition that you can have flea market activity there once a month? You don't have to answer that. Just give it some thought. I'd like to restrict it to once a month.

MR. SIEBERT: Yes, that would be acceptable to my client.

CHAIRMAN DURAN: Any other questions?

COMMISSIONER CAMPOS: Mr. Chairman?

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: I'd like commentary from staff on all the issues raised by the applicant.

CHAIRMAN DURAN: All the changes to the conditions?

COMMISSIONER CAMPOS: All the proposed changes by the applicant.

CHAIRMAN DURAN: Well, I think they commented on most of them except for maybe one. Right, we heard your comments on No. 2.

COMMISSIONER TRUJILLO: On the flea markets, just on the flea market, you're saying once a month. And again, like you said, some winter months might be conducive to having a flea market, how about 12 times a year. And they can have them whenever. I don't know if the applicant agrees to that or not but there are some months that are too cold to do a flea market.

CHAIRMAN DURAN: My only concern was that during the summer months and spring, which is a beautiful time of the year, is that we don't have them there every weekend.

COMMISSIONER TRUJILLO: Twelve a year, there's 52 weeks in a year: twelve

1932450

SFC CLERK RECORDING 08/13/2004

times.

CHAIRMAN DURAN: Or maybe every weekend during the summer.

COMMISSIONER TRUJILLO: How do you note that?

CHAIRMAN DURAN: Well, we'll discuss it when we vote.

MR. DOMINGUEZ: Regarding Condition No. 16, the lighting..

CHAIRMAN DURAN: What happened to No. 2 and then No. 11? Weren't those some -- or No. 3. I think Commissioner Campos wants you to address all of the changes beginning with No. 3.

COMMISSIONER CAMPOS: If you have comments about them.

MR. DOMINGUEZ: I will address them. Condition No. 3, was the original condition as proposed by staff. The LCDRC was added that the applicant should install the six foot chain link fence and I believe we had some discussion on that. That was added in regards to the concerns of the neighbors.

Condition No. 4, again, goes back to the removal of the manure. And we addressed the old and the new manure as well. Again, I mentioned staff's concern would be that there is no financial guarantee in place if the condition is changed as proposed by the applicant.

CHAIRMAN DURAN: Do you think that financial guarantee could be delivered to us at the end of three years? Was that a possibility? Or I don't know, is it best to have it at the beginning?

MR. DOMINGUEZ: Mr. Chairman, the way that usually this is addressed by land use staff is that up-front the financial guarantee is secured in the event that anything should cease. We have the opportunity to cash it in and -- ..

CHAIRMAN DURAN: What's the cost of removing that manure?

FRANK DeMALI: There is no cost to us. They're taking it off of our hands.

CHAIRMAN DURAN: Why don't you charge them the cost of the bond for the financial guarantee?

MR. DOMINGUEZ: Mr. Chairman, I couldn't tell you what it is. I know it's a percentage of the overall estimate. So that would be worked out.

Condition No. 11, I believe that I was talking with Roman and he, Estevan and Katherine met with the applicant regarding Condition No. 11 and I believe that there was consensus that they felt the language was such that we could work with them on this condition and it would be fine.

COMMISSIONER CAMPOS: Mr. Chairman?

CHAIRMAN DURAN: Commissioner.

COMMISSIONER CAMPOS: Would you ask that the verification be kept in, verification requirement.

MR. DOMINGUEZ: Mr. Chairman, Commissioner Campos, thank you. Yes, I do believe that the hydrologist would like to see the meter verification left in.

CHAIRMAN DURAN: So how would 11 be changed?

MR. DOMINGUEZ: Mr. Chairman, I believe that 11 would read, "The applicant shall submit a hydrology report providing adequate long term water availability, water quality data, water budget for full project build out, and water conservation measures with the development plan for each phase. The well shall be metered annually and water meter readings shall be sent to the

1932451

SFC CLERK RECORDING 08/13/2004

county hydrologist. The county shall have the right to verify the readings."

And then we would install language that says, "The applicant shall continue discussions with the county water utility regarding connection to the system."

CHAIRMAN DURAN: That's a little weak.

MR. DOMINGUEZ: That's proposed. You can change it as you see fit.

COMMISSIONER CAMPOS: Could you recommend something stronger?

CHAIRMAN DURAN: Yes, that they'll connect to the county water system when it's 200 feet from the property. That's pretty strong. That's the question. Do you want to have them do that or do you want to let them discuss it with us forever.

GLORIA MENDOZA: Mr. Chairman, point of order. Are you supposed to have a public hearing first before you start amending subject to your changes?

CHAIRMAN DURAN: We're not making any amendments. We're discussing this with staff and -- no, we're not out of order. But thank you for asking. Continue.

COMMISSIONER GONZALES: On that one point, in my discussions with the staff on this particular issue, correct me if I'm wrong, but before this went to the La Cienega Development Review Committee, was this the original staff condition, that they would continue to negotiate with the staff in terms of establishing some type of water contract or some type of water dialogue?

And I think your point is a valid point, Mr. Chairman, that we need to, and in my mind, I want to hear from to continue to go forward, but in my mind as I looked at this as a way the applicant has presented it, it seemed fair and reasonable that they would continue to work with the county utility to negotiate and to develop some type of time line when they would come into the system. For the simple fact that they can prove up that they have the water rights, in the area and they are valid, which is still questionable. It still has to go submitted to the staff, the issue of the 50 acre-feet is still an issue that does need to be determined to the staff.

And then at that point, one, that hurdle will need to be addressed. Secondly, I think that a condition stating that they have to continue to negotiate with the county water utility regarding the connection to the system is something that provides clear direction to the staff, that this is something that needs to occur and take place.

And we mandate, my own preliminary thoughts, that if you ask for connection within 200 feet once it becomes available, the point is where the county and its water delivery system, its capacity to deliver the water, do we have the ability to deliver at that time. Are we going to ask them to hook up when we don't have water to deliver at that time. Are there other priorities that we are going to need to be able to provide water in other areas.

And so as I looked at this, at least preliminarily, it seemed reasonable from the standpoint that, one, it requires that they provide a detailed hydrology report with a water budget that it's metered continuously, and the county continuously developing and monitoring what's happening out there.

But it also assures and provides that the county is continuing discussions with the applicant to assure that at some point in the future, which the applicant has acknowledged, they will become a county water customer. And so I just think we need to be careful. We're talking about saying we're going to provide them water once we come up within 200 feet. Well, what happens if we

1932452

SFC CLERK RECORDING 08/13/2004

don't have the capacity to deliver that water. What happens if there are other priorities that are placed. And so there's a lot of factors that can take place that are still unknown.

I think the key is making sure they prove that water, it proves to be a 100 year water supply, they provide the monitoring of the usage of that water and that they invoke conservation measures to ensure that they minimize the use of the water in the community.

From my point, you can ask a question, can we make it stronger, you can say that by saying that it will become stronger if they have to hookup at within 200 feet but I think we need to assure that the county has the capacity to deliver it at that point. And right now everyone knows that we don't necessarily have that capacity.

CHAIRMAN DURAN: Well, I think we're in the middle of negotiations with this group and if we don't negotiate with them now to get them away from depleting the aquifer, we'll lose that opportunity and we won't have another opportunity to do that.

We could say something that, "the applicant shall connect to the county water system when it is within 200 feet of the property if the county has sufficient water rights to provide the service."

I mean, obviously if we don't have the water, we can't do it. But I think that we should be in the control of that rather than let them be in control. Especially with the philosophy that we have which is to work hard on the depletion of the aquifer. And how by pumping this 55 acre-feet could affect the La Cienega area. Any other questions of the applicant.

MR. DOMINGUEZ: Mr. Chairman, I just wanted to say that when the original Condition No. 11 was written in the staff report, it was exactly as Commissioner Gonzales has just brought forward to you. We were in the middle of working with them, the discussions were ongoing and that's why we left it the way it was.

The LCRC placed this language, this further language, that last sentence on within the 200 foot property. The only other comment I would make regarding this is if the language were to stay, and again this is depending on the action taken by this Board, Condition No. 11, we would like it, we could fix it by putting some sort of language that says, "provided that the development plan were in accordance with the county line extension policies and the allocation policies which takes care of the water rights transferring issues and the swapping of the water rights for service, etc. There are certain guidelines that the utility has that would address the concerns that this Board is expressing.

CHAIRMAN DURAN: But there might be something in those guidelines that would prevent us from providing water to some facility that is promoting gambling, that's promoting racing, and these other things. I don't think that the policy that we have, right now, specifies that these kinds of uses that are referenced in this application, have any priority in the policies that we've adopted.

It then tied into that, I think, could create an out for them to not have to hook up. It's a little unnecessary.

MR. DOMINGUEZ: Condition No. 16, the big concern that staff has with this is currently it say, "all existing and new lighting shall be shielded." That looks like the major changes, two changes, once says all permanent new lighting. Any time that a proposal is brought forward on a legal non-conforming use. The whole thing must be brought into compliance. So we would like "existing" to remain in there.

