

**SANTA FE COUNTY**  
**REGULAR MEETING**  
**BOARD OF COUNTY COMMISSIONERS**

April 24, 2007

This regular meeting of the Santa Fe Board of County Commissioners was called to order at approximately 10:34 a.m. by Chair Virginia Vigil, in the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

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

**Members Present:**

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

**Members excused:**

Commissioner Paul Campos

**V. INVOCATION**

An invocation was given by Stephen Ulibarri from the County Manager's office.

**VI. APPROVAL OF THE AGENDA**

- A. Amendments**
- B. Tabled or withdrawn items**
- C. Consent Calendar: Withdrawals**

CHAIR VIGIL: Mr. Abeyta, are there any changes to the agenda?

ROMAN ABEYTA (County Manager): There are, Madam Chair. The first, under IX, Matters from the Commission, B, Discussion and possible approval for expenditure of discretionary funds has been tabled. IX. E, Discussion and possible approval for expenditure of discretionary funds has been added, and IX. F, which is also approval of expenditure of discretionary funds has been added.

Under XII. Consent Calendar, A, Budget adjustments, staff is requesting to withdraw item #5 from the agenda, and under XII. B. 7, we're asking that that be withdrawn from the agenda.

Finally, Madam Chair, under XII. B, we added an item 13, which is request approval for amendment #1 to MOA #27-0717 PFMD-RH with the Cundiyo Mutual Domestic Water Consumers Association to expend the remainder of the grant proceeds in the amount of \$191,000 for FY2007 for construction of the Cundiyo water system improvements project.

Those are all the changes by staff, Madam Chair.

CHAIR VIGIL: Thank you, Mr. Abeyta. Changes from the Commission? Any requests to remove from the Consent Calendar?

COMMISSIONER SULLIVAN: Madam Chair.

CHAIR VIGIL: Commissioner Sullivan, then Commissioner Anaya, then Commissioner Montoya.

COMMISSIONER SULLIVAN: Well, let them go first.

CHAIR VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, thank you. I was wondering if maybe we could move item IX. C to the first item under Matters from the Commission. The Mayor has to get back to his town.

CHAIR VIGIL: Are there any objections to that request? Seeing, hearing none, item C will be moved up. Commissioner Montoya.

COMMISSIONER MONTOYA: Madam Chair, I would ask that item XII. B. 13 be removed from Consent.

CHAIR VIGIL: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Madam Chair, XII. B. 2, 6, and 11.

CHAIR VIGIL: Items XII. B. 2, 6, and 11. Anything more?

COMMISSIONER MONTOYA: Move for approval as amended.

COMMISSIONER ANAYA: Second.

CHAIR VIGIL: I have some requests. There's a motion and a second. I'm calling for discussion. I'd like item B. 9. Will the maker of the motion include those removals from the Consent Calendar.

COMMISSIONER MONTOYA: I'll include that one, B. 9.

CHAIR VIGIL: Would the seconder also?

COMMISSIONER ANAYA: Yes.

CHAIR VIGIL: We have a motion and a second with changes.

**The motion to approve the agenda as amended passed by unanimous [4-0] voice vote.**

**VII. APPROVAL OF THE MINUTES:**

**A. March 27, 2007**

CHAIR VIGIL: Are there any changes?

COMMISSIONER SULLIVAN: Madam Chair.

CHAIR VIGIL: Commissioner Sullivan.

COMMISSIONER SULLIVAN: A couple of typographical changes.

CHAIR VIGIL: Okay.

COMMISSIONER MONTOYA: I also have some, Madam Chair.

CHAIR VIGIL: Okay.

COMMISSIONER ANAYA: So moved.

COMMISSIONER MONTOYA: Second.

CHAIR VIGIL: Motion to approve the minutes with some typographical changes.

**The motion to approve the March 27<sup>th</sup> minutes as corrected passed by unanimous [5-0] voice vote.**

### **VIII. MATTERS OF PUBLIC CONCERN – NON-ACTION ITEMS**

CHAIR VIGIL: These are non-action items. It is at this point in time that we ask the public if anyone is interested in addressing the Board of County Commission on any subject that is not a part of our agenda. You may move to the podium right now and address us. How many would like to address? There's three or you? Could I see a show of hands? And is it all on the same subject? Do you have a spokesman?

JIM SMITH: Chairwoman Vigil and Commissioners, thank you for being available for our comments. My name is Jim Smith and I live at 193 Cañada Village Road. I want to talk about County Road 67-A, just beyond the Village of Cañada de los Alamos. Our perspective is that this is indeed a County road and not a private road. Since at least 1988 the County has been certifying to the state 1.4 miles of the road, which covers the Garcia property. When I bought my land my plat indicated that this was a public road. So we're here today to ask that the BCC if possible, authorize the County Roads Department to improve this road.

It's one that's continually in terrible condition. It often floods during winter thaws and summer monsoons when the arroyo can turn into a river, after which it's barely passable, particularly along a stretch bordering on the Garcia property. Beyond the Garcias are over 50 parcels of land and at least 50 people who are dependent on this as their only access to get to town. School buses struggle to use this road on a daily basis and there are many vehicles that use it to access the national forest on a recreational basis. As a safety issue it's difficult for emergency vehicles like ambulances to get through or fire fighting equipment. We need to protect this area as a primary watershed.

The County road maintenance people come in every year to repair and maintain the road, only to have it wash out by the next flash flood. Solutions have been discussed but never come to be implemented. We've been working with James Lujan, Director of Growth Management, and Carolyn Glick, assistant County Attorney to arrive at a solution. Currently, there is talk of a plan but there is an injunction to work with the Garcia family for their portion of the road, where, unfortunately, there is little willingness on their part to really let the County do anything other than just blade it. We all understand the Garcias who have lived there a long time would like to remain the same; there are many more people who are dependent on that access besides them.

I would also like to point out that on April 27, 1999 there was an agreement from the BCC

to maintain our road to the national forest boundary an additional half-mile beyond the arroyo which was never acted upon and for which a right-of-way had been established. I want to thank the people at County road maintenance and the County Legal Department for their efforts on our behalf, but in order to really arrive at a solution that both works and can be implemented I want to ask this Board of Commissioner to help us after all these years to make it finally happen.

In closing, there are two steps we would be eager to witness. First we need sufficient material brought in so that graders have something to work with so as to grade the road before the summer monsoons, and secondly to expedite an unfettered engineering plan to solve the problems in the long term. Thank you for your consideration.

CHAIR VIGIL: Thank you, Mr. Smith. And before we go further, on the agenda today, and I'll have James address this, under the Consent Calendar we have a resolution that is with the Department of Transportation for expenditures for County Road 67. James, is this the same road that we're getting testimony on? It's a different road. Because Mr. Smith referenced 67-A. Are those separate roads?

JAMES LUJAN (Growth Management Director): Madam Chair, members of the Commission, it is a separate roadway.

CHAIR VIGIL: Okay. Thank you very much. Thank you, Madam Chair. Next presenter. Please state your name.

SENTA HOGE: Good morning, Chairman Vigil. My name is Senta Hoge. I reside on my own property on Tree House Road, 46, Santa Fe County, New Mexico. I have owned the property since 1976 and have lived there for 26 years. My residence is located to the north and east of George Garcia's property. I use County Road 67-A, also known as Cañada Village Road, to access my residence. I travel across the portion of the road that crosses Mr. Garcia's road and it provides the only access to my residence and to my summer camp for children.

For over 20 years I have leased part of my property to the Santa Fe Tree House Camp, which is a summer day camp for our community's children. I also lease part of my property to the Santa Fe Mountain Center which uses the property for members of the public, also use the road to access the Santa Fe Tree House Camp and the Santa Fe Mountain Center. Occasionally school buses travel over the road to take children from school groups in the Santa Fe area to day programs at the Tree House Camp. I need your help and the children need your help to make sure that the children and their parents can come to the camp. Thank you for all your help, and Senta Hoge is my name.

CHAIR VIGIL: Thank you, Ms. Hoge. Appreciate it. Next. Please state your name and address for the record.

DIANE OLDENBERG: Madam Chair and Commissioners, thank you for being available for our comments. My name is Diane Oldenberg. I live at 18 Cougar Ridge Road and I too am concerned about County Road 67-A. Our perspective in our community is that it truly is a County road. It's the only way we can access our homes. It's the only route for our children to get to school and for our seniors and others who need emergency assistance. It's also the only way the Santa Fe National Forest has road access into that area, the Pecos Ranger district, which is adjacent to the critical watershed.

So we really need your help on this critical public road. You've heard the road is often in

terrible shape and is frequently barely passable in this stretch through the Garcias. So with the 50 families and more coming that live beyond the road it is critical access for affordable recreation, for affordable living and for the children to come and go to the camp. Delivery vehicles, construction vehicles, also struggle to get through, so we need your help now. This has been a section of the road that has had long-standing concern. We need your help to support James Lujan, the new director of Growth Management and overseeing public works and roads, because we've got three to six months for yet another study. We'll have a river not a road running through there and we won't be able to get emergency vehicles through. So we really need your help to expedite the engineering study, assure that sufficient materials come through, and that this is done in a timely fashion before the summer monsoons. Thank you so much for your consideration of our request.

CHAIR VIGIL: Thank you, Ms. Oldenberg. Is there anyone else that wanted to address the Commission on County Road 67-A. Seeing none – Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, thank you. James, I have a couple of questions for you. Is this when you're going down Cañada de los Alamos after you get off the pavement? When you get down in the arroyo, it starts from the pavement part? Is that – that's not County road?

MR. LUJAN: Madam Chair, Commissioner Anaya, that is correct. It's right after the pavement ends and you go in approximately .2 mile before you start climbing the hill.

COMMISSIONER ANAYA: Oh, before you climb the hill.

MR. LUJAN: Yes. It's where the water continuously runs.

COMMISSIONER ANAYA: So they're asking to upgrade.

MR. LUJAN: There's a couple of issues here and I'll let Carolyn Glick speak to the legal portion of that. In fact I think we ought to start with that if that's okay to start with.

CHAIR VIGIL: If you think that will set the framework for our discussion.

MR. LUJAN: I think it will.

CHAIR VIGIL: Carolyn Glick, would you please come forward and address the legal issues.

MR. LUJAN: And then we'll let you know where we're at in Public Works trying to get the project started.

CHAIR VIGIL: Okay.

CAROLYN GLICK (Assistant County Attorney): Madam Chair and Commissioners, there are some legal issues regarding ownership of the road. The particular portion of the road that is in issue is a portion of the road that goes through a Mr. George Garcia's property. And while the road is labeled a County road, that does not necessarily mean that it's a public road. So the issue that is in question is whether it is in fact a public or whether it is a private road.

CHAIR VIGIL: Thank you, Carolyn. Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, James, so I guess what we need to do is find out first if we can – if you all need to be going through there or you can gate it off, and then you guys need to find a new place to live. What's the next step? Just find out if it's a private road or public road?

CHAIR VIGIL: It seems clear to me that through the testimony that because it is

even partially owned by a Mr. Garcia that it's questionable whether or not it is a public County road. Is that how the issue is being addressed today, Mr. Lujan? And you have more experience with this road.

MR. LUJAN: Madam Chair, Commissioners, all I'm aware of is that it's been open since 1988 and the County's been maintaining it. This question has arisen. I guess of course – I don't know how far we've got to go on this, but we're waiting to make a decision to work with the Garcias on it. Currently, as of yesterday, I'm looking for an engineering study to correct that portion of the road because it is a large body of water that's continuously running. From a maintenance standpoint we need to build a road and build a canal to keep the water running. And I guess that's the next step we're working with them on. And Robert may have a little bit knowledge on that issue.

COMMISSIONER ANAYA: Madam Chair.

CHAIR VIGIL: Go ahead.

COMMISSIONER ANAYA: Do we need to purchase the property from the Garcias?

ROBERT MARTINEZ (Deputy Public Works Director): Madam Chair, Commissioners, let me back up and give you a little bit of history. The road has been on our inventory since at least 1988 for maintenance. We have been maintaining it. The issue is the drainage. Prior to the holidays the Garcias threatened to close the road. That's when the County filed a restraining order. We went to court for the restraining order, met with Judge Hall, and Judge Hall directed or asked the Garcias if they would stop their intent of closing the road if the County worked with the Garcias. That's basically what happened and the County agreed to work with the Garcias.

I don't believe it's an issue that a prescriptive easement would not be declared for this road. The issue is that we need more than the width that would come with the prescriptive easement to accommodate the design that would handle the road and the drainage. So currently, what we're doing is we're getting quotes to get someone who designed the roadway through that section of the Garcia property that will separate the road from the drainage. I think we're probably about two weeks away from issuing a purchase order for that.

I'm sorry, Commissioner Anaya, your question was about purchasing the right-of-way. What we've already done is we've already done an appraisal on the property that goes through the Garcia property. We've already done a survey to accommodate a 30-foot right-of-way. So we're trying to move along with the design to see what we can build within that 30-foot right-of-way. Also part of this would be meeting with the Garcias and purchasing additional right-of-way to accommodate this design. So we are working on it.

COMMISSIONER ANAYA: Thank you, Madam Chair.

CHAIR VIGIL: Thank you. Any further questions? I actually have some. It's not real clear. It's listed in our inventory. Does that make it a County public work. It's listed in our inventory for maintenance. It is arguable that it is County. Has there ever been a dedication of that road to the County?

MR. MARTINEZ: Madam Chair, it is in our inventory. We do maintain it. I believe from Public Works' standpoint it is a public road because it shows up on our inventory. The issue is that the Garcias, every time we try to maintain the road, they use the claim that it hasn't been

granted to the County. We do not have a formal dedication that grants an easement for this property to the County. I think basically we're maintaining it based on prescriptive right.

CHAIR VIGIL: Okay. And am I hearing you say that the County requires more easement than what the Garcias have available?

MR. MARTINEZ: Madam Chair, right now the area for the roadway is fenced off approximately 30 feet from fence to fence. So we have that 30 feet surveyed because we feel that that 30 feet would accommodate a design that would separate the roadway from the drainage. Now, prescriptive easement is basically edge of road to edge of road, so I believe that if we did go to court and a prescriptive easement would be ruled, edge of road to edge of road would not accommodate the design for paving or road improvement and drainage.

CHAIR VIGIL: So are you saying that we are going to need more easement?

MR. MARTINEZ: Madam Chair, what I'm saying is the 30 feet that we've surveyed would be sufficient.

CHAIR VIGIL: Okay. Very well. Any further questions? Are you working with this community to fulfill the requests that they've testified to today?

MR. MARTINEZ: Madam Chair, I've been working with these residents for about eight years now, not only for this issue but also when the Board adopted a resolution extending the Cañada Village Road through beyond the County's maintained portion right now.

CHAIR VIGIL: Okay. Thank you, Robert. Thank you, James. Thank you, members of the 67-A Coalition. I hope that this has assisted you and that we can move forward with your request. Anyone else that wants to address the Commission?

AMBER HASKELL: Good morning, Madam Chair. My name is Amber Haskell, and my address is 77 Camino San Cristobal. I'm a resident of the Galisteo community and a constituent of Commissioner Anaya. We're handing out a copy of the presentation that I'm going to give you this morning with background information for your review. *[Exhibit 1]*

Madam Chair and honorable members of the Santa Fe County Board of Commissioners. We are here today on a matter of public interest, the paving of County Road 42. We represent concerned citizens who live along County Road 42 as well as the Galisteo Community Association Roads Committee and Planning Committee. I'd like to ask any of those members to please raise their hands for the Commissioners *[Approximately 12 members of the audience raised their hands.]*

CHAIR VIGIL: Thank you all for being here.

MS. HASKELL: Thank you. We have interviewed community member who are most impacted by changes to County Road 42. A minority would prefer no changes or paving at all to this road. However, the broader consensus is that the road should be paved, but without major regrading and most importantly, should remain rural in character. We feel that our concerns have not been heard by Public Works and there is now great urgency as the project may start very soon. We believe that the County Commissioners were voted into office to serve their constituents and once again we would like to appeal to you that we be heard.

The portions of County Road 42 that were previously paved have the following problems: no stormwater management design except minimal and ineffective rip-rap; they promised a reseeded that was not done, which is a violation of federal regulations requiring stabilization of soil on any public project that disturbs more than one acre; every new culvert installed with this

pavement led to severe erosion on adjacent private land, undermining of pavement and sediment deposited on County Road 42 that creates hazardous driving conditions.

Public Works has used the fear of lawsuits as an excuse to reject citizen requests for context sensitive design. We understand that avoiding lawsuits is a concern for the County, but ask the Commission to realize that the County is more at risk for liability for causing an eight-foot deep, 100-yard long gully on private property than for following current context sensitive design standards. The County is also at risk of federal penalties by Mr. Lujan's statement at a previous meeting, which is in the timeline, that though he admits reseeding is federally required, that he will put it in the contract but won't have any money for it. We have attempted to address these legal issues but DPW is not listening.

On April 5<sup>th</sup> we met with Santa Fe County lawyer Steve Reed [sic] who tried to present expert legal information showing that context sensitive design practices of federal and state agencies have not put them at any more legal risk than conventional design. Reed admitted that he had never been briefed before that meeting regarding County Road 42 on context sensitive design liability issues.

CHAIR VIGIL: Are you referring to Steve Ross?

MS. HASKELL: Mr. Ross. Pardon me, I apologize, Mr. Ross. Background information that was sent to Public Works for Mr. Ross at Commissioner Anaya's request had never been forwarded by DPW. Mr. Ross was blindsided and unable to give an opinion based on facts. We have excellent, reliable evidence from both US and New Mexico law proving that the use of context sensitive design does not make the design engineer, County or County contractors any more liable than the old-fashioned design for paving that DPW insists on.

At this April 5<sup>th</sup> meeting with Public Works and Mr. Ross, we were told that only 250 cars per day use County Road 42. Per Santa Fe County Extraterritorial Zoning Regulations, this small number of cars constitute a local lane with a design speed of 10 miles per hour. We have heard over and over again the Public Works representatives refer to County Road 42 as a collector, which indicates future anticipated number of car trips to rise as far as 2,000 per day. County Road 42 is absolutely unsuitable to become a thoroughfare. Despite community concern about this obvious fact, DPW has stated that they would prefer to see speeds comparable to those on New Mexico 14 for County Road 42.

Without consulting the community, DPW instructed their contractor, Miller Engineering, to produce a design for 30 miles per hour speeds on County Road 42. DPW admits that this speed cannot be enforced by the Sheriff and that drivers will speed, therefore to have the nature of the road itself deter speeding would be in all of our interests. However, by delaying public input until Miller's design were 90 percent complete – please refer to your timeline for that – DPW has pushed through their preconceived design and is now saying they cannot make changes because there are no funds to pay Miller. This is in our opinion just one more excuse to avoid listening to the voting public while wastefully using public money on an overbuilt design.

For over one year we've been speaking with the County regarding this paving project and asking that our suggestions be addressed. We're respectfully asking today to be included on the agenda for the regular Board of County Commissioners to be held on May 8<sup>th</sup>. We would like to make a thorough presentation of the items we briefly touched on today, and at that time request the

County to allocate the funds to include our suggestions in the paving design of County Road 42. We urge the Commissioners to consider our request and truly work in harmony with the residents for the future of the beautiful Galisteo Basin.

And again, I just want to clarify that our purpose of today is that we are specifically asking to be included on the May 8<sup>th</sup> agenda. And I thank you for allowing us to take the time.

CHAIR VIGIL: Thank you, Ms. Haskell. Anyone else wanting to address the Commission on this? Comments? Response from some of the Commissioners?

COMMISSIONER ANAYA: Madam Chair.

CHAIR VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: Yes, I've been involved with County Road 42 projects since I was on the Road Advisory Committee about eight, nine years ago. I believe that the citizens of the area are concerned about the pictures and I too am concerned about the pictures that they have before us. But I believe that the engineer has addressed these concerns and I would be happy if you all want to be on the May 8<sup>th</sup> agenda. I won't be here on that date. If you'd like to change it so that I could be, it would probably be good.

But we have and we are working with the community to try to address the issues that you brought forward and we're working with the engineer and our attorney. So I want to thank you all for coming forward and I would only ask that you maybe postpone the 8<sup>th</sup> and move it to another day where I could be here to listen to some more concerns.

MS. HASKELL: Thank you, Commissioner Anaya. Would you have a recommendation on that date, based on your schedule or on an upcoming meeting? Is there a place that we should refer to? An assistant?

COMMISSIONER ANAYA: Why don't you get with Jennifer Jaramillo and she can advise you on what date would be a good day.

MS. HASKELL: Okay. Thank you.

COMMISSIONER ANAYA: Thank you.

AMY TREMPER: I'm Amy Tremper, Galisteo, New Mexico. The only question was that Jennifer had said that on May 15<sup>th</sup> DPW was submitting their project plans, so we were just concerned about the date, to be sure that we were in the right timeframe, based on Jennifer's comments.

COMMISSIONER ANAYA: You're more than welcome to come to the Commission on the 8<sup>th</sup> but I'm not going to be here.

MS. TREMPER: Will anything be finished or formalized on the 15<sup>th</sup> that will prevent us being able to make a good presentation that gives us a chance for some revision?

CHAIR VIGIL: Ms. Tremper, I see Mr. Lujan behind you. Are you wanting to address this particular issue?

MR. LUJAN: Madam Chair, Commissioners, a lot of the information has been displaced wrong. We are submitting for the GRIP project. Our request for the GRIP monies have to be in to the DOT. No decision will be made on the 15<sup>th</sup> by DOT. We have to have our requests in by the 15<sup>th</sup> and this is one of the roads. It's just the request for the money. Nothing's final.

COMMISSIONER ANAYA: Madam Chair.

CHAIR VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: I know that we have our Road Advisory Committee that's in place and I would maybe suggest the community go to the Road Advisory Committee first so that they can listen to the concerns and maybe the Road Advisory Committee can come to us along with the community, if that's a possibility. I would recommend that. That's why we have that Road Advisory Committee in place.

CHAIR VIGIL: Okay. I see Robert Martinez wanting to address that issue.

MR. MARTINEZ: Madam Chair, Commissioner Anaya, the Road Advisory Committee has looked at County Road 42 for the last 12 years. That is why it's at this stage. The Road Advisory Committee does not get involved in the actual design of the road; they're not engineers. Their purpose is to plan road improvements for certain roads within communities. So to send them to the Road Advisory Committee to discuss engineering designs would not be practical.