1932453

And then another thing the applicant addresses with this it says, "all permanent lighting," and of course they're addressing or not addressing the temporary lighting that would be placed for the concert events or the late night events.

CHAIRMAN DURAN: But they agreed to add something to that. Which was that they would agree to --.

MR. DOMINGUEZ: It says, "a lighting analysis for permanent fixtures shall be required at each phase and details of portable and stage lighting shall be submitted with preliminary development plan.

CHAIRMAN DURAN: But in my discussion with their attorney, that he agreed that they would expand that condition to say that any event lighting -- what did you say?

FRANK DeMALI: That we present a plan for each event that we would hold about the lighting.

CHAIRMAN DURAN: You would have to present it to us but they'd have to present it to you so that it would conform to what you've agreed to do?

FRANK DeMALI: Correct.

CHAIRMAN DURAN: Okay; did you get that?

MR. DOMINGUEZ: Yes.

CHAIRMAN DURAN: What did I say?

MR. DOMINGUEZ: I have no idea. Mr. Chairman, I believe that staff feels that as long as we address the existing and any new lighting being shielded and then now we would address the temporary lighting. We have to keep in mind that in Phase 2, will be the amphitheater and all that and it would be addressed at that point as part of permanent lighting.

CHAIRMAN DURAN: But we're worried about temporary lighting.

MR. DOMINGUEZ: Correct. Again, I believe staff has expressed our concern. We would like to see it all shielded. These conditions kind of overlap. When we look at Condition No. 24, the lateness of the...

CHAIRMAN DURAN: So any lighting condition that you have is going to have to be complied -- I mean, any, so any lighting condition that we adopt here is going to be applicable to even any event?

MR. DOMINGUEZ: Mr. Chairman, that's correct.

CHAIRMAN DURAN: Okay, then we don't have to do anything.

COMMISSIONER TRUJILLO: That would be the light.

MR. DOMINGUEZ: Condition No. 20, Mr. Chairman, there was a lot of discussion regarding the emergency access road. Again, we were conveying the wishes of the fire marshall. The applicant has spoken with the fire marshall, got something in writing, we'd be amenable to that.

CHAIRMAN DURAN: Okay. Thank you very much.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Condition No, 3, I think ceasing may be a requirement and I think you need to add in that in addition to landscaping, fencing and berming maybe required. I don't think we have to say it is required not, but I can see certainly the potential

for trespassing and getting in without having to pay the gate fee. And the damage that that would occur, the cost to properties.

But I want to, unfortunately, revisit just one more time the manure situation and you answered one question for me -- and that was, under this program it's at no cost to the Pueblo, so that is apparently dictating how it's going. Staff, does the Caja del Rio landfill accept manure? Where is Jill when you need her?

MS. YUHAS: Mr. Chairman, Commissioner Sullivan. I'm sorry, I don't know that it does or it doesn't.

COMMISSIONER SULLIVAN: Nobody knows.

I have a concern still and Jim, can you respond to this. Mr. Siebert. Let's work with us here now. They've got a contract, it's for five years and one of the recommendations is to take the five years out of the conditions. So we're not stuck -- so you all are not stuck with that. But the reason for the five years is because it's not costing them anything. And that's all that this particular contractor can sell in a year, is 25,000.

Now, it seems to be that if we have a problem, that the applicant has a duty to expend some capital here and this is an issue that's been brought up. Whether it's a documented health hazard problem, and I understand from our hydrologist, that from a ground water standpoint, it is not, I want to be sure that we're clear on that. None the less, it's a problem in the neighborhood, in the area. Do we have any idea what this would cost to speed up this process. I mean, you can move 120,000 cubic yards of dirt in a month or less. And I would assume you could move 120,000 cubic yards of manure. And then the question is, what are we going to do with it, obviously.

But obviously we can't sell it all in that period of time, but we can dispose of it. Help me out here. Is there something we can do to work on this particular issue?

MR. SIEBERT: Mr. Chairman, Commissioner Sullivan, let me tell you what my knowledge of the process is and the reason it's taking as long as it does. It's not a simple matter of just removing it. They remove it, they screen it, they put it in piles and it composts, again, over a period of time.

At that point, then it is ready, then they truck it off down to Albuquerque and it gets packaged and sold. So yes, you could just take it all out, but I mean it does have a value to it. I mean people use it. And this is the process that you would have to go through in order to properly recycle this particular asset.

COMMISSIONER SULLIVAN: I understand, in order to make this a saleable product, I understand that, and we're certainly in favor of recycling here.

MR. SIEBERT: Well, I guess the question would be, where would you put it?

COMMISSIONER SULLIVAN: Well, that's why I asked about the landfill.

MR. SIEBERT: I have no idea where you would take this and put it.

COMMISSIONER SULLIVAN: Well, I think we can find out and I don't have the answer. And obviously you don't. And I'm wondering if we could rework this condition, something to the effect that if there is an acceptable site, that it can be disposed of in a shorter period of time. And by acceptable, I don't mean necessarily free. I mean environmentally and legally acceptable. Can we work with a condition like that?

MR. SIEBERT: Well, I'm going to have to -- I mean, that's getting specific and

1932455

legal. I would have to defer that to Mr. DeMali, again.

CHAIRMAN DURAN: Well, I think we've talked about that particular issue. We need to get into the public comment.

COMMISSIONER CAMPOS: One last question.

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: Condition No. 24, Mr. Dominguez, you didn't comment, they're saying all outdoor activities shall cease by midnight, every day of the week. What about noise? What about Monday through Thursday?

MR. DOMINGUEZ: It was placed by the LCDRC. As far as a time frame there was a lot of public concern regarding this. I guess we would leave this to your discretion after public hearing you can hear the concerns.

CHAIRMAN DURAN: Was 10:00 ever mentioned?

MR. DOMINGUEZ: Mr. Chairman, this was one of the last things thrown out and I believe, as I recall, without looking at the minutes, the LCDRC just kind of said 7:00 and somebody said, "that seems kind of early," and they said anything else seems kind of late. As I recall those conversation going. So there wasn't a whole lot of discussion.

CHAIRMAN DURAN: Now we're going to move into the public comment. Is there anyone out there that would like to address the Commission concerning this issue. Please step forward. I'd know to know how many people are going to address this commission on this. I'm going to ask you all to stand up and raise your hands and I'm going to have the clerk swear you in.

Becky Bustamante administered the oath to those wishing to speak regarding this item.

[The Commission recessed from 8:20- 8:35]

CHAIRMAN DURAN: We're going to go back into session here. Could you all take your seats please. We have a pretty heavy agenda. We have several items on the agenda that are going to be quite lengthy. I'm going to limit you to three minutes. If you could please keep your comments within that time frame, we would appreciate it. I will offer some latitude to that but if it goes too much beyond that, I'm going to have to ask you to sit down.

The other thing I need for you to know is that the Pojoaque Pueblo has asked to table this issue. So we're going to have public comment. We will table it at the end of public comment. The reason they want to table it is because they want to hear public comment and try to address the community's concerns and deal with staff a little bit more on the issues.

So this is your opportunity to let them know what your concerns are and continue some dialogue with them.

COMMISSIONER CAMPOS: Mr. Chairman?

CHAIRMAN DURAN: Commissioner.

COMMISSIONER CAMPOS: I'd like to ask that we move, we change our agenda to move the Santa Fe Ski area case to follow this case. Cause there's a lot of folks here. They've been waiting a long time and I'd like to get it done tonight.

CHAIRMAN DURAN: And what are you going to do about the people that are

here for the Santa Cruz housing, the LaFarge Mining, the AT&T Wireless.

COMMISSIONER CAMPOS: I think we have the largest group dealing are here for the ski area issue. I'd like to do that next, if Commission would like to do that.

CHAIRMAN DURAN: Well, we did this once before and we were criticized for changing the agenda because there were some people who were anticipating for one item to be towards the end and they weren't here for it. The came towards the end of the meeting and we had already decided.

I guess the option is that we could stay here until we deal with the issue or we can table it until the 16th at 4:00. What's the consensus of those people that are here for the ski? We would you like for us to put it, Caroline?

I'm sorry to delay the public comment on this. But we need to deal with the ski hill issue. The question is we can continue the meeting and go on until we start addressing this issue or we can table -- .and that could be late, or we can table it until the 16th at 4:00. I'd like to hear a representative from both sides.

STEVE SUGARMAN: Mr. Chairman, my name is Steve Sugarman and I representative the ski area containment coalition here tonight. And the coalition would be in favor of tabling the matter until next week, I believe you said the 16th at 4:00.

CHAIRMAN DURAN: Right.

MR. SUGARMAN: We've have had many people who have come who wanted to make a presentation to the commission tonight who have already left seeing that the Commission had a very crowded agenda, out of fear that the matter would not be heard until midnight, I believe, Mr. Chairman, you were here when we were before the Commission on the matter of the parking lot a few years ago. That one wasn't actually taken until 1:00 a.m. or 1:30 a.m. And seeing that we were going to be in a similar situation, we have had many people who have left.