COMMISSIONER ANAYA: Okay, so then somehow we need to address the issues, and I believe that our engineer has addressed these issues but it still is not good enough for the community. And I know that there's got to be somewhere where we can meet half-way in trying to address these.

MR. MARTINEZ: Madam Chair, Commissioner Anaya, the pictures that you're showing were on the phase of County Road 42 that's on the Cerrillos side. We agree that there was no erosion control factored into that project. With this project that we've got going now for the paving of the five miles of 42 we have told the residents whether it's culverts or any other type of drainage structure that there will be erosion control, wire-enclosed rip-rap. So that would not occur on this section of roadway.

COMMISSIONER ANAYA: And then, Mr. Martinez, I would like to address these two.

MR. MARTINEZ: Madam Chair, Commissioner Anaya, we have discussed on the staff level that we need to schedule to remedy those conditions in maintenance, not with this project.

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

CHAIR VIGIL: Okay. And Robert, also in our packets we have quite a few public meetings that were held. Can you give us the history on that?

MR. MARTINEZ: Madam Chair, Commissioners, we've had several community meetings regarding the paving of County Road 42. Like I stated earlier, we started this process over 12 years ago when residents did actually come to the Road Advisory Committee meetings requesting that County Road 42 be paved. Now in those meetings no design is discussed. It's just planning of roads in the communities that the communities want improved. So that's how this project was initiated from the community itself. But just recently within the last year or so we've had several public meetings. We've had at least one in the town of Cerrillos. We've had at least two in the Village of Galisteo to discuss the paving of County Road 42.

CHAIR VIGIL: Okay. And Robert, the request from the residents today is that they be placed on the May 8<sup>th</sup> Board of County Commission, understanding that they may have the option of rescheduling that. However, is it your understanding that that request is because you're going to be coming forward with a recommendation on May 8<sup>th</sup> or any kind of –

MR. MARTINEZ: Madam Chair, no. We are not in any position to start this project May 8<sup>th</sup> or any sooner than that. We are applying, as James Lujan stated earlier, whether

it's the 35 mile hour design, with culverts, or any other type of design that the community is requesting, we still need that funding.

CHAIR VIGIL: Okay. To narrow the issue, there's a difference in request between culverts and low water crossings?

MR. MARTINEZ: Madam Chair, that is correct.

CHAIR VIGIL: And the engineer that has presented a preliminary design is recommending what here?

MR. MARTINEZ: Madam Chair, this is final design, not preliminary design.

CHAIR VIGIL: Okay. He's recommending –

MR. MARTINEZ: We can have the engineer address your question.

CHAIR VIGIL: Okay. Would you please state your name and address for the record and as best summarize your recommendations.

BERLYN MILLER: Yes, Madam Chair. My name is Berlyn Miller. I'm the president of Miller Engineering Consultants, and we're the engineer of record for this project, for County Road 42 for the County. Basically, in a nutshell, this green book, which we call the AASHTO greenbook, is kind of our bible for geometric design of roadways. We strictly adhere to this design criteria in the design of roadway projects, and that's pretty consistent with most engineering consultants. On this project a design speed of 30 miles per hour was selected and the design elements in this project right now adhere to that design speed with the vertical geometry.

Changing from a culvert in these low points to a low-water crossing would change the vertical geometry of the roadway and thus deviate from the rate of curvature specified in the greenbook. So that is our concern as an engineering consultant and there is some issues concerning liability that we're concerned about.

CHAIR VIGIL: Okay. Thank you very much. Anything further from the Commission? It seems to me like the request is to come forward again and perhaps not at the May 8<sup>th</sup> meeting but at a future meeting, and at that point in time we can discuss this further. It seems to me like what the County is actually doing is going through its own internal procedures in identifying what is in the best interest, what we are exposed to liability-wise, but the community wants to be able to address this from their perspective. So I do not see a problem in considering this at a future meeting if that is what your request is and that's how we'll move forward.

MS. TREMPER: That is what we're requesting. We'll be able to give you much more documentation presented by people that have a lot more experience than myself. You've met Kim Sorbig and he is on the group that is concerned about the paving, and he would be able to present that day and talk about some of the legal issues. We understand the 30 miles per hour design and what we were told at our last meeting on April 5<sup>th</sup> with Mr. Ross was that the County could no longer look at our suggestions because the design that they asked Miller to do was just for the 30 mile per hour. So they needed more money to look at including our suggestions and so that's what we'd like to pursue or discuss with you.

CHAIR VIGIL: Okay. Unless there's any objection, I think you can as Commissioner Anaya directed, work with constituent services' Jennifer Jaramillo and reschedule the meeting. Sir, I'll give you a minute. Can you address this within a minute?

RYAN HEPPE: I'm Ryan Heppe. I'm the planning board representative for area

10, Madam Chair and Commissioners. I'd just like to bring up, like the fellow sitting back there with me, he's been traveling that road for 50 years. Now, I respect the people who live in Galisteo and along the road and their wishes, but the Area 10, Madrid, Cerrillos, everybody over in Area 10 comes to the sanitation/refuse over that road. Also, a lot of people work down in Moriarty and so forth, they travel it every day back and forth, and myself, we have traveled it for the last 25 years, and I've talked to several – the Fire Chief and the fire departments over on Cerrillos side, Madrid side, and emergency vehicles and so forth. If it was no culverts there they're going to have to maintain to get through – the County is, to maintain, get the mud and gravel off of it, off of the low-water crossings. Also, with the ambulance service and the fire department and so forth, as of right now, if they happen to have an accident and the ambulance arrives – say a person with a fractured back or something – to go over those rocks is only going to make it worse right now. And I'm trying to represent all the people in District 10 that uses that road.

As I said before, I respect these people's wishes, the residents along the road and it has filled up mighty fast in 25 years. That's all.

CHAIR VIGIL: Mr. Heppe, before you leave, for purposes of the record, are there other people who represent your position here. Please raise your hands. [Approximately four people raised their hands.] Okay. So there are people on both sides of the issue here.

MR. HEPPE: A lot of people that had to work today contacted me, in fact about the meeting and people that I contacted and they said we have to work. We can't do it. So I'm more or less the mouthpiece for them, I guess.

CHAIR VIGIL: Okay. Thank you very much, Mr. Heppe. Mr. Lujan, any closing remarks?

MR. LUJAN: Just one closing issue. What we did express, these people's concerns, the design has already been finalized. To change the design would be more expensive and that's what I told them. Right now we do not have the money to get it redesigned. That's what I stated to them. So I told them it would be up to the Commission. If they choose to have us redesign, which we'll look at at another date when we have our meeting with them.

CHAIR VIGIL: Okay. And I sort of have given the direction that we could comply with the community's request but if there's anyone else who has a differing position please feel free to state it. Please work with constituent services, bring forth further testimony if you think we'd like to benefit from it, and thank you all for being here to represent your community's best interest.

We are still under Matters of Public Concern. Is there anyone else that would like to address the Commission?

## **IX. MATTERS FROM THE COMMISSION**

### **C. JPA Between Santa Fe County and the Town of Edgewood to Financially Assist the Town to Expand the Waste Water Collection System to Serve Certain Santa Fe County Owned Facilities (Commissioner Anaya)**

COMMISSIONER ANAYA: Madam Chair, as you know, the Town of Edgewood approached myself and the Commission several years ago to try to help fund a portion

of the wastewater treatment facility that they are now putting in. I was through there on Saturday and Sunday and you can see a lot of construction going on. There's construction of a new Walmart and they're widening the roads and they're installing the wastewater treatment system. So basically, Madam Chair, this is to help fund that and eventually, some day that the County – we're working on building a fire station there and working on getting satellite offices there. Eventually we would possibly do some stuff in the Town of Edgewood to help better serve our constituents in that area. So if there's any other questions or comments.

COMMISSIONER MONTOYA: Madam Chair.

CHAIR VIGIL: Commissioner Montoya.

COMMISSIONER MONTOYA: Commissioner Anaya, you're requesting \$440,000 to be contributed toward the expenditures of phase 2 and 3. Is that a one-time, or is this going to be an ongoing expenditure?

COMMISSIONER ANAYA: Madam Chair, Commissioner Montoya, that's just a one-time.

COMMISSIONER MONTOYA: And it says at the end of that sentence that for phase 2 and 3 improvements to be jointly owned. How are we going to jointly own this system with the Town of Edgewood?

COMMISSIONER ANAYA: Madam Chair, Commissioner Montoya, I will pass that question on to our Attorney. They're the ones that wrote the document to answer that question.

MR. ROSS: Madam Chair, Commissioner Montoya, the ownership interest will be proportional to the contributions of the County versus the City of phases 2 and 3.

COMMISSIONER MONTOYA: And then a technical committee of four persons is going to be creating, each party having two representatives. Who would those people be?

MR. ROSS: Madam Chair, Commissioner Montoya, those people would be persons identified probably by the City Manager and the County Manager.

COMMISSIONER MONTOYA: So they're not necessarily going to be staff?

MR. ROSS: They could be staff.

COMMISSIONER MONTOYA: They could be staff?

MR. ROSS: Probably it would be a good idea if they were staff.

COMMISSIONER MONTOYA: Yes, I was going to suggest that probably Dr. Wust would add this to his list of to-do items. And then as I understand this, in terms of any other operation and maintenance of the system, we have no responsibility at all to that.

MR. ROSS: That's correct.

COMMISSIONER MONTOYA: And then Dr. Wust, how does this fit into our overall plans for what is it that we're doing in terms of setting up water and wastewater systems? Is that part of your job?

STEPHEN WUST (Water Resource Director): Madam Chair, Commissioner Montoya, it's in the overall structural framework of water and wastewater plans for the County, that is that it's preferable to have people on regional systems, but it's not going to be part of the County's utilities. So in terms of day-to-day or our operational framework for the County, we'll probably have, except for this oversight group, we'll probably have very little involvement. We're planning our own regional wastewater treatment plants at the same time. We're improving Valle

Vista to make it a regional plant, and those would be the concentration of the County utility. But the policy framework that the Commission has generally expressed and that is it's generally to have people on regional systems than all off on individual septic tanks. It fits into that.

COMMISSIONER MONTOYA: Okay. And then a question, I guess, either for Jeff or the mayor, in terms of other funding sources, what other funding sources do you have that are going to contribute to this, and kind of what is the overall cost?

JEFF CONDREY: Madam Chair, Commissioner Montoya, there's about five different funding sources that are included in the project. I think we have a section that addresses that in the JPA, in Section 3, 3.1, there's funds from the United States Environmental Protection Agency, through a STAG grant, we have legislative appropriations, there's funds, hopefully provided by Santa Fe County if you approve this JPA today, the town reserve funds and then of course future loan proceeds from a Clean Water revolving loan fund that's administered by the Environment Department. The total project cost right now is about \$7,150,000. That does not include phases 3, but just to do phase 1 and 2 it's about that cost.

COMMISSIONER MONTOYA: About \$7 million.

MR. CONDREY: So this is a relatively small but very important component of the overall project, because we have to demonstrate to the Environment Department that we have all the funding components in place before we can get the remaining \$3 million loan that we've tentatively been authorized.

This is the first sewer system, by the way, for the Town of Edgewood. Everybody else in the entire town septic systems except for a few package plants. So for those that are concerned about water quality and so forth it's a very important project.