CHAIRMAN DURAN: Is the other side here? Is the applicant here?

SKI BASIN APPLICANT: Just to show you there is true opposition on this issue, we, of course, would like to see it heard tonight. We have been waiting for this ruling patiently, after submitting to the land use, and we have gone through the variance process. We went with the CDRC and we were very hopeful that we could put this to rest today.

CHAIRMAN DURAN: Okay, so your answer is that you would want to hear it tonight?

SKI BASIN APPLICANT: We're prepared to stay.

CHAIRMAN DURAN: Okay, what's the pleasure of the Board?

COMMISSIONER TRUJILLO: Mr. Chairman, I move to table this.

COMMISSIONER GONZALES: Second.

CHAIRMAN DURAN: There's a motion and there's a table?

The motion to table the Santa Fe Ski Area Expansion passed by unanimous voice vote.

ERNEST HOLMES: My name is Ernest Holmes. I live at No. 10 Calle Brillante. Mr. Chairman, commissioners, thank you for allowing me here to speak on a very serious problem that exists at the race track. And probably other people will be talking about other things

1932457

SFC CLERK RECORDING 08/13/2004

but since we're only limited on time, I'll speak about what I think is the most dangerous situation existing in that area.

That is the land field that is burning. I don't think you got all the information from the staff. They said they had been there a few times, but we live there. We live in that area. And it gets so back where you can't even put the air conditioner on in the summer time. You can't use your yard, your front yard or your back yard. You can't go outside because of the poisonous gases that are emanating from the underground of that fire that's burning there. And it's been burning there for years.

We had a person from the fire department go up there with a sensor and he could detect fire burning underground. Part of that was removed that was not on the race track property. It was on the other side of the fence. And that's when I addressed Mr. Gonzales about the matter there. And I think Mr. Valencia or somebody else, they were trying to divide the land and the county held them back because they made them clean that mess up. They did.

And they pulled out trash and there was about from three feet to four feet deep that they had to go down to clean that mess up. And they found plastic bags, old tires, old shoes, you name it. Everything was there. It's a landfill.

But on the other side of the fence where the race track property is at, now that's been burning there and if any of you gentlemen were to go there, you wouldn't believe the smell that's there, that permeates the whole area. Not only where we live, but it goes all the way to the front of the race track. And to the back of the race track, up in the hills, up to the houses up in the hill.

Now the concern that I have here is, not only are we getting poisoned there, we're being punished because I think air should be clean for everybody. But if you're going to have other people participating there, going there to concerts, that are not aware of the poisonous gases that are coming out of the ground from there, I think you're putting all those people in danger.

I think my house is in danger and I think that the people that live in that area are in the same boat as I am. And let me tell you how bad it gets sometimes. When I park my car in the carport, I have to run in the house with a handkerchief covering my face because I cannot stand the smell. I cannot tolerate the smell. It's a poisonous gas. It's like smelling plastic. Somebody putting a burned diaper or something in your face.

That's the way it smells. People might not believe it but I dare anyone, Mr. Gonzales agreed to go there and visit with us so he can see for himself first hand the problem that exists there. And it's a real serious health hazard problem. And I addressed the county, I wrote them some letters and they've been there but they only stay there for...and they know the problem exists there. But it's not the same people that I see here tonight.

So I really would appreciate if you would be doing something concerning this matter. To me it's a grave matter, it's a great concern to all of us. And I hope that you address this matter as soon as possible. And to say that they don't know who owns the land is kind of ridiculous. I was an investigator for many years and I know I could find out. Let me just go to the county records and I'll find out for you.

But anyway, thank you for allowing me to speak and I don't want to take too much of your time. Only to say that, please, take care of that problem. It's going to ruin our health. And I know there's a baby who's having breathing problems who lives right next to that place. And I

know my neighbor died of lung cancer, he never smoked. So we're just wondering if this has something to do with it. And we certainly are concerned. Thank you very much.

CHAIRMAN DURAN: Thank you Mr. Holmes. We don't have the time constraints or the time pressure anymore. So if you want -- we're all leaving at 10:00. Thank you very much.

BEVERLY GARCIA: My name is Beverly Garcia. And I live in La Cienega. In the Por Su Gracia Subdivision that is right immediately next to the race track property. I'd just like to point out something to you on this map. This red area was identified to you as a landfill that was owned by some unknown party. That's not what we're complaining about. We're complaining about this area that is owned by Pojoaque Pueblo.

This is where the fire is taking place. It's not taking place in the old landfill that was long ago closed. That's not what we're here talking about. We're here talking about the landfill and burning mountains on Pojoaque Pueblo land.

So I think that you were really very, very misled earlier.

CHAIRMAN DURAN: Oh no, we understood that entirely.

BEVERLY GARCIA: They said they did not own the portion where there was a landfill. Only the portion where there was manure. So they weren't addressing the removal of the landfill material in their proposal, but only the manure was what I understood from the audience. Maybe I'm mistaken.

CHAIRMAN DURAN: This is the fire in manure?

BEVERLY GARCIA: I don't know. But that's not what we're concerned about. There is manure mixed in with the landfill. But that's not the red identified area. That's not an issue with us.

CHAIRMAN DURAN: Yeah, I understood that.

BEVERLY GARCIA: It's everything else around here. And we're not concerned about four acres of land, we're concerned about something far more extensive.

CHAIRMAN DURAN: I think we are too.

COMMISSIONER TRUJILLO: Mr. Chairman, Beverly, isn't this a problem, the manure is a problem that was already there? That was inherited by Pojoaque Pueblo when they bought the land.

BEVERLY GARCIA: Yes.

COMMISSIONER TRUJILLO: It's not a problem that Pojoaque Pueblo created.

BEVERLY GARCIA: Right, and I think Pojoaque Pueblo took care of it at the time they bought this land. And I'd like to provide you with some documentation here that speaks directly to this and I'm not going with my whole orderly presentation here because I think we need to get straight to the site contamination first.

There's more than 15 acres of contamination on this site that runs 30 to 40 feet high in some places. As much as an 1/8 of a mile long in some places and extends deep into the ground at other locations.

It is a result of 25-30 years of dumping at the race track. From horse manure, straw, dirt, bedding materials, wood shavings, paper, food refuse, glass and iron scraps, tires, commodes, syringes, and who knows what else.

1932459

SFC CLERK RECORDING 08/13/2004

I have here a copy of a letter under date of July 13, 1989 that was sent to the Environmental Improvement Division by the Santa Fe Racing Incorporated acknowledging that the area consists of 15.5 acres. And the very words that I used, the horse manure, straw, dirt, bedding, are Santa Fe Racing's words here, they're not mine.

Some of the waste was dumped into old gravel pits that Cook used to run out there. So we don't know how far down the landfills go. The landfill was placed as far away from the grandstands as possible and as near to the adjoining properties as they could get, meaning the old racing owners.

When Pojoaque Pueblo bought this land from Santa Fe Racing, Inc., they signed an agreement, and an option, dated February 2, 1996, wherein they both agreed, Pojoaque and the racing people, that a former landfill site on the property would be retained by the Santa Fe Racing Commission and not sold to the Pueblo. There were sort of alluding to that tonight.

They also entered into an indemnification agreement dated February 1, 1996, wherein Santa Fe Racing agreed to clean and re-mediate the former landfill site, and I quote, "hold Pojoaque Tribal Enterprises harmless from all claims connected with smoldering landfills by Santa Fe County or any other party."

Both of these agreements were signed by Woody Schick, as president of Santa Fe Racing, and by George Rivera, as President of Pojoaque Tribal Enterprises. This is the same George Rivera who's here tonight and is vice-president of Pojoaque Pueblo today. And who is a major proponent behind this so-called development plan.

The indemnification agreement is notarized by John Fox. I guess he thinks he's an attorney with Sommer Law Firm in Santa Fe. That indemnification agreement also contains a provision that the indemnity, the Pojoaque Tribal Enterprises, has received a notice that the Santa Fe County intends to pursue legal action against the indemnitor, that's Santa Fe Racing, in connection with alleged health and safety concerns relating to a smoldering landfill that is located on the site.

I don't know why that legal action wasn't pursued. But a lot of us who live there are suffering the consequences because the county dropped the ball. And I think it's time to pick that ball up again.

Later in the agreement it says that if Pojoaque Tribal Enterprises is named as a party, in a legal proceeding, in connection with a smoldering landfill, that Santa Fe Racing agrees to pay all their costs, all their attorneys' fees or expenses in defending that action.

So if you require Pojoaque Pueblo or PTE or whatever their corporate name of the day is, if you call upon them to clean up this site, they have legal recourse against the prior landowner.