COMMISSIONER MONTOYA: So out of that \$7 million, how close are you to that, based on all of those funding sources?

MR. CONDREY: We already have a little over \$2.5 million under contract. The remaining portion is on hand with the town reserve funds. The two missing components would be this contribution and then the loan from the Environment Department. Otherwise, everything else is in place.

COMMISSIONER SULLIVAN: Okay. And that loan, you said was going to be about \$3 million?

MR. CONDREY: Right. The Town Council has authorized a loan not to exceed \$3 million. We might want to – we're working with our financial advisor, who's RBC Capital Markets, Paul Cassidy and his group, we may want to expand that loan amount request to include the components that we're talking about in this agreement if that becomes necessary.

COMMISSIONER MONTOYA: Okay. Thank you, Madam Chair. That's all I've got.

CHAIR VIGIL: Okay. Further questions? Commissioner Sullivan.

COMMISSIONER SULLIVAN: Thank you, Madam Chair. Just to clarify on the funding source, we had, I recall, a capital improvements meeting a month or two ago when we made some decisions on where our capital funds would go, and I recall that part of that decision process was \$400,000 for this project that Commissioner Anaya had advocated for. And I agree as well; it's a real need. But where did the \$40,000 get added to it? Did that come from the same

GRT?

MR. ABEYTA: Madam Chair, Commissioner Sullivan, I don't know where the \$40,000 is coming from. I recall \$400,000, but maybe Steve Ross or somebody who worked on the agreement will know where the \$40,000 –

COMMISSIONER SULLIVAN: I bet the chairwoman contributed it.

CHAIR VIGIL: No, I didn't. I wouldn't have minded if I had it, but I didn't. I think when we made the motion it was \$400,000 and some. Is this the equitable distribution between districts? Does Finance know?

COMMISSIONER SULLIVAN: I think we were actually over when we made the motion. We were over and we kind of rounded up and we rounded high, and we were over what was being projected by the staff.

TERESA MARTINEZ (Finance Director): Madam Chair, when the motion was made, it was to fund the first five, six priorities that the staff had selected criteria for, based on the point system, and then the remainder was to be equitably distributed to the Commissioners.

CHAIR VIGIL: Right.

MS. MARTINEZ: So I was under the impression that it was \$400,000, and \$100,000 of that, both Commissioner Anaya and Commissioner Vigil would help the Cañoncito, and that was the original intent. So I'm also needing to go back and research that \$40,000.

CHAIR VIGIL: Okay.

COMMISSIONER SULLIVAN: That's what I recall is that we dealt with a total of \$2.5 million and then Commissioner Anaya and Commissioner Vigil put \$100,000 from their funds into Cañoncito. I put all of mine into Cañoncito to come up with a total of \$1.2 million there. So if we're talking about the same GRT allocation if I'm remembering correctly.

MS. MARTINEZ: My recollection is \$400,000.

COMMISSIONER SULLIVAN: All right. So we could probably move forward with this with perhaps that clarification. Is that – I don't want to nickel and dime over \$40,000 here but I'm just not sure where the \$40,000 would come from if we haven't allocated it.

MR. ABEYTA: Madam Chair, Commissioner Sullivan, I would recommend \$400,000 because I don't know where the \$40,000 would come from either.

COMMISSIONER SULLIVAN: Okay. They can use all the money that we can provide and it's just I want to be sure we can provide what we say we can provide. That's all.

The other question I had –

CHAIR VIGIL: Teresa, I have a question for you. Does this money have to be encumbered before the end of this fiscal year for the projects? Is it project specific or not?

MS. MARTINEZ: Madam Chair, Commissioners, it would be wise to encumber it before the end of the year since it is being authorized this fiscal year. I don't know how far the project is. We can work with the Town of Edgewood to move in that direction if we can, or we probably have to re-establish budget authority if it's too early in the project next fiscal year.

CHAIR VIGIL: Okay. So this is earmarking his portion of that water project allocation towards this project.

CHAIR VIGIL: Okay. Thank you. Commissioner Sullivan.

COMMISSIONER SULLIVAN: I just wanted to be sure that we had the

approval of the authority to move forward with this, that we had established that that capital improvements meeting, because we discussed this project at great length and Commissioner Anaya was a strong advocate and voice for this project, so we want to see it move forward. We also want to be sure we don't cause problems downstairs at the Finance Department.

The other question that I had was on paragraph 8 of the agreement, page 6. And at the beginning it says that the town, on paragraph 8.1, shall bear all the costs of day-to-day operation of the system. And then continues on what that includes. Then as you go into paragraph 8.2 it says Any routine maintenance and capital expenditure related to the improvements described herein shall be discussed by the technical committee prior to making the expenditure, which shall provide a recommendation to the parties hereto concerned the proposed repair or capital expenditure.

Let me just jump back up to the beginning of paragraph 8.2 where it says The parties hereto shall jointly bear the expense of capital expenditure and routine maintenance of the jointly owned phase. And then it goes on to say If the technical committee recommends making the expenditure the town shall make the maintenance or capital improvement but may seek reimbursement from the County for the County's share of the cost, based on the County's ownership interest. So I'm reading that we might have – it doesn't say shall, but says may seek reimbursements, that we might have an obligation beyond the \$400,000 as a result of additional maintenance or capital expenditures related to our portion. And then also the last sentence in that paragraph says If the maintenance or capital expenditure is not approved by the technical committee, the County may contribute to those costs but shall not be obligated to do so. And it also mentioned that any cost in excess of \$100,000 shall be approved in advance by the Board of County Commissioners.

So I'm concerned if there's an expenditure, let's say, of \$75,000, and related to this phase that the County is participating in on a pro rata basis, that comes to the staff. What does the staff do with it? Do they approve it? Do they turn it down? Do they bring it to the County Commission? It's under \$100,000. It says they may seek reimbursement. I guess that doesn't obligate the County to reimburse it, but Mr. Ross, what's the thinking on the drafting on this?

MR. ROSS: Madam Chair, Commissioner Sullivan, I'm actually looking at 8.2 and we've developed kind of a form agreement that we're using for all these kinds of things. This deviates from that in kind of a significant way in that this does talk about routine maintenance which I think is a difference between this agreement and the form agreement that we've been working from. When I worked up the first form agreement it said that the County was responsible for capital expenditures of the jointly owned infrastructure, so this is a little bit more – and you're right. There will be two elements of additional cost that the County would have to bear if this agreement in this form were enacted.

Number one, capital expenditures, i.e., if a piece of pipe needs to be replaced. The County would have to contribute to that proportionately to the County's original contribution to the cost of laying the pipe, and two, routine maintenance. So whatever types of routine maintenance might be required to a pipe or valve system or what have you, the County would have to contribute proportionately to those routine costs. And of course, the difference between those types of costs are capital costs are those costs that can be depreciated; routine maintenance are those that can't.

So generally, capital costs are those types of costs that can be depreciated over multiple

years and maintenance has to be those types of costs that are generally subsumed within a year's budget. So I don't know what the thinking is in this paragraph but there are basically two elements of additional costs that the County would have to make.

COMMISSIONER SULLIVAN: Also capital costs are things that we can put on our priority list for the legislative actions and if there were a problem in Edgewood we could go to the legislature and say we need \$100,000 to assist with this malfunctioning piece of this plant that we have a pro rata interest in, the town having to contribute some other amount of money toward that same issue. Maintenance costs are operational types of costs where funding is much harder to find. It's non-existent. Is there a way to get this – so we don't delay this, is there a way to get this paragraph 8 consistent with our boilerplate that would still, Mr. Ross, enable us to move forward with it today?

MR. ROSS: Well, Madam Chair, Commissioner Sullivan, you'd have to delete a few words. In the first line, probably the word "both" and the word "and", the last word in the sentence. "Routine maintenance" on the next line, and essentially make that same change throughout the paragraph.

COMMISSIONER SULLIVAN: So if we were to make the motion could we simply say with amendments to paragraph 8 deleting the term "routine maintenance" and other references thereto?

MR. ROSS: Correct. There is another typographical error in the agreement if we're talking about the technical issues in the agreement that Ms. Hermann can describe, there's a word that needs to be changed.

SUE HERMANN (Assistant County Attorney): Madam Chair, members of the Commission, we did make a couple of changes to split out 8.2 into two paragraphs and to clarify that any changes that the technical committee would make a recommendation to in the initial instance to the town council, and the town council would determine whether or not what improvements or what expenditures needed to be made for the system and the County would only be responsible for its proportional share of the improvements. So if, let's just say for an example that the town council had put \$2 million into it and we had put \$400,000 into it, we would only be responsible for that proportional share of the capital expenditures.

The other small change that we made was in 12.5, and that is in the unlikely event that this agreement would ever be terminated, the County would be reimbursed based on the appraised value of the improvements at the time of the termination. The basis for that is in the event that in 25 or 50 years we should somehow determine at that point in time that this agreement should be terminated, the value of those improvements will of course be different than they will on day one. And we would change the agreement to reflect that. That was at the request of the town's counsel.

But with the agreement of Mr. Condrey, I can make the other changes to delete "routine maintenance".

CHAIR VIGIL: Clarification. So based on the appraised value, that's language that isn't in our copy?

MS. HERMANN: It is not. It was based on the contribution. We would just get the \$400,000 back, and that could have drawn an objection from Mr. Henderson, the counsel from the Town of Edgewood, who thought that if this was terminated in 50 years that those improvements

may not be \$400,000 at that point in time.

CHAIR VIGIL: Just needed clarification. Thank you, Ms. Hermann. Commissioner Sullivan, further questions?

COMMISSIONER SULLIVAN: No, I think paragraph 8 is the one I'm concerned we have right and I don't know if, Madam Chair, if you want to ask them to redraft that and we can bring it up right after lunch and be sure we've got the right language or if staff feels comfortable enough. I'd like to move forward with this today, whatever way, but I also want to be sure that we have this issue of operation and maintenance very clearly delineated.

CHAIR VIGIL: Mr. Ross, would you like to respond to that?

MR. ROSS: Well, Madam Chair, I think I've identified all the changes. If you want to eliminate the County's responsibility for routine maintenance, i.e., non-capital expenditures, I think I've identified all the changes that would need to be made. I think I would recommend the following, and I'd just go through them if you'd like.

In the first line, 8.1, where it says what the town is obligated to do, I think I would say The Town shall bear all the costs of the day-to-day operation and maintenance of the system, and the words "and maintenance" would be new words. And then the remaining text in that paragraph would remain unchanged. And then in 8.2, like I said in the first line, you'd eliminate the word "both" and the word "and" and in the second line, eliminate the words "routine maintenance", and in the third line, the word "routine" and in the fourth line "maintenance and" and in the eighth line, eliminate the words "maintenance or" and in the ninth line, the words "maintenance or" and in the 12<sup>th</sup> line, "maintenance or".

And I think that cleans it up so that it's strictly capital expenditures that the County would be obligated to contribute to.

COMMISSIONER SULLIVAN: So Madam Chair, that would take care of the issue of maintenance, which I think is a town responsibility. My question would still exist on how does the staff deal with a capital expenditure? Let's say there's a new pipeline needed or something as a part of the facility of the either phase 2 or 3 in the amount of \$75,000. It says the technical committee may seek this reimbursement, which I guess based on the amended language will come through the town, from the town council. Is that correct?

MS. HERMANN: That's correct, Commissioner.

COMMISSIONER SULLIVAN: So is that language still reading in your revised language the way it does here, that they may seek reimbursement? Or is the County committing itself to provide the proportionate share for capital costs relating to phases 2 and 3?

MS. HERMANN: Madam Chair, Commissioner Sullivan, based on the final language, it would still be that the town may seek reimbursement from the County of these expenditures, which would require approval either of the County Commission or County Manager in the event it was less than \$100,000.

COMMISSIONER SULLIVAN: That's still in your revised version.

MS. HERMANN: That's still in my revised version.

COMMISSIONER SULLIVAN: Okay. Does that say once the town council makes that request, is Santa Fe County then obligated to make that payment?

MR. ROSS: Madam Chair, Commissioner Sullivan, yes.

COMMISSIONER SULLIVAN: So it could be “may”, it could be “shall”. That’s irrelevant. It’s upon the town council’s decision that that’s a cost under this agreement, then we are obligated to pay it.

MR. ROSS: Madam Chair, Commissioner Sullivan, if the technical committee agrees that it’s an expense that should be made then the County becomes obligated to contribute, if this language stands.

COMMISSIONER SULLIVAN: Their pro rata portion. Okay. Notwithstanding this “may” that’s in there.

MR. ROSS: Well, if it’s not recommended by the technical committee then we have some choice in the matter. But if it is recommended by the technical committee, then we have no choice; we have to make the contribution.

COMMISSIONER SULLIVAN: Yes. I understand. The last sentence, revised sentence would say If the capital expenditure is not approved by the technical committee the County may contribute to these costs but shall not be obligated to do so. So that takes care of the technical committee doesn’t think it – I understand the procedure now is that there’s still a technical committee, but then what the technical committee recommends will go to the town council. Is that correct?

MS. HERMANN: Madam Chair, Commissioner Sullivan, yes it is.

COMMISSIONER SULLIVAN: Okay. Then once it goes to that step then we’re still back to the situation that if the technical committee recommends it, even though it says “the town shall make the capital improvement but may seek reimbursement from the County” Mr. Ross’ reading of that is at that point the County is committed to making that pro rata expenditure for the plant. Am I right?

MS. HERMANN: Madam Chair, Commissioner Sullivan, that’s correct.

COMMISSIONER SULLIVAN: Okay. Just want to be sure we know what we’re diving into here.

COMMISSIONER MONTOYA: Any suggestion we eliminate that?

COMMISSIONER SULLIVAN: I don’t know. I don’t know if it would be more trouble than it’s worth, quite frankly, to go through that process. I think we want to assist the town if it has capital expenditure needs. I think we want to assist them in lobbying and as a partner. I’m not sure if we’re putting a burden on staff here for capital improvements, say a pump or something like that, that’s going to cost \$30,000 and we have a one-fifth share in it so we need to pay that portion, say 20 percent, so we’d need to pay \$6,000 for the pump. Because this is the first one we’ve gone through this with.

COMMISSIONER MONTOYA: And I guess my feeling is if we’re going to be doing these types of joint ownership things we should be consistent across the board, as opposed to having different standards for different contracts.

COMMISSIONER SULLIVAN: We talked about one that came up a couple months ago from Chimayo. And the same issues were there at that time, so I feel you’re exactly right. They should be consistent.

MR. ROSS: Madam Chair, Commissioners, we’ve drafted these so that you can use bond money in addition to GRT money to pay for these things. These agreements have been

reviewed by and contributed to by our bond counsel. That's the reason for this specific provision, this specific concept. If you own something you have a duty to maintain it. If you don't agree to maintain what you own, there's a chance that the IRS or others could claim that the payment is a pretext and it's not really a joint project but a contribution to somebody else's project. So that's why these kinds of provisions are in there and why they're really important. It's reflective of the fact that we own something.

COMMISSIONER MONTOYA: So on this point then, was this provision included in the final document that we had with Chimayo?

MR. ROSS: Yes.

COMMISSIONER MONTOYA: Okay. So it is consistent.

MR. ROSS: We're trying to be consistent with these. Each group that we deal with has a different set of issues to deal with but we're trying to be consistent with this concept so that, let's say something expensive breaks in this system we can use bond money, since it is a capital expenditure to make the contribution.

CHAIR VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: I was just talking to Commissioner Sullivan and I was bringing up the suggestion that if we own part of it then we'd want to maintain our portion of this. So I'm in agreement with the way it's written. Another thing is we don't want to get over our head in terms of things that are happening in terms of cost but we do want to be able to pay our share. And I don't think that our share, only \$400,000 compared to the \$7 million project, it's going to be a tiny proportion. So that's just my comments. Thank you, Madam Chair.

CHAIR VIGIL: Thank you.

COMMISSIONER SULLIVAN: Madam Chair.

CHAIR VIGIL: Commissioner Sullivan.

COMMISSIONER SULLIVAN: The draft, Mr. Ross, let me make sure that I'm clear on this. The draft, the boilerplate that you had drafted did not have the routine maintenance language, right?

MR. ROSS: Madam Chair, Commissioner Sullivan, no, it did not.

COMMISSIONER SULLIVAN: Okay. So by just referring to capital expenditures do you feel we are still okay in terms of the bond concerns and the IRS and so forth?

MR. ROSS: Madam Chair, you could contribute to maintenance without violating those kinds of principles.

COMMISSIONER SULLIVAN: But not having it in there wouldn't create the problems that you mentioned.

MR. ROSS: No, I think the thinking is that routine maintenance is something that could be recovered in rates.

COMMISSIONER SULLIVAN: So we're clean if we just call it capital expenditures and where we are is we're saying if we're a partner in this thing and they need capital expenditures and we're committing to put our proportionate share into those capital expenditures, however we get the money – through bonds or legislative appropriation or wherever. Is that a fair characterization?

MR. ROSS: Madam Chair, Commissioner Sullivan, I didn't completely follow but it

sounded right.

COMMISSIONER SULLIVAN: It sounded good. Okay. Let me try to condense it. I'm saying that with the capital expenditure language that you have in here we're saying that we have an obligation to contribute a pro rata share of the capital expenditures that are needed for phases 2 and 3, but not the routine maintenance. Does that still make us a bona fide partner legally?

MR. ROSS: Yes. Correct. We still would be a bona fide partner.

COMMISSIONER SULLIVAN: Okay. Well, I think those are useful changes and I think we just have to understand that there may be capital commitments beyond the \$400,000 here in the future that the staff and the Commission are going to need to address.

CHAIR VIGIL: And not only capital but a concern of mine would be liability. Could Ms. Hermann or Mr. Ross, either one of you address liability exposure and any kind of indemnification that we've provided for ourselves?

MS. HERMANN: Madam Chair, the agreement does provide that public liability insurance will be maintained and I believe that the County will be named as an additional insured. I don't believe that there is an indemnification on behalf of the town for that proportional share though.

CHAIR VIGIL: Should there be and could there be?

MS. HERMANN: I believe that there's no reason that there couldn't be.

MR. ROSS: Madam Chair, I'm not sure. I know that we can't indemnify folks based on the anti-donation clause and other things.

CHAIR VIGIL: We can or can't?

MR. ROSS: Cannot. The Anti-Donation Clause, Bateman Act, things like that. I know the anti-donation clause doesn't necessarily strictly apply to towns, municipalities. It probably does in my opinion but I'm not a municipal lawyer; I'm a County lawyer so I don't purport to make those kinds of judgments. But certainly the Bateman Act applies to municipalities, so I'm not sure a broad indemnity without additional language that provides for non-appropriation would work in an agreement like this.

CHAIR VIGIL: Okay. It seems to me that the public liability insurance would be good and the County being named as one of the insured would also be good, but when it comes to negligent acts, would we pro rata be liable for a tort claim? Is that foreseeable?

MR. ROSS: Madam Chair, with us, with the County not participating specifically in the operation and maintenance of the system, aside from making these contributions, I think our liability would be minimal, particularly if the town named us as an additional insured. Under those circumstances we're covered under their policy. Their policy would have to hire attorneys to defend us and we would essentially be defended without cost, without burden whatsoever, up to the limits of their insurance.

We probably wouldn't escape from being named. The typical claim in this regard is for a sewage backup into a house, or during maintenance, when there's a car accident or something like that.

CHAIR VIGIL: Okay. Thank you. Anything further?

COMMISSIONER SULLIVAN: Madam Chair, I could make a motion if you're ready.

CHAIR VIGIL: Ready.

COMMISSIONER SULLIVAN: Madam Chair, I'd move for approval of the joint powers agreement between the County of Santa Fe and the Town of Edgewood with the following amendments – I'm going to go backward: in paragraph 12.5, to include agreed upon language between the County and the town that at time of termination, compensation to the County would be based on the appraised value of its improvements; and amendment to paragraph 8.0 as outlined by Mr. Ross deleting the terminology that related to routine maintenance.

COMMISSIONER MONTOYA: Under 8.2.

COMMISSIONER SULLIVAN: Well, it was actually under 8.1 also.

COMMISSIONER MONTOYA: Oh, under 8.1. That's right.

COMMISSIONER SULLIVAN: We added in "and maintenance" in 8.1, so it would be throughout the entire paragraph. And then amending paragraph 3.2 to read the sum of \$400,000.

COMMISSIONER ANAYA: Second.

CHAIR VIGIL: Okay. Would the motion also include Ms. Hermann's statement that on 12.5, the County would receive compensation on the appraised value?

COMMISSIONER SULLIVAN: Yes. That was my first one.

CHAIR VIGIL: Okay.

COMMISSIONER SULLIVAN: But then I guess I also should mention in addition, in paragraph 8.0, the language relating to the Town of Edgewood reviewing the recommendations of the technical committee prior to taking any further action with respect to requests for funding from Santa Fe County. Is that sort of what you outlined?

MS. HERMANN: Madam Chair, Commissioner Sullivan, that's correct.

COMMISSIONER SULLIVAN: Okay. So essentially we have four.

CHAIR VIGIL: Okay. That motion has been corrected. The seconder agrees? Any further discussion?

**The motion to approve the JPA with the Town of Edgewood, as amended, passed by unanimous [4-0] voice vote.**

CHAIR VIGIL: Congratulations, gentlemen.

COMMISSIONER SULLIVAN: Congratulations, Mayor. Good luck on your plant and your system.

MAYOR HOWARD CALKINS: Madam Chair, Commissioners, my name is Howard Calkins, Mayor of the Town of Edgewood. Chair Vigil, I have not had the privilege of meeting you but I have had the privilege of meeting the other three gentlemen there, and as long as I'm the Mayor of Edgewood we will work together in more ways than just this. That is one of my goals and I think that is the best thing for our communities to all work together if we're going to get anything done and done right. I appreciate this. I thought it was \$1,440,000, but I'd be glad to settle for \$400,000 and thank you very much.

CHAIR VIGIL: Thank you, Mayor Calkins. Thank you for being here. I'm going to ask the Commissioners what is your pleasure. It is now 12:00. We've only gone through one item

under Matters from the Commission. We can recess for lunch at this time and come back and 1:30 or we can work through the agenda. What is the pleasure?

COMMISSIONER MONTOYA: Can we try to go for another half-hour?

CHAIR VIGIL: Okay. Is that fine with you? That's all right with Commissioner

Anaya also.