And what we're doing, as residents in the area, is calling upon you to represent the residents of Santa Fe County and invoke the power and remedies that are available to you by requiring that this mess be cleaned by Pojoaque Pueblo. They could pay to have this removed very fast. Because under this re-mediation agreement, there's indemnification agreement that they have, they're going to be reimbursed by Santa Fe Racing anyway.

So I don't know why they just don't anti up and pay for it and get it out of there.

I have a copy of the agreement and option and the indemnification agreement for you. I unfortunately didn't have time to copy it. I gave a copy of this to your county attorney over a year ago. And this is file of record at the Environment Department.

The reason the Environment Department has not required them to clean up this site is because they have taken the official position, contrary to what your staff says here tonight, they have told me directly, so they must be telling us both different stories, that they do not consider animal waste to be... "to come under the regulations of the Solid Waste Act." They say that, "agricultural product is exempt."

I said, you know it's a commercial enterprise. It's not a farm out there. But they still held to that position. And they say that they cannot regulate it. So when somebody here is telling you that the Environment Department is watching this for a 30-year period, I plead for you to please get that in writing from the Environment Department because I don't think that's so.

That's reposition with me. I asked them on what basis they were exempting it and to please show me the state law. They said there was none but that they had adopted a regulation. I don't even know how regulation is. It can go on and on and on. We can't be challenging the Environment Department and on their regs and what the law entitles them to do or not entitle them to do.

But we have a major problem there and we don't have any official body that's really biting the bullet and following up on it; in my opinion. I'll give you this indemnification agreement for the record. I don't have copies for you at this time. But I can provide them later.

COMMISSIONER TRUJILLO: Mr. Chairman?

CHAIRMAN DURAN: Commissioner.

COMMISSIONER TRUJILLO: Beverly, the manure has been there for 30 years?

BEVERLY GARCIA: About, they say. It accumulated over a 30 year period of time, yes.

COMMISSIONER TRUJILLO: Thirty years and Pojoaque Pueblo has committed to get rid of it in the next three to five years or whatever, maybe even less depending on how fast it can be processed. The community has lived with it for 30 years. Now health impact, or safety impact, Pojoaque Pueblo has made the commitment that it's going to go away within five years. It's going to go away. So the community will have a clean ambiance and environment.

BEVERLY GARCIA: You know, I guess the things I think of when I hear that, are when you're dealing with unclean air and you're dealing with a health hazard, that those kind of things should not be handled on the long term. That they should be handled on the short term, when you're dealing with a health hazard. That's my personal belief.

And I find it unbelievable that anyone would really consider letting them extend it's mess for another five years. They don't have to pay to get it removed in one month. They get the money back from Santa Fe Racing. That's what that agreement is all about. When they bought this land, they knew about those smoldering pile, they knew about the fires. And they protected themselves.

The Pojoaque Pueblo is not going to be out one dime for cleaning up this mess faster. Why are they waiting five years. I mean, I guess they don't want to go after Santa Fe Racing. But you know what, that's their problem. Why should it be the problem of your constituents to put up with the stuff for five years.

I guess that's the part I don't get. I feel like we're tiptoeing around the Pojoaque Pueblo, for some reason, and not making them do what any other private business would have to do. They

would have to re-mediate a site before they were ever allowed to develop on it.

COMMISSIONER TRUJILLO: It's not a matter of waving a wand and the thing disappears. I think the lawyer said that they're committed to get rid of it as fast as they can.

BEVERLY GARCIA: They can get rid of it in a month of they'll pay for it.

COMMISSIONER TRUJILLO: Where do they take it? I mean there's...

BEVERLY GARCIA: You know, there are other places to take this kind of stuff. I mean, I don't know if WIPP site is an appropriate place for it. I don't know if it's formally hazardous material or not. That has a specifically defined legal definition. I don't know what it constitutes and I find myself like totally deviating from my presentation to kind of...I don't know. I don't agree with that position of five years. I have great concerns that Pojoaque Pueblo will sell that property. That corporation could go defunct. It could claim bankruptcy. Any of those things could happen.

And if it does happen this county has no remedy, nor do we. That's not protecting the landowners, in my opinion. I mean they ought to be tied down and they ought to be tied down by putting up some strong financial security. Not a bond, a bond goes out the tube if someone claims bankruptcy. You can't collect against it. You can collect against other things. But I could finish my presentation?

COMMISSIONER GONZALES: You can, but I just want to say on that one point, I think that you've made your point relative to that issue. And I'm sure that the Pueblo heard you. So let's see what they come back with at the next public hearing.

BEVERLY GARCIA: Okay. With regard to the quantity of material that is out there, if you take the 15.5 acres that they admit to, the size of the landfill on there, it doesn't compute. You come out with far more than I think the 120,000 cubic yards that they were talking about here. It comes out to be more like 163,000 cubic feet if you're only talking about 10 acres. I think it's far in excess of even those 15 acres.

If you double that 163,000 cubic yards, you're talking about a heck of a lot more.

CHAIRMAN DURAN: Are we still talking about manure?

BEVERLY GARCIA: Landfill and manure. But this thing doesn't address the landfill. They're talking about 100 and some odd cubic yards of only manure. Their figures don't even include the land fill.

So the five years that you're talking about will only remove some of that manure.

CHAIRMAN DURAN: Beverly, can we move off of the five year thing, please. I thought you made your point about that manure needs to get out of their tomorrow.

BEVERLY GARCIA: I was just trying to show that the calculations that you have before you are not accurate.

CHAIRMAN DURAN: Okay, good.

BEVERLY GARCIA: And sometimes a lot of the things aren't in the record, like flea markets and things because our time is so short and we never have a chance to address everything,

CHAIRMAN DURAN: Well, maybe if you said it a little more succinctly it wouldn't take so long.

BEVERLY GARCIA: Yes sir. We have heard that the Highway Corridor Plan

1932462

designates Pojoaque Pueblo's property as residential and non-residential. But we have ordinances that were adopted after the Highway Corridor Plan that redesignated this area as traditional community and historical community whose main purposes were to preserve the rural nature of La Cienega. And I believe that the later ordinances supersede the Highway Corridor Plan.

In any event, the uses that are being proposed by the Master Plan before you are incompatible with residential and rural uses and ask that you deny this application because of its non-conformity with the surrounding uses and because of the health safety environmental and welfare risks that it presents for our community.

I do not believe that gambling should be a use that should be allowed in the midst of a residential community. It sends the wrong message to our children. If the Pueblos and Tribes in New Mexico want to conduct gambling operations on reservation property, that is their choice. But they should not be allowed to bring gambling operations into non-indian communities.

If a race track operation opened here today, it would be allowed to install 600 slot machines, not 300. The number of allowable slot machines was increased during this session of the legislature from 300 to 600.

There was also a bill introduced that would have allowed open casino gambling at race tracks. That means dice tables, roulette, the whole enchilada. That bill did not get through this year. But it easily could in the near future.

So this is only a preview of what may come. Machine gambling and casinos are not exactly what most members of the Highway Corridor Committee had in mind when they recommended this property for recreational and non-residential purposes. To me that's a far cry from a gambling operation.

And in the meantime, while race track owners are working on the whole enchilada, Pojoaque Pueblo wants this property to bring in as much money as possible without having to fix up its dilapidated buildings and horse stalls, and of course, without having to clean up the manure and garbage. How do they do this, by bring in temporary uses that won't cost Pojoaque Pueblo any real money in infrastructure costs. Circus, carnivals, rodeos, outdoor rock concerts, mud bog races, portable toilets, seems to have been overlooked here tonight, flea markets.

What you have before you isn't a development plan at all. It's a skeleton that is being used to obtain master plan approval and get a legal hook, if you will, into Santa Fe County. So that Pojoaque Pueblo will have a vested interest in a vested right in every conceivable type of use that is allowable under the broad heading of entertainment.

I have to tell you that when I wrote this, I hadn't seen the use list that they proposed tonight. Some of this may be inappropriate.

And I suppose they could even include porno joints, lotion parlors, and topless bars if they wanted to, because there's nothing in this development plan to prevent that either.

This isn't what we want for La Cienega. And I don't want my property value diminished. I don't want there to be a taking of my property either. Because Pojoaque Pueblo decided to get into the gambling and land speculation business.

The noise, light pollution and glare, dust pollution, traffic and environmental hazards that will be introduced into our daily lives will be extensive. And you should know that there have been no noise and light pollution studies done on this case. And yet your staff has recommended

1932463

SFC CLERK RECORDING 08/13/2004

approval before these studies are done. That's really putting the cart before the horses.

CHAIRMAN DURAN: Beverly, excuse me. You've been there now for 20 minutes. There are other people that would like to speak and I would appreciate that you wrap it up as soon as you can, please. I think 20 minutes when we started out with this, with the direction that you would be there for three is a little too much. I'd appreciate you --

BEVERLY GARCIA: I have one letter from Representative Patsy Trujillo. May I have permission to read it or is that hearsay.

CHAIRMAN DURAN: Why don't you..how long is it. Is it going to take you another 20 minutes? I'm trying to be as respectful as I can. But, you know, you need to realize that there are other people that want...