**IX. A. Resolution 2007-63. A Resolution Restricting Truck Traffic on Camino Carlos Rael Between the City and County Limits of Santa Fe and it's Intersections with Agua Fria and Alameda Streets; directing Posting on Said Intersections and Camino Carlos Rael and Directing Staff to Forward a Copy of this Resolution to the Department of Public Safety, Motor Transportation Division (Commissioner Vigil)**

CHAIR VIGIL: This is a request that I'm bringing forward and before I even discuss it, I'm going to ask Steve Ross to identify whether it's gone through appropriate legal review for me please.

MR. ROSS: Madam Chair, I have just taken a look at this document and it's identical with one I drafted up personally for I believe it was Agua Fria and San Felipe a few years ago. There is a typo in the document that we can address either now or during the discussion, but it's – it will accomplish the purpose that I know you're intending.

CHAIR VIGIL: I'm sorry. I didn't hear the typo.

MR. ROSS: The typo is paragraph 4 on the second page. There's a parenthetical after the word "ten" and it should be a digit "1" there instead of that "t". It's very clean other than that.

CHAIR VIGIL: Thank you, Mr. Ross. I brought forth this resolution actually in concert with Councilor Chris Calvert who will be bringing forth a similar resolution and actually I think at the City they're actually going to adopt it by ordinance. And I do believe, and I'll stand corrected by Robert or James on this, that this really only involves less than half a mile of a road that is the County portion of Camino Carlos Rael. I believe it's to the south of the river, and that may even be a quarter of a mile. I'm not quiet sure. To the north of the river it is City of Santa Fe.

This is that river crossing that the residents surrounding there that have complained because neither was it designed or built for the amount of traffic and we're hoping that traffic will be relieved once Siler Road and South Meadows gets going. In the meantime there are heavy, heavy trucks that traverse that and what this resolution would do is it would provide the ability for us to be able to enforce the traversing of those heavy trucks to protect that intersection, not only for safety purposes, but also for erosion purposes. So I stand for any questions.

COMMISSIONER MONTOYA: Madam Chair, who will enforce that?

CHAIR VIGIL: It is the Sheriff's office who usually enforces the truck trafficking and we have at least three other truck prohibitions, I think, throughout the County. It's a difficult thing to enforce, undoubtedly, because there are exceptions for traversing there, those are deliveries

and those kinds of things and many times the Sheriff has told me that when they do try to enforce it they actually stop someone and the delivery truck will say they're actually making a delivery and you have to do some follow-up investigation and that kind of thing.

But it also I think in general provides a prohibition and those trucks who comply with the truck trafficking prohibition signs will probably be less likely to break the law.

COMMISSIONER MONTOYA: Yes, and I have no doubt that this and some of the other resolutions that have come through are certainly worthwhile. It's just the enforcement end of it.

CHAIR VIGIL: It's very difficult. And Mr. Lujan would like to address that issue.

MR. LUJAN: Madam Chair, Commissioners. I believe once it's posted it will be enforced by the entity that's in that – City Police and Sheriff's Department, State Police. Several agencies, once it's posted.

COMMISSIONER MONTOYA: Oh, so we'll have multiple. Move for approval.

CHAIR VIGIL: There's a motion to approve.

COMMISSIONER SULLIVAN: Second.

CHAIR VIGIL: Any further discussion?

**The motion to approve Resolution 2007-63 passed by unanimous [4-0] voice vote.**

COMMISSIONER SULLIVAN: Madam Chair.

CHAIR VIGIL: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I was wondering, if we have people that are here for the presentation on the Española Basin Regionally Planning Issues Forum, if they're here do we want to hear them before lunch and let them go on their way?

CHAIR VIGIL: I'm hearing an agreement. What item are you referencing in particular?

COMMISSIONER SULLIVAN: It's item XI. A.

CHAIR VIGIL: Are there any objections to that request?

MR. ABEYTA: Madam Chair, I just want to bring to the Commission's attention also that we have the chair of the Maternal and Child Health Council here for the appointment of Jacqueline Baca.

CHAIR VIGIL: Okay. Actually, we could probably take the appointment. That might be most expeditious.

**X. C. Appointment to the Maternal and Child Health Council - Jacqueline S. Baca (Community Services Department)**

CHAIR VIGIL: Do we need a report on this?

COMMISSIONER MONTOYA: Move for approval.

CHAIR VIGIL: There's a motion. Is there a second?

COMMISSIONER ANAYA: Second.

CHAIR VIGIL: Motion and second to appoint Jacqueline S. Baca to the Maternal and Child Health Council.

**The motion to appoint Jacqueline S. Baca to the Maternal and Child Health Council passed by unanimous [4-0] voice vote.**

CHAIR VIGIL: You're approved Jacqueline. Welcome. And Lisa, thank you for being here today and for being so patient with us. We appreciate you.

**XI. PRESENTATIONS**

**A. Presentation on Efforts on the Espanola Basin Regional Planning Issues Forum (EBRPIF)**

CHAIR VIGIL: Charles, thank you for your patience.

CHARLIE NYLANDER: Thank you, Madam Chair and members of the Commission. I have a power point slide presentation which I think was included in your packet, but I think is going to be shown here for the audience's benefit. All right. I think we're ready to proceed. Again, my name is Charlie Nylander. I'm the president of Watermatters, LLC, and I'm a consultant working for the Espanola Basin Planning Issues Forum, and I'm pleased to provide you with this overview of the forum and its activities, both past and present.

The forum is an outgrowth of the intergovernmental summit that was held in July 2004 here in Santa Fe which recognized the need for regional planning in the Espanola Basin. The initial meeting of the forum was held at the Pueblo of Tesuque in August of 2004 and that forum has held monthly meetings since that time. I believe in your packets there was a handout with the names of participants that have participated during the last six months, just to give you a flavor of the typical attendance at the meeting.

The EBRPIF is an advisory group. It's not a decision making body, and it's made up of 14 governmental entities with representatives formally designated by those governmental entities. If we look at a map of the area of interest we basically are talking about the Espanola Hydrologic Basin, which is basically north to south some 40 miles long and roughly 30 to 40 miles wide. It encompasses the Cities of Espanola and Santa Fe, and three counties, Rio Arriba, Santa Fe County and Los Alamos County, as well as a number of sovereign Pueblo and tribal nations. The participants on this forum, 14 different members, the three counties, which I previously mentioned and two cities, and then we have nine Pueblo and tribal governmental jurisdictions that are represented.

The other participants in the monthly meetings are congressional and governmental observers and this would include on the congressional side, the offices of Senator Domenici and Senator Bingaman, as well as Congressman Udall.

The charter that this forum has adopted, accepted, actually, in February of 2005, I'd like to highlight a couple of paragraphs in the charter, just to give you and the audience a flavor of this forum's intent. I'll quote from the slide. It says, "The forum's intent is to provide an environment in

which members can communicate openly and honestly about significant regional challenges, allowing candid exchanges that develop mutual trust and understanding. The forum has a primary goal of providing recommendations to its member governments through collaborating on issues of regional concern. Its initial focus is on water and wastewater issues.”

Another aspect of the charter which is helpful to clarify is “The intent of the collaboration is to promote communication and a regional understanding among the member governments, mutual fact-finding about specific water and wastewater issues, and discussion of projects on a regional basis...the forum provides for discussion; it is not a decision-making body.” And that’s a quote out of the charter.

I would have to just editorially say that I’ve been associated with this forum since its inception and the tremendous amount of relationship building that has been accomplished is really remarkable. I think any of us who have lived in northern New Mexico very long recognize that it is often difficult to establish sound and collaborating relationships among multiple jurisdictions. So this is the essence of this advisory group is to come together and to know each other.

As far as support for the forum, for the first two years of the forum’s existence, August 2004 through September 2006, the forum was supported by Los Alamos National Laboratories Water Research Technical Assistance Office. At that time I was employed by the laboratory and actually managed the WRTA office, which is a collaboration between the laboratory and Santa Fe County. Last summer I retired from the laboratory, so presently the forum is supported by me as a contractor under my company’s name, Watermatters, LLC. The current funding for that contract is derived from a tri-county agreement between Rio Arriba, Santa Fe and Los Alamos counties.

For the fiscal year 2008, beginning this next July, funding will be received by the forum from Los Alamos County in a committed amount of \$150,000 per year. When we look at past activities, just to highlight some of the significant ones, the forum did prepare their own charter and a set of government-to-government protocols which has been attached to your packet. This has established some unique methods of communicating between the sovereign nations, our tribal and Pueblo governments, and city and county governments.

During the first year of the forum’s activities they established a workbook through an interview process, project pages were developed for each of the entities that describe their current and future wastewater and water projects, their future needs, their issues and concerns. That particular document has been very useful because members have gone on to present their own information and basically get everybody on a sound playing field of understanding each other challenges and systems.

We’ve also had infrastructure funding presentation by the New Mexico Finance Authority, federal agencies – the Bureau of Reclamation, the Corps of Engineers, and presentations by the New Mexico Department of Finance and Administration. This is in an effort to get out on the table all of the available information about grants, loans and various funding sources for infrastructure. Technical presentations have been made by Los Alamos National Laboratory regarding hydrology, hydrogeology, groundwater contamination, NMED has presented information on individual liquid waste systems, septic tank contamination and general health concerns in the basin.

We’ve heard from the Jemez y Sangre Regional Planning Council regarding the regional water plan and its contents, and its list of recommendations for management options for the basin.

And we've also worked with the Santa Cruz Irrigation District and had presentations regarding their project to increase the capacity of Santa Cruz reservoir, either by dredging or raising the dam. And then finally, the Española Basin Technical Advisory Group, the EBTAG is a six-year old organization that consists of all the technical agencies, federal and state, and other governmental agencies, universities, who are doing data collection in the basin, hydrology and geology specifically.

Throughout their tenure of these meetings there's been active discussion on legislation and each year before the New Mexico Legislature meets there's always been a sharing of information on what each other's jurisdictions were going to pursue in the way of funding and project-types of legislation. And there's been a great deal of interest in just regional planning and the issues that surround it. Now, I have to say the focus has been on water and wastewater but at times these meetings have been very helpful in discussing other issues of regional concern such as transportation, emergency services, police protection, even animal control.

Regarding the present activities, presently the forum is in the process of updating their water projects list. In other words we're revising the workbook, bringing those project descriptions up to date. We're also developing a five-year strategic plan that basically could be seen as kind of a business plan. It's a look forward as to the water and wastewater infrastructure projects that forum members would like to pursue in the next five years, and basically some help in prioritizing and supporting those. This five-year planning process actually began with some recommendations from the congressional offices because of their interest in understanding what the forum membership really prioritized as far as federal funded projects in the basin.

I'll talk a little bit more about that particular plan in a second. We are developing an EBRPIF forum website so that we can share information with the public and developing a pilot project proposal for resolving some of the individual liquid waste problems in the basin. As most of you are aware, the New Mexico Environment Department has basically stated that individual liquid waste issues are the number one cause of groundwater contamination in the state, and certainly in the Española Basin it is a high priority contamination and public health issue. We are also, EBRPIF is also continuing to provide informational updates to its members and participants on their projects and so routinely we have presentations on the ongoing Pojoaque Valley wastewater project, the Santa Fe Buckman Direct Diversion. The City of Española has a number of projects regarding water treatment and a diversion project as well. Those are just a few of some of the projects that are highlighted.

Now to focus just a little this slide on the individual liquid waste initiative, septic tanks and cess pools in the basin are a great concern as far as groundwater contamination and public health issues. In Rio Arriba County alone, if you look at New Mexico Environment Department's website under individual liquid waste, based on 2004 Census numbers, approximately 70 percent of the residents in Rio Arriba County depend on individual liquid waste systems – septic tanks and cess pools. If we look at Santa Fe County's data it's more like 34 percent that depend upon individual liquid waste, and Los Alamos County has the lowest of some 2.4 percent.

So regarding individual liquid waste, the forum members have asked to really focus this year on a pilot project to work hand-in-hand with NMED to develop some project descriptions in the basin regarding specific locations and to try to attack those locations with bona fide engineering projects. Ideally, the jurisdictions would work hand-in-hand together, would contribute engineering

or planning or other technical services to help frame these projects, and part of the project implementation would be funded through the contributions by Los Alamos County.

EBRPIF is working with NMED regarding funding alternatives for these project alternatives, and it's interesting that during the last legislative session there were a number of bills introduced that would have provided funding for replacing obsolete or dysfunctional individual liquid waste systems. Unfortunately, none of those pieces of legislation made it through the session so right now, funding alternatives are hard to come by, but we are pursuing with a joint effort with NMED discussions to further support finding federal and state funding for these kinds of activities.

Future objectives, during this year we will be improving methods for public participation and particularly solicit input regarding the development of this five-year strategic plan. I would imagine that as the five-year plan is scoped by the forum it will be taken back to the parent governments for their consideration as well, and so there will be public input processes to develop an understanding of what the five-year priorities are. Also during 2007 we will develop a conceptual plan for evolving into a formal political subdivision of the state. Ultimately the forum would like to consider whether there would be advantages to becoming a regional authority, for example, or a water and sanitation district, or any other number of political subdivision descriptions. So throughout the summer there will be presentations and some information shared as to what the advantages and disadvantages of those types of nomenclature entail, and again, they're just developing a conceptual plan toward that kind of evolution.

And finally, I'll take any questions or comments and for additional information I've listed my contact information in your slide.

CHAIR VIGIL: Thank you, Mr. Nylander. I appreciate the presentation. This is not an action item but are there any questions from the Commissioners? Seeing none, we appreciate your informing us. Thank you.

MR. NYLANDER: You're welcome.

COMMISSIONER MONTROYA: Madam Chair, I just wanted to thank Charlie for the presentation. I think it's something that we look forward to on a quarterly basis in terms of what we're talking about, reporting to the Commission, so we're kept aware of what's going on with all the different projects. And there will be some – the charge of the group at our last meeting was to do the five-year strategic plan, which as Charlie mentioned is going to be more like a business plan, so there will be projects there that will be outlined over the next five years or so for funding purposes to include cost sharing at the local level, the state, and the federal level. So we're probably going to have that – when? By June 1<sup>st</sup>?

MR. NYLANDER: June or July.

COMMISSIONER MONTROYA: Sometime this summer.

MR. NYLANDER: June 30<sup>th</sup>.

COMMISSIONER MONTROYA: Thank you, Charlie.

MR. NYLANDER: Thank you, Madam Chair and members of the Commission.

**IX. D. Possible Approval of Discretionary Funds to be Used for Office Cubicles to Utilize Space in the Sheriff's Investigation Unit \$2,500 (Commissioner**

**Anaya)**

COMMISSIONER ANAYA: Madam Chair, thank you. The other day I was at the Sheriff's office and noticed that there was an investigator sitting at just a table and I asked the Major and Undersheriff what was happening with this guy? He doesn't fit in? And they said they didn't have any money so that's why I'm bringing this forward, to purchase a cubicle for the Sheriff's investigating unit.

CHAIR VIGIL: Any questions?

COMMISSIONER ANAYA: I'll move for approval.

CHAIR VIGIL: Motion. Is there a second?

COMMISSIONER SULLIVAN: Second.

CHAIR VIGIL: Motion seconded. Any further discussion?

**The motion to approve discretionary funding for Sheriff's office cubicles passed by unanimous [4-0] voice vote.**

**IX. E. Discussion and Possible Approval for Expenditure of Discretionary Funds in the Amount of \$2,500 for a Mural at the Sobering Center (Commissioner Sullivan)**

COMMISSIONER SULLIVAN: Madam Chair, this item is to fund a local artist, Sam Leyba, who has been recommended to be and is well known as a mural artist to prepare a mural. The mural will be on a four by eight canvas and it will be movable – it's not a mural on a wall, to be used at the sobering center to provide kind of a relaxing, calm feeling and environment in the center. I don't think it will be La Raza mural. I think it will be more of a landscape type of a mural as it's been described to me. But I think that it will provide some much needed color and friendliness to the sobering center facility that we have, and I would move for approval.

CHAIR VIGIL: Motion. Is there a second?

COMMISSIONER ANAYA: Second.

**The motion to approve discretionary funds for a mural at the sobering center passed by unanimous [4-0] voice vote.**

COMMISSIONER SULLIVAN: I didn't want to leave anyone out of the – you're welcome to – we've got our sobering center folks there.

RICKY LUCERO: Ricky Lucero, sobering center manager. I would just like to thank you, Madam Chair and the Commission for approving the funds for this mural. As Commissioner Sullivan indicated, our sobering center at the present time is a bit spartan, it appears, and this mural would bring – it's a pastoral setting. Very relaxing. Would bring some much needed color and friendliness to the environment, so thank you very much.

CHAIR VIGIL: Thank you, Mr. Lucero. And thank you for helping us out at the

sobering center.

**IX. F. Discussion and Possible Approval for Expenditure of Discretionary Funds in the Amount of \$2,500 for Professional Video of La Cienega Task Force (Commissioner Anaya)**

CHAIR VIGIL: Thank you, Madam Chair. This is a video that we put together probably about a year and a half ago. They've asked to take this video to the Western Interstate Region Conference, and there are some glitches in it and this would take those glitches out. The film is about 17 minutes long and we need to move it down to about between 10 and 11 minutes, then make copies to hand out at the Western Interstate Region Conference.

CHAIR VIGIL: Thank you. Any questions? Is there a motion?

COMMISSIONER ANAYA: So moved.

COMMISSIONER MONTROYA: Second.

CHAIR VIGIL: Motion and second.

**The motion to approve discretionary funding for La Cienega video passed by unanimous [4-0] voice vote.**

**X. APPOINTMENTS / RE-APPOINTMENTS / RESIGNATION**

**A. Appointment to the Health Policy and Planning Commission – District V: Robert A. Best or Beverly Russell (Community Services Department)**

CHAIR VIGIL: We have two recommended candidates, Robert A. Best or Beverly Russell. Any recommendations, Steve?

STEVE SHEPHERD (HHS Director): Madam Chair, at the meeting prior to the request to submit materials the Health Planning Commission recommended sending both names to the Commission. It is staff's recommendation that Beverly Russell be considered. She's been a previous member as well as has a long experience both with healthcare administration and delivery.

CHAIR VIGIL: Okay. We have a recommendation from staff that we appoint Beverly Russell to the HPPC. Commissioner Sullivan.

COMMISSIONER SULLIVAN: Steve, these districts that you're listing here, are these Commission districts?

MR. SHEPHERD: They are Commission districts and that's one reason we pointed out that neither representative or candidate resides within District 5.

COMMISSIONER SULLIVAN: One is in District 4, Mr. Best, and Ms. Russell is District 2. Were there no representatives or did we advertise or what was the process?

MR. SHEPHERD: Madam Chair, Commissioner Sullivan, yes, we advertised in the newspaper and put it out among our informal network of persons, and we just didn't have any applications from District 5. The other thing we could do if you'd like is readvertise and specifically

ask for somebody that resides in District 5.

COMMISSIONER SULLIVAN: Well, I don't think it's a deal-killer if the staff feels – and certainly Ms. Russell has an excellent curriculum vita in the field. So I'm comfortable with staff's recommendation. Her attendance has been good?

MR. SHEPHERD: Her previous attendance was excellent.

COMMISSIONER SULLIVAN: Thank you, Madam Chair.

CHAIR VIGIL: Okay. Any further questions?

COMMISSIONER ANAYA: So moved, Madam Chair, that we appoint Beverly Russell.

CHAIR VIGIL: Motion.

COMMISSIONER SULLIVAN: Second.

CHAIR VIGIL: Okay. Any further discussion?

**The motion to appoint Beverly Russell to the HPPC passed by unanimous [4-0] voice vote.**

**X. B. Re-Appointments to the Health Policy and Planning Commission  
(Community Services Department)**

**Dan Burke - District II**

**Erika Campos – Local Hospital**

**Arturo Gonzales – Sangre de Cristo**

**Valery Henderson – NM Department of Health**

**Lydia Zepeda-Jennings – District IV**

**Melissa Manlove – Edgewood Community**

**Larry Martinez – District I**

**Dr. Frantz Melio – Medical Physician**

**A. Terrie Rodriguez – City of Santa Fe**

**Patrycia Sanchez – District III**

**Jack White – Local Union 1199 / Healthcare Worker**

**Glenn Wieringa – DWI Planning Council**

CHAIR VIGIL: Anything you need to add?

COMMISSIONER MONTOYA: Move for approval

CHAIR VIGIL: There's a motion to approve.

COMMISSIONER SULLIVAN: Second.

CHAIR VIGIL: Steve, do you need to add anything?

MR. SHEPHERD: I don't, Madam Chair.

CHAIR VIGIL: Then there is a motion and a second to approve item X. B.

**The motion to reappoint the above named people to the HPPC passed by unanimous [4-0] voice vote.**

**X. D. Appointment of Andrew Griego as the Member to Area 5 of the Road Advisory Committee (Growth Management Department)**

COMMISSIONER ANAYA: So moved.

COMMISSIONER MONTOYA: Second.

CHAIR VIGIL: There's a motion and a second to approve Andrew Griego, but I do believe there are going to be some questions. Commissioner Sullivan, did you want to address anything? Robert, do you have anything to add?

MR. MARTINEZ: Madam Chair, no, I do not.

CHAIR VIGIL: Andrew Griego is a member to Area 5. What does that consist of? What area is that?

MR. MARTINEZ: Madam Chair, Area 5 includes Cañada de los Alamos, Old Santa Fe Trail, Hondo Hills, San Sebastian and Cañoncito areas.

CHAIR VIGIL: So it's not divided according to the districts that we represent.

MR. MARTINEZ: Madam Chair, these are Road Advisory districts. Some areas straddle two different Commission districts. I don't believe this one does. And I did speak with Commissioner Campos about this appointment and he was in favor of it.

CHAIR VIGIL: Thank you. Anything further? Seeing, hearing none, there's a motion and a second to approve Andrew Griego.