BEVERLY GARCIA: It's three paragraphs, short ones:

Dear County Commissioners, due to a prior commitment I am unable to attend your meeting tonight, but I am very concerned about the environmental and public safety problems that continue on the old race track property in La Cienega. I urge you to require the complete removal and re-mediation of the contaminated site of approximately 15 acres before considering development of this property. It is my understanding that the contaminated piles have spilled over onto surrounding residential lots. As a result some children are being directly exposed to this contamination. Any plan for re-mediation should also include clean-up of these residential lots. At least 200 homes and families are being directly impacted by this contamination and the constant outbreak of fires. I am concerned that sooner or later the strong winds of La Cienega will prevail over the fast response time of our dedicated fire fighters. And that the contamination will some day reach La Cienega's fragile underground water source. A public health hazard is something to be addressed in the short term and not the long term. These people should not have to endure another five or six years of air pollution and fires. I urge you to address this contamination hazard first.

And one of the last things I'd like to say, there are many other things I wanted to say but the last thing I will say is you can't smell methane gases and there have been no tests out there conducted for methane gases. The only environmental test that has ever been conducted out there has to do with water. And fortunately, it hasn't reached our underground water sources. There has been no environmental studies out there, contrary to sworn testimony by Jim Siebert before the La Cienega County Development Review Committee, that he had a letter from the Surgeon General saying that it got a clean environmental bill of health. It did not. He misrepresented what was in the letter.

CHAIRMAN DURAN: Next speaker, please.

BEVERLY GARCIA: I have a video here. And we have copies for each of the commissioners. If you would like to take one home and see the contaminated site.

CHAIRMAN DURAN: Why don't you give it to the Clerk.

Next speaker, please. Thank you. Please try not to be redundant. We know that there is some issues with manure. Thank you.

HENRY PACHECO: [Previously sworn] Good evening, Mr. Chairman, commissioners. My name is Henry Pacheco and as a property owner the issue is safety. They say that nobody has reported any safety problems and that's not true. On an annual basis I usually report four to five fires per summer. Ususally when it rains the compost starts decomposing and

1932464

that is where you start getting fires. We've had fires out there where my neighbor who is sitting back there has woke me up and my wife in the middle of the night to inform me that there's a large fire close to my property. Some of those ambers and fires that have been there - the ambers actually fly into my lot. I have a lot of Juniper trees, I got a 500 gallon propane tank and there's been times where the ambers actually land in my property and I have a lot of dry grass, natural grass, that is a very - I mean what more can I tell you. If those ambers ignite my gas tank, or my neighbors' - when I moved out there and that was about 10 years ago I was one of the first people out there and now there's more people out there. There's kids out there. There's other families. The weed problem is out there. The field has never been maintained and the weeds and accumulation of compost and everything like that - darn right there is a fire hazard out there. All the time, right now. Last week there was a fire smoldering and you can see the smoldering all the time. As I mentioned, I have reported to the La Cienega Fire Department numerous times, at least 20 to 30 times that I can think of. One time when I called the Fire Department they all came into my lot, there was not way, no access, to those back lots to turn out the fires. And then once they got there, the land is so uneven and there's a lot of area where the compost has actually sunken down that the fire engine couldn't get in there.

Those are the problems that I see out there on a daily basis. And these people over here are saying there's no fire hazard.

The last time Carlos Santana had a concert back there about 8 years ago or so - from where I live I could see the back of the Downs. There were guys, two different guys, they weren't together but they were out there stumbling drunk. They were passed out and if I wouldn't have called the sheriff office to come and get those guys those guys would have definitely died of exposure.

Those are the safety issues that I'm talking about. And those are the safety issues that these people are not talking about and they say six years to clean up that compost. There's no incentive for them to do it. They'll sell it. You know how they clean up that compost? They use a back hoe tractor. Once in awhile they get a front big-loader and they tail it out of there. In the last three or four months they've done nothing. You know most of that compost; you know where it was brought from? It was brought from Albuquerque, when the Santa Fe Downs was still operating and they were running both tracks. They were bringing the trucks from Albuquerque and the reason I know that is because I went and I stuck my nose out and I followed those trucks, where they were coming from and where they were going. So all that compost was not generated there at the Downs it was brought in from Albuquerque - it was trucked across County lines.

I have brought - I have talked to Land Use, I've talked to Mr. DeMali over here and I've voiced my concerns and I've gotten nowhere. The last time the County argued this point it was with the lawyers out there. The lawyers were out there on my property and they could see there was an area where the fire had started at the Downs and where the fire had ended up was into my lot and we're walking on it. And you know what they told me? There's nothing we can do because of a dairy-type of a problem that they had where all these dairy farms can throw out this compost and there's no regulation on who is to clean it up.

Gentlemen, thank you for your time.

CHAIRMAN DURAN: Thank you, Mr. Pacheco.

DELFINA ULIBARRI: Okay, I'm Delfina Ulibarri. Do you want my address too? It's 219 Los Pinos in La Cienega.

The ownership of our family property in La Cienega was first recorded on the deed dated February 21, 1893. It is signed by President Theodore Roosevelt. Our land is located on Los Pinos Road in La Cienega between the race track and Sunrise Springs. Closer to Sunrise Springs. I was born in southern Santa Fe County in San Pedro and I guess you all - you must. And most of La Cienega - the first time when I married my husband in 1947 at that time, [inaudible] was a big event. I remember that - we would rush to the window to see who was coming down the road. Believe because that's the truth. That's how quiet and peaceful it was.

Even until the early 1980s La Cienega was still a quiet place to live in but then, some land developers started to buy up big tracts of land and split them up. Today, thousands of people live in La Cienega and so many cars drive up and down Los Pinos drive that it is no longer safe to walk on Los Pinos or ride horses there. Those days are gone.

When Las Golondrias holds major events, we can't even get out of our driveway and we dread the expansion of Sunrise Springs. That will bring even more traffic and pollution. And now on the other side we have Pojoaque Pueblo. And all the traffic, noise, dust and pollution that it will bring.

Last year when I heard that La Cienega was going to be listed as a historical community, I told them that I didn't think that it would do any good. And believe me, it hasn't done any good so far. The people told me I was wrong because it would protect us as a rural community. That maybe be true for parts of lower La Cienega but not to live in upper La Cienega. And this is the largest part of La Cienega.

I may not be as smart as some of you, so can you please expand to me how Santa Fe County can give us this protection with one hand and then take it away by approving all this commercial development that are destroying everything that is rural and traditional in La Cienega? Our water rights are old. Senior water rights at that. Much older than the water rights at the racetrack. And Pojoaque Pueblo is going to pumping up water from our aquifer for thousands and thousands of people that will be attending the flea markets, circus, carnivals, rock concerts, horseraces, rodeos and gambling establishments. How can you convince yourself that there is enough water for all of this? Water rights on paper is one thing. Droughts are real too. Ground water can not be replenished. This will kill anything rural that is left in upper La Cienega.

Let me tell you about the race track that was there before. That was in 1975. Flies were all over us. We would step out the door and fleas would just cling all over us - *se pegaban como chinches*. We complained and complained and finally the environmental people made them cover the manure piles with dirt in order to control the flies. But it didn't stop completely. They can't even handle all the manure from the past property. We need a guarantee clean up before we would consider them opening at all. Why should we let them keep piling it up higher and higher. The noise and the lights are another nuisance. Everything is allowed from loud speakers at the racetrack and it was noisy in the day time. But now Pojoaque Pueblo wants to put up with rock concerts at night - we want our peace and quiet: believe me. We live in a community, a residential community.

I'm almost done.

There are other quiet businesses that could be developed here by Pojoaque Pueblo. This is showing no respect to our community and I believe your job is to help us protect our homes from offensive development. I want to thank you.

CHAIRMAN DURAN: Thank you. Next speaker, please.

GLORIA MENDOZA: Gloria Mendoza, again, and I'm going to be redundant cause that's my right. This is my time. This is my right to say what I want to say. And if I'm going to repeat everything that Beverly said or Delfina said, I have that right to do that.

CHAIRMAN DURAN: You do, and thank you very much for being respectful of all the other people that wish to speak to the issue. The floor is yours.

GLORIA MENDOZA: I believe that the County owes the people of La Cienega at least the right to be able to be concerned about their health and their safety. I think that you owe the people of La Cienega to get this thing cleaned up before you approve anything. And the reason for that is that I remember when we were fighting the golf course out in La Cienega when we were opposing it, we brought up this issue and that was in 1992. And the County has been called by residents out there. You've been told and you've done nothing. You have done nothing - we don't mean for you to go out there and dig it out. Just to find a way to make it a healthier and safe community. And you haven't done that. Not this Commission or the Commission before you, or the Commission before that. And I just spoke to the gentleman from the race track and I asked him if they would consider getting rid of some of these things because they do have the right to do what they want to do there as long as the County approves of it but I would really beg for them to get rid of the mud bogs, get rid of the concerts, get rid of the circuses, carnivals and rodeos and if they do have them have them during the day because the people that live in that area, all around that area, are the working class people. They go to bed early and they get up early to go to work. And they don't need this kind of noise level out there - this is not the new agers who will sit out in their back porch and listen to the concerts because these people won't do that. And so they said they would be willing to meet with the community and I commend them for that because a lot of times these developers won't do that.

I would like to make a suggestion to them. Something I think really needs to be done. They have a contract with the City to use the effluent until the year 2007 and I want to let them know that at the year 2007 myself and other people will be at a City Council meeting and we are going to ask that you not get the effluent any more because we believe that the City can use it for return flow credits. And they're desperate for water. We would like for them to rehabilitate their waste water treatment plant and use their own gray water to do their landscaping, to water their landscaping and everything else they use the wastewater for at this time.

I would also like for them to meet with the three different areas in La Cienega. I know they have meet with La Cienega Valley Association, but not everybody, just a small amount of people are members of that association. I would like for them to meet with the people in upper La Cienega and your contact person would be Delfina Ulibarri. And to meet with the people out in Cieneguilla and your contact person would be Egnacio Salazar if not myself. And lower La Cieneguilla you can go to their meetings and meet with tme.

I would ask that they do that. And this is a real bad situation. I hope the media picks up on this and I hope the media goes the next time it rains to look at these hot spots and I want them to

1932467

put our elected officials in a hot spot for not taking care of this problem

CHAIRMAN DURAN: Thank you, next speaker please.

GLORIA MENDOZA: I was short.

CHAIRMAN DURAN: Thank you very much. We heard you.

VIOMA TRUJILLO: Vioma Trujillo, 61 Calle Torcido Loop in La Cieneguilla area. Commissioners, good evening.

As I come here and I listen to all the issues that are going on here this evening there are just some key words that come out. First of all, when we talk about the safety and well-being of people affected by things we don't know about. I did a study one time in a course I did and it had to do with the Wooster Massachusetts area, for the residents took some area canning places to court and it's amazing - it was like 30 or 40 years later that nobody had even given thought to cleaning up health hazards and people were dying leukemia and when I say people, I don't mean 30 or 40 year old people. I mean children. I mean women miscarrying because of severe negligence that was done and that created the tort law cases that came about for environmental pollution to be cleaned up by various means. I suggest that some of those tort laws be readdressed by any and all Commissioners as well as legal with the County because they are out there. You used the word tonight that we are negotiating; I want to know who is going to be enforcing because there's a portion there called sovereignty and who enforces it. Years ago you could be a man of your word and that was very acceptable. If we're lucky to get respect in this day and age even amongst ourselves, we're luckier yet.

When you transfer water rights out of that area, who is to say that the new people coming in wouldn't just take it on tap and say I have no idea what that means. Who is to insure that that same groundwater won't be pumped because somebody doesn't know.

As far as the County's water system is concerned, there's a third entity involved in these issues here and it's called the City of Santa Fe Sangre de Cristo Water and they too have been negotiating. Negotiating - the regional water system with the San Juan-Chama area which will and could be impacted and affected by this.

The sadder part is that realistically, I've come before you on numerous occasions and said to you that your water company has no T&D department nor SOS department. T&D stands for transmission and distribution nor does it have a source of supply. But it's easy to get out there and get those water rights which are on paper - how much water can you pump in your water lines that have been broken now and you have to turn to that third entity and say, can you help us fix those lines? And at the same time, we've created disputes about fees for having to fix these lines and now you want to tell me that you shall set a different precedence for regional water. I really have a problem with that. Even third world countries know how to set proper direction and precedence when it comes to cleaning up unsafe material and providing quality safe products to the people they serve.

Thank you.

CHAIRMAN DURAN: Thank you. Next speaker, please.

GINA TORICELLI [Previously sworn]: Good evening, again, I'm here to support the citizens of La Cienega in their environmental assault from all sides. In this particular issue I would also like to address some of the possible uses of the Pojoaque Downs.

CHAIRMAN DURAN: Excuse, Gina, you have been sworn in?

MS. TORICELLI: Yes, we all have been. Specially, the circus issue. I'm sure you all know that this is a highly contentious issue here in Santa Fe. Circuses bring out all the warm bodies on both sides of the issue. We have some serious safety issues, animal rights issues, and it's a can of worms that I wish wasn't on this list. At present, Councilor Montañño is working with Animal Protection of New Mexico and the other councilors to come up with a cleaner circus ordinance for the City of Santa Fe which I would hope would be adopted also by the County. I would like to ask you tonight, to remove circuses as a possible use until that language has been worked out by the City so that we can have circuses, if we must have them, that are either animal free or at least acceptable by the majority of the community so that it does not include abused exotic animals. The current circuses that run in Santa Fe are full of all kinds of violations. There are major safety issues which are very hard to enforce and protect the public. We're hoping that the Public Safety Committee and Councilor Montañño and the City councilors will address that – so please, remove circuses from the possible list of uses until such time that we can guarantee that the public has something that is acceptable.

And, that's about it. Thanks. Good night.

CHAIRMAN DURAN: Thank you. I was wondering – if we're going to end, Commissioners, at 10 maybe this should be the last item. So I would entertain a motion to table all other cases and pick up again on the 16th at 4 o'clock.

Commissioner Trujillo moved to table the remainder of the agenda. Commissioner Gonzales seconded.

COMMISSIONER CAMPOS: Mr. Chairman, I think we should try and go a little longer.

The motion passed by majority voice vote with Commissioner Campos casting the sole nay.

CHAIRMAN DURAN: Okay, please, go ahead.

ELAINE CIMINO: My name is Elaine Cimino and I live at 49 Camino Torcido Loop. I wanted to ask staff a couple questions to Katherine Yuhás and Doug Sayre. Did you have to take a special oath to uphold professional ethics as far as your licenses go?

CHAIRMAN DURAN: You know what, Elaine, I'm not going to let you ask that question.

MS. CIMINO: Why?

CHAIRMAN DURAN: Because it is inappropriate. So why don't you tell us why you are opposed or for this project.

MS. CIMINO: Well, this is for the record, sir. Because earlier this evening,

1932469

both Katherine Yuhas and Doug Sayre did not tell this Commission the truth and I think that it is important because I do not think that you're getting the full story here from staff.

CHAIRMAN DURAN: Why don't you tell us your side of the story.

MS. CIMINO: First of all earlier tonight, County Manager Montoya mentioned that you were going to change the status of your county from a B rating to an A rating.

CHAIRMAN DURAN: Elaine, what does this have to do with whether you are for or against this proposal?

MS. CIMINO: This has to do with the population that is now existing in this county and it has to do with how these impacts are going to be used at the Downs.

Now, the amount of people that were here in 1975 has changed from the amount of people now and they have stated on the record that there would be no change than what has operated before at this facility. So I just wanted to correct that and bring that point out.

The next point -

CHAIRMAN DURAN: It's obvious that there's a huge change in the -

MS. CIMINO: I hope that you would see that, Commissioner Duran.

CHAIRMAN DURAN: It used to be a racetrack and now it is everything else.

MS. CIMINO: It is everything else and it looks like the County may be stepping into a taking on this area and I think that you should be aware of that.

There was a question that one of the Commissioners raised as to how fast we could get the manure out of the racetrack. Now I know that the City of Santa Fe takes the sludge, the excess sludge, from the wastewater treatment plant and hauls it out to the Caja del Rio dump site. And I also know, after working on this issue for two years and I have all the documentation to back this up, that the manure piles are about 65 percent solid waste/garbage and the rest agricultural waste. I believe that you could expedite this problem with this manure and have them take it to an appropriate facility and I believe that there is one that exists within the County.

Second of all, there has been mention that there was no impact to the groundwater from the manure and I know for a fact that over the years, previous to the racetrack, that there were uranium test holes drilled and they were from 700 to 1800 feet deep and they were not plugged properly. Then the manure sets in and I've been in front of this Commission and I've told this story before and I'll tell it again shortly, here we have a background now of at least 4.6 to 4.9 of nitrates in this table and as a result drinking water is now monitoring this area because it has a potential of climbing and it has climbed over the years. So to say that there was no impact to water when we have privately tested wells in the area I think that you really should consider what those health hazards would be over the long term and those impacts on the aquifer.

I also was concerned about the noise impact and the motor events that were scheduled at this facility and I think that you should do away with those.

The access problem to the backend of the facility - I believe that in order to get through there you have to go through an arroyo and that there would be nationwide permits to get and I would like to know how you would justify putting in that kind of a road when in the Por Su Gracias subdivision they have severe road problems as it is and that back road goes

right into the back of the manure pile there.

We have pictures of the remediation that was supposed to have taken place out there that never did and I am sure that the Commission is well aware of the problems over the years there and I hope that you will not approve this until you get the remediation of that manure pile. That is a very big risk and limit what is going on at that track.

And, thank you very much.

CHAIRMAN DURAN: Thank you. Next speaker please.

ANGELA MARTINEZ: My name is Angela Martinez and I live at 9 Paseo de Ulibarri. I don't want to be here anymore than you do but I feel that this is important because not only myself will be impacted but my kids years from now. I think 12 p.m. is really late to have stuff. They have mud bogs in Santa Fe at the Rodeo grounds and even when you're five miles away you can hear them. I mean they are loud. I don't live even five miles away from the Downs.

They say traffic isn't going to be an issue because there's going to be the same amount. I highly disagree with that. There's more people even living out there. There's going to be more traffic out there with the events going on and even back then when they did have state police and the sheriffs out there helping with the traffic, it still didn't work very good. I remember when we would go to visit my grandma, we would have to leave when the Downs was closing and it would take us a long time to get out on the Frontage Road and there was people driving horribly because they wanted to get home or wherever they were going like passing people back and forth. This is also going to be involved in this cause they're going to restaurants and I believe that they're going to be serving liquor and there needs to be more looked into on the traffic.

On the noise, when the Downs was there we would hear them in the morning when we were leaving for work and they were practices and stuff. With concerts, I think it's going to be a lot louder than that. I think a lot more studying should be done before it can be approved.

And also on contamination, they said if there's any signs of contamination in the water that they would stop and get everything out. Won't that be a little too late. I think they need to look into it now and look and see if there's anything in the air that we are breathing. There are a lot of kids out there and we don't want to see them 20 years from now suffering from something that they're breathing right now.

That's all I have to say. I just think there has to be more looked into this before anything is approved. Thank you.

CHAIRMAN DURAN: Thank you very much. Next speaker, please.

LISA BACA: Hi, my name is Lisa Baca and I live at 65 Las Estrellas. I'm right next to the racetrack. I've got five critical issues that I'm concerned with. The first one being I feel that no motorized sports or mud bogs should be allowed there. They bring high noise levels which will not allow us the peaceful enjoyment of our house and property. Another big concern over that is going to be the manure problem and I know that we're not trying to be repetitive here but you know it's serious business. The current accumulation of horse manure must be cleaned out within a reasonable amount of time and not five years.

That's ridiculous. These guys have money. Pojoaque Pueblo has money and I think what we're asking is not unreasonable. Also, all events should end by 10 or 11 p.m. I work and I get up early and to have to hear something till 12 midnight is very disrespectful like Gloria said, we're working class and 12 o'clock is just not reasonable.

We must be able to come and go to our home in a reasonable time period. When the fireworks took place out there two years ago, it was murder to get in or out of there. You had to be in at a home by 4 and don't count on leaving early. I didn't leave out there at the time and now that I'm living out there, I'm dreading that.

I just hope that all of this is taken into consideration because it's serious. We live out there and this is our every day life and the main point is let's get rid of that manure. Thank you.

CHAIRMAN DURAN: Thank you. Next speaker, please.

LOUIE MARTINEZ: My name is Louie Martinez and I live at 04 South Paseo [inaudible] and I live right below the racetrack. And at this time I would like to thank Commission Javier for listening to me all the times that I have been making phone calls to him and also for returning my phone calls. By the way, I still have a coffee pot and coffee but I had to throw away the donuts and bisochitos they got kind of stall. Anytime that you are there you are more than welcome to come around so we could walk that area.

COMMISSIONER GONZALES: Thank you.

MR. MARTINEZ: My biggest concern over here, gentlemen, is that the issues that everyone else has brought up: the water, the noise, and the amount of crime we're going to have out there. It looks like nothing right now. Other events have taken place there before and so forth like this but let's take a look at the long-term. The big issue is the horse manure - I never did know anything about this when I bought that place out there because nobody ever told me. The only thing they ever told me was that that was going to be a real quiet place. Something that I wanted. Something I took three jobs, that I still work now so I could buy that place and live right there. So I wouldn't have to worry like I did when I lived downtown. You can't walk away from your place, you can't leave anything because there's everybody breaking into and there's all kinds of people hanging around - noise and everything and that's what I wanted to get away from to. And now that's what I'm getting or be getting if this thing goes up. Especially with the mud bogs there. Especially with the gambling, the drinking - they said a little while ago about the 6 foot fence and so forth like this. No, gentlemen, fences don't stop people from doing that.

Good thing they passed the gun law, though, what we need to do now is get permits for machine guns to set them up on top of our houses so we can go ahead and take care of our properties. That's what it is leading to. This is what all of this is leading to and if you people do not stop to look at this, first of all the big issue of that manure right there. Think about the health of the people. The health of the people is the most important think that anyone of us, you, I or anybody can ever have. Because if you have good health you've got everything. Bad health, you ain't got nothing but suffering. That issue really has to be addressed and make sure that that thing is cleaned up to make sure that everybody has a safe environmental out there.

The next thing about it, gentlemen, is that if this things goes – don't opposed to some of the stuff out there, you know, if it's quiet or so forth. Concerts and so forth like this, you know what concerts are? Nothing but drunken parties and drugs and so forth like this. I've been to a lot of them just to find out and see what goes on. And the thing about it is that that's all that you see. I do a lot of security and that's all that I see. Dealing with drunks getting them out of there. It's just like, my wife was telling me, if this thing goes on and they pass this thing what I'm going to have to do being that I work at night time I won't be stay at the house by myself. I would just as soon go stay with my mother because I won't stay over here by myself. Why did I buy that place if I'm going to have this problem?

Gentlemen, I'm asking you, look at this before you guys okay anything. Think of us first. When Sunrise and the water issue and so forth came up and we went to court and so forth with them and what did they tell us? We were bystanders. We didn't need anything. Only the people that got big fat accounts at the bank are the ones that count. When do we count? Election time. That's when the bystanders really count. I wish you would look at our side and see if this is in the best interest for everyone.

Thank you.

CHAIRMAN DURAN: Thank you, sir, and I can assure you that that's what we're going to do.

CAROLINE SIGSTED: My name is Caroline Sigsted and I live in downtown Santa Fe. I think it's really pretty obvious and I hopes it is obvious to you that this is life out of balance. This is a project that is way out of scale and needs to be pared down. We have a general master plan community master plan and at the core of that plan are traditional communities. You can't put something of this scale next to a traditional community and expect that community to be able to experience healthy quality of life. You just can't.

It seems to me that the Commissioners are constantly looking for sources of wet water and that a lot of this project revolves around the possibility of transferring water rights in exchange for a county water system. I just hope that that doesn't imbalance your judgement on the scale of this.

The other thing is that it is very late and none of us can really even concentrate anymore. We're not going to make a decision on this and it's tabled – so when this comes back I want to ask you does the public get to speak again or is it just brought up and a decision made in the quiet of the light of day? I don't understand how that works. I mean it's strategically –

CHAIRMAN DURAN: It will be a public hearing with public comment and we'll have the applicant come up and we'll have public comment and then we'll make a decision or table.

MS. SIGSTED: Okay, well, that's fine. I just that it is necessary even though it is tedious and I can't believe we're doing it again, but, thank you.

DON BRAYFIELD: My name is Don Brayfield. I have children that live in the area that is involved here. I also live in the south side of town, 6231 Vuelta Ventura. And I would just like to urge the Pojoaque Pueblo to reconsider what they're doing and get together with the neighbors because the Pojoaque Pueblo and those neighbors have a lot in common and

that is that the Pojoaque Pueblo has had to struggle for their existence, they were like one person at one time. They came back and they've got about 286 members according to the US Census and they're trying to prosper and I would hope that the Pueblo wouldn't prosper on the backs of the working people of that area that have pushed out of Santa Fe by high property taxes and expensive housing and found a refuse in basically illegal development that were poorly placed but done by powerful people like Dickie Montoya and Mr. Cook. That area really hasn't been developed correctly or well. So you're looking at two sets of victims. The people of this town, pretty much most of the people that live out there are pretty much native Santa Feans and so you have these victims that are moved to that side of town and then subjected to possibly this monstrosity and then you have the victims that Pojoaque Pueblo who are struggling to make something out of their pueblo when the federal government would just prefer that they all dry up and die.

So I would hope that the pueblo would get together with neighbors and really make this a project that works for everybody because the people can't really count on government. They can't count on this County government for sure because the influence peddlers around here have managed to pretty much negate their responsibilities of county government such as basic things like fire protection, like police protection, you know, the basic things. The County allowed Airport Road to develop into a monstrosity out where I live. The City helped them do it but the County allowed all these basically illegal subdivisions take place around the race track and now the County is contemplating turning the racetrack into a come-as-you-will everybody do it deal that disrupts the neighborhood.

I hope the government of Pojoaque gets together with the neighbors and makes something work here because you know I've been here for 25 years and governments don't get it. They don't work because they don't serve the interest of people. Thank you.

CHAIRMAN DURAN: Thank you.

RICHARD BARELA: Mr. Chairman, I'm Richard Barela and I live on 15 Barton Road. I'm impacted. I have a property there that I plan to give to my son and it's right adjacent to the racetrack and so I'm here representing him since he's in Albuquerque and I'm still the property owner.

I'm concerned - I realize the track was there when I bought the property. But the uses that they had were horseracing. The manure that they have there, again, they're stating that they want to limit to to one company and why do they have to limit it to one company. You have a health hazard here which you cannot ignore for five years. There are fires out there. It's a health hazard that if you don't address and just basically look the other way and hope it goes away, well, it's not going to go away. And so I urge you to look into getting this resolved not in a five year term because that is where I think Commissioner Sullivan make a point that they could move it a lot faster and we all know that they could move it a lot faster and there are other places that it could go. This is something that you all have to address. You have the responsibility for this.

The motorized events I think is an extreme use change from what was there when I bought the property. See, your argument to me is when you bought it during the horse racing, yeah, but not now, with these motorized events, I mean they are very noisy. If you just drive

down Rodeo Road when they're having those. If they're going to be having these motorized events – that is more, I can assure you, that they will one, not comply with the County noise ordinance that you have.

The flea markets I think should be limited because if you're going to have the highway corridor protection act that you spent so much time and money and I know Commissioner Duran was invalid the way corridor, I think that this flea market if it starts just a little, I mean, before you know you're going to have permanent stands out there so there goes your highway corridor. I urge you to if there is going to be one, no permanent stands and once a month, a weekend a month would be reasonable.

And I think you've heard a lot of people talk to you now and I collect political cards and I have a card from all of you and you all said that you were for the people when you ran and I really hope that you have listened to these people in the southwest sector in the area that we're at and take these concerns that we've addressed you seriously and not just merely say let's move on and we'll go to the next hearing. I really urge you because these are concerns that you should consider and there is a problem with it and I urge you to not allow motorized events. Not allow flea markets, permanent stands, and to see that this health hazard be cleared up in a faster manner. Thank you very much.

ULALIA ULIBARRI: Okay, hi, I'm not going to take much time of yours at all, sirs, however, for everyone of us that is here, everyone of us, there are probably 20 or 30 people that stand behind us and say you guys don't know politics – it's a dirty business. And I'm going to say, no, I'm going to go up and talk to you guys and I'm going to tell you guys that we love our land and that's why we're here. I just wanted you know that nobody believes the system works. They all say politics stinks. But I'm here to ask you guys to look up behind you – it says protection of property – and I'm asking you to please do this for us. We're going more than willing to work with the pueblo. If they're willing to work with us, I'm sure that we'll all be willing to work with them. Thank you. Ulalia Ulibarri, 218 Los Pinos Road.

CHAIRMAN DURAN: Politics isn't as bad as you think it is.

Okay, how many more speakers are there?

IVAN TRUJILLO [Duly sworn]: I live in La Cienega. And actually I was not prepared or planning to speak tonight but listening to everyone's concerns is that they're all the same. And I believe that in summation of that, they're all worried that the applicant is proposing Tingely Coliseum in their backyard. I am asking the applicant that the next time they come with their amended plan, that they include some of the concerns that the public has. I've heard about water metering – if their meters are installed then they are read and there is some form of over consumption then there should be some contingency in the plan that would be installed in the plan that if they were found to be over consuming water we can retaliate back on later in times.

A lot of times there are plans that are approved that don't have any consequence. So once the approval process is done, I believe the applicant leaves the table and does whatever it is they want to do. Water metering is one. Noise abatement – I didn't hear a decibel level that would be considered exceeding and if so, what happens. Does that type of special event not occur in the future or is it something that they get a slap on the hand for. I think that any development applicant has the obligation that to those whom they're going to be impacting is

to say sincerely we're trying to do this and we don't think it will exceed this but if it does, we'll be willing to do something else. And I believe if the plan or the amended plan has that type of verbiage a lot of these concerns will go away.

And I believe in sincerity of the applicant that those can be brought up in the amended plan that we'd all be willing to listen. Thank you.

CHAIRMAN DURAN: Thank you, sir. I guess that concludes the public comment.

COMMISSIONER GONZALES: Mr. Chairman, I want to bring up a question for staff or at least provide some direction. I know that last week I had the opportunity while in Washington to meet with EPA administrator Whitman's chief of staff concerning "brown fields" and the fact that there is brown field legislation that is currently moving through the Senate and it's in the process of going through the House. There are about \$90 million available to local communities to actually access grants that would provide federal assistance to come directly into communities. This is a direct appropriation from the federal government straight into the community to clean up contaminated areas. I know that as we go forward and Pojoaque works with the community out there, that there may be an opportunity for us in conjunction with the Pueblo and the community to pursue a grant from the EPA to get money to clean up that area that is going to be classified as a "brown field."

I believe the direction we should provide to the staff is to an assessment to see if it qualifies. In my discussion with their staff, those grants are getting ready to come up for requests from communities and I think we stand a pretty good chance of getting some money to come into this community and get the thing cleaned up.

I'd like to ask the staff to look into if we're eligible for a brown field grant and if we are, maybe we can sit down with the Pueblo and jointly go after this money and get some federal appropriations and see if we can get this think cleaned up.

COMMISSIONER TRUJILLO: Just for the record. Fingers have been pointed at Santa Fe County as being the bad guy regarding the clean up of the manure at Santa Fe Downs. What effort has Santa Fe County made to get rid of that manure? Can anybody represent that for us?

MS. YUHAS: Mr. Chairman, Commissioner Trujillo, staff has actually worked quite hard to try and figure out what our avenues are for getting this manure removed. I do hear the community and understand their concerns regarding the smell and the fire - but according to the state statute this is horse manure. So it doesn't fall into the solid waste act - and until it contaminates groundwater, the groundwater bureau doesn't have jurisdiction to require it to be removed. And the County doesn't have a law that says you can't have a big burning pile of manure.

We really have tried to find a way to find some regulation under which we could get them to remove it. If the development doesn't move forward, I'm not sure what avenues we do have to pursue to have it removed. We can look at the brown fields and things like that and we can work with the state. And I would certainly like to see it removed - but I think it is a process of working with the Pueblo. We've met with the Pueblo, I'd say 10 times now in the year that I've worked with the County. I've been out to the site three or four times. I've

1932476

Santa Fe County Board of Commissioners
Regular Meeting: May 8, 2001
Page 76

been part of the sampling efforts that have happened out there. I think we have been pretty involved.

CHAIRMAN DURAN: I think that it is evident that something has to be done about the manure. So hopefully when the Pueblo comes back - is this at the next meeting -

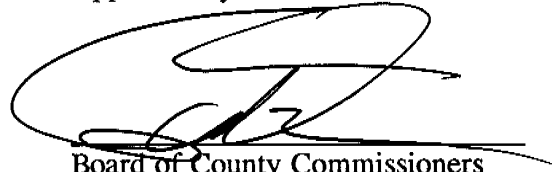
COMMISSIONER GONZALES: I assume it will be tabled until the next land use meeting which is June 12th.

CHAIRMAN DURAN: I can ask the Pueblo to consider all the testimony that we've heard tonight and help us deal with the concerns of the citizens out there.

Commissioner Gonzales moved to table LCDRC Z-01-5010 and LCDRC MIS 01-5011 until the June 12th, the next land use meeting, and his motion was seconded by Commissioner Trujillo. The motion passed without opposition.

Chairman Duran announced that this meeting was recessed at 10:05 p.m. until May 16th 4 p.m.

Approved by:

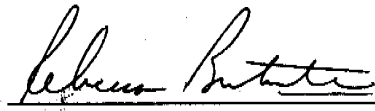


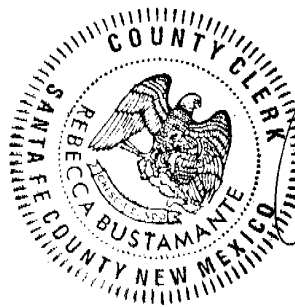
Board of County Commissioners
Paul Duran, Chairman

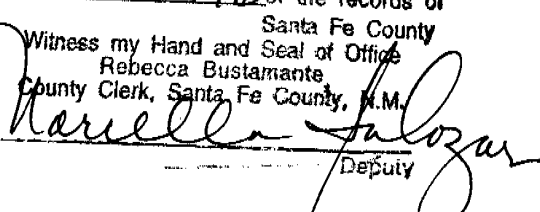
Respectfully submitted:


Karen Farrell, Commission Reporter

ATTEST TO:


REBECCA BUSTAMANTE
SANTA FE COUNTY CLERK



1161343
COUNTY OF SANTA FE } SS
STATE OF NEW MEXICO }
I hereby certify that this instrument was filed
for record on the 2 day of July A.D.
20 01 at 8:13 o'clock 2 m
and was duly recorded in book 1932
page 400 - 476 of the records of
Santa Fe County
Witness my Hand and Seal of Office
Rebecca Bustamante
County Clerk, Santa Fe County, N.M.

Deputy