**The motion to appoint Andrew Griego to the Road Advisory Committee passed by unanimous [4-0] voice vote.**

**XI. CONSENT CALENDAR**

**A. Budget Adjustments**

- 1. Resolution No. 2007-64. A Resolution Requesting an Increase to the General Obligation Bond Series 2007 Fund (331) to Budget Bond Proceeds Issues for Construction of a New District Courthouse / \$25,035,123.24 (Administration Services Department / Finance)**
- 2. Resolution No. 2007-65. A Resolution Requesting an Increase to the General Fund (101) to Budget a Joint Powers Agreement With the Bureau of Land Management for Law Enforcement Support on Public Lands in Fiscal Year 2007 / \$5,000 (County Sheriff's Office)**
- 3. Resolution No. 2007-66. A Resolution Requesting an Increase to the Jail Operations Fund (518) to Budget Prior Fiscal Year 2006 Cash Balance For the Temporary Wage Increase for Santa Fe County Corrections Officers (Corrections Department)**
- 4. Resolution No. 2007-67. A Resolution Requesting an Increase to the Road Projects Fund (311) / County Roads 56 and 67 to Budget Cooperative Grant**

**Agreements Awarded Through the New Mexico Department of Transportation for Expenditure in Fiscal Year 2007 / \$349,244.63 (Growth Management Department)**

5. **Resolution No. 2007-\_\_ . A Resolution Requesting a Budget Decrease to the Housing Enterprise Fund (517) to Decrease the Operating Transfers From the Housing Capital Improvement Fund (301) / -\$79,528 (Community Services Department) WITHDRAWN**
  6. **Resolution No. 2007-68. A Resolution Requesting an Increase to the General fund (101) to Budget a Memorandum of Understanding with the Administrative Office of the Courts for court Security / \$4,024.75 (County Sheriff's Office)**
- B. Miscellaneous**
1. **Request Authorization to Enter into Agreement with Mora County for the Incarceration, Care and Maintenance of Juveniles in Custody at the Youth Development Program (Corrections Department)**
  2. **Request Approval of a Utility Right of Way Easement Between Santa Fe County and the Public Service Company of New Mexico (PNM) on the County's South Meadows Open Space Property Near the Village of Agua Fria, in Santa Fe County, New Mexico (Community Services Department)**
  3. **Request Approval of the Fiscal Year 2007-2008 Santa Fe Solid Waste Management Agency Proposed Budget Which Was Presented and Approved by the Solid Waste Joint Powers Board on March 15, 2007 (Growth Management Department)**
  4. **Request Approval of the Community DWI (CDWI) Application for FY 07 Funding in the Amount of \$56,506 From the New Mexico Department of Transportation Traffic Safety Bureau (Community Services Department)**
  5. **Resolution No. 2007-69. A Resolution Requesting Authorization to Surplus Heavy Equipment in Accordance with State Statutes (Growth Management Department)**
  6. **Resolution No. 2007-\_\_ . A Resolution to Confirm the Transfer of Maintenance of Roads Located in the City of Edgewood (Growth Management Department) ISOLATED FOR DISCUSSION**
  7. **Approval of the Memorandum of Agreement No. 07-0031-PW with the City of Santa Fe and the Santa Fe Solid Waste Management Agency, Joining in Sponsorship of the Annual Household Hazardous Waste Day on April 22, 2007 (Growth Management Department) WITHDRAWN**
  8. **Resolution No. 2007-70. A Resolution Authorizing the Surplus of Obsolete Fixed Assets in Accordance with State Statutes (Administrative Services Department)**
  9. **Request Authorization to Accept and Award a Price Agreement with Maxim Healthcare Services in Response to RFP #27-1822-CORR/MS to Provide Temporary Nursing Staff to the Adult Detention Center (Corrections**

**Department) ISOLATED FOR DISCUSSION**

- 10. Request Authorization to Accept and Award Indefinite Quantity Price Agreements with Joann's Secretarial Services and Wordswork and in Response to RFP # 27-0814-FD/MS to Stenography and Transcription Services for Various County Departments (Multi-Award) (County Managers Office)**
- 11. Consideration and Possible Approval of an Airspace Agreement By and Between the New Mexico Department of Transportation, and the Board of County Commissioners of Santa Fe County for the Northeast Connector (Legal Department) ISOLATED FOR DISCUSSION**
- 12. Resolution No. 2007-71. A Resolution Allowing Santa Fe County to Submit a Recycling & Illegal Dumping Grant Application to the New Mexico Environment Department (Growth Management Department)**
- 13. Request Approval for Amendment No. 1 to MOA No. 27-0717-PFMD/RH with the Cundiyo Mutual Domestic Water Consumers Association to Expend the Remainder of the Grant Proceeds in the Amount of \$191,000 for FY2007 for Construction of the Cundiyo Water System Improvements Project (Community Services Department) ISOLATED FOR DISCUSSION**

COMMISSIONER ANAYA: Madam Chair.

CHAIR VIGIL: Yes.

COMMISSIONER ANAYA: I move we approve the Consent Calendar.

COMMISSIONER MONTOYA: Second.

CHAIR VIGIL: Motion and second to approve the Consent Calendar.

**The motion to approve the Consent Calendar with the exception of items A. 5 and B. 7 (withdrawn) and items B. 2, 6, 9, 11 and 13 (isolated for further discussion) passed by unanimous [4-0] voice vote.**

CHAIR VIGIL: We will come back with specific items on the Consent Calendar to be heard. What is the pleasure of the Commission with regard to return time from lunch?

COMMISSIONER MONTOYA: Two o'clock.

CHAIR VIGIL: Two o'clock's good.

[The Commission recessed from 12:30 to 2:20.]

**IX. OTHER MATTERS FROM THE COMMISSION**

CHAIR VIGIL: After recess, we are back in order. We will start with Matters from the Commission. Commissioner Anaya.

COMMISSIONER ANAYA: Thank you, Madam Chair. I want to thank – we had an ATV meeting in Edgewood a week ago. There were people concerned about people driving on

their private properties. I don't have a list but there was quite a bit of staff that went. The Sheriff's Department was there, Wayne Dalton, Ron Madrid, Undersheriff Robert Garcia. What's the name of your person, Steve?

MR. ROSS: Is that Liz that went out there?

COMMISSIONER ANAYA: Elizabeth Travis was there. We had a good meeting. We ended up setting up a task force with people that were for the motorcycles and ATVs and people who were against it. So I think it was a good meeting and I just wanted to staff for going out there and helping me out with that.

There's also a benefit fundraiser for Junelsa Gallegos who has cancer. She works for the Association of Counties and she's our receptionist there. She does a fine job. They diagnosed her with cancer and they're having a family fun day on May 12<sup>th</sup> from 3:00 to 7:00 at the Fraternal Order of Eagles. That's on 833 Early Street. They'll have door prizes, a silent auction, dancing, face painting and a symposium on breast cancer awareness. So if you could make that it goes to a great cause. It's \$12 a couple, \$7 for a single, and \$2 for children. Like I said, Junelsa is a great worker at the Association of Counties and she would be happy to see you.

Madam Chair, that's all I have. Thank you.

CHAIR VIGIL: Thank you. Commissioner Sullivan.

COMMISSIONER SULLIVAN: I have two items, Madam Chair. One, I wanted to also express some thanks for staff efforts over this past weekend. We had the formal opening of the Ken and Adam Senior Center in Eldorado and we were mobbed. I'm glad the Fire Chief wasn't there because they were hanging out the windows and I really want to express some appreciation to Ron Salazar who has been with that project all along to keep it going and to Jennifer Jaramillo for helping to put together the festivities in arranging some of the groups such as the rodeo queen and her court, who were there, and to Don Dayton and his building committee who were there who arranged for a lot of the food and also Ron did that as well. A mariachi band. To Joseph Gutierrez of course, and also to Rudy, and all those who have been working on that project. Everybody was really excited about how things looked and how they came out. It was really a rowdy time. Quite a lot of fun. I think they were just really appreciative of the efforts that the County has put forward on that project. That center is going to be used by thousands of people in that area and it's going to get a lot of use.

And then the other thing I wanted to bring up was they had, on Saturday- or Sunday I think it was, a hazardous waste recycle day out at the recycle station that the City and the County both participate in and help to fund. I'd not been to that before but it's really a very efficiently run operation and people can bring in a variety of hazardous chemicals and oil and solvents and things of that nature that you couldn't otherwise safely dispose of. I was quite impressed with the group there. They had over 20 people handling the waste materials and a number of volunteers directing traffic and doing those types of administrative tasks. So I think that's a really excellent thing to have, particularly Saturday being Earth Day, but just that annual event itself is something that the County is really getting its money's worth on. They take a tally of those who come in, whether you reside in the county or the city and that's how they determine our pro rata share of the funds needed to pay this specialty firm that takes care of these hazardous waste materials.

Next time it comes around keep an eye out for it if you haven't participated in it before. If

you have any type of hazardous chemicals that you don't know how to dispose of that's a real good way to do it and I think that's something that we certainly get our money's worth and the taxpayers' money's worth out of by participating in. Thank you, Madam Chair.

CHAIR VIGIL: Commissioner Montoya.

COMMISSIONER MONTOYA: Yes, Madam Chair. I just wanted to let the Board know that we had some very good visits last week in Washington, DC for the Aamodt case. We met with the Department of Interior, Department of Justice and then of course with our delegation, in addition to the staff at the Office of Management and Budget. And this is probably the most encouraged that I've ever felt going to Washington and hearing from everyone in terms of all the parties involved. There was a delegation of about 15 that included the Pueblos of San Ildefonso, Tesuque, Pojoaque, and Nambe, the governors or lieutenant governors who were all there, as well as their legal representatives. John Utton went on behalf of Santa Fe County as well, so I just wanted to – and if anyone has any questions or wants more information I'd be glad to fill you in on that particular visit.

And I also want to let the Board know that Roman and I met with Rob Apodaca yesterday and discussed some of the concerns that were coming from the Department of Finance and Administration around some of the information that maybe we weren't providing. The bottom line is that we as a Commission need to set our priorities so that we have our priorities that the staff will then work on in terms of making sure that they're implemented, making sure that we're going to be able to leverage other funding sources, particularly if it's going to be state funding. It was clear that we need to get our table in order in order for us to be more effective in terms of some of the funding requests that we're putting out there. It was clear that if there isn't that commitment, if the projects aren't ready to go, that it's going to be hard to convince the Governor or anyone else that these projects need to be funded.

So I would encourage us as soon as possible – I talked to Roman a little bit yesterday about having a study session to do exactly that. I think that we're probably going to need to look at projects countywide as opposed to projects within our own districts. I know that we just allocated money for our districts individually, but in looking at the big picture I'm not sure that that's the most prudent way to proceed in doing business for the residents of Santa Fe County, if projects aren't ready to go and ready to hit the ground. So I think we really need to look at what are the projects in Santa Fe County, look at one or two of those. We're getting four and five and maybe that's even too many, so that we're able to get these projects done.

There's a lot of projects out there that we have that are on the books but they're not ready to go because we don't have all the money we need to push those projects forward. Just some information. It was a very constructive meeting, very informative meeting and I think certainly both sides walked away with a clearer understanding of what it is that needs to be done on both sides as well. Peter was also there yesterday, so I appreciate Roman setting that meeting up.

Then one last thing is that I got a couple of disturbing phone calls, one from the superintendent of Pojoaque Valley Schools and another from the governor of Pojoaque Pueblo regarding the incident that occurred last week in Pojoaque. I'm not sure what's going on. I thought we had the jurisdictional issues covered with our Sheriff's office and apparently in responding to that he decommissioned and he's decommissioning a lot of people these days for whatever reason, but

decommissioned the Pojoaque Pueblo officers so that they could not respond to that call. Said that it had to do with jurisdictional issues. Well, jurisdictional issues have been cleared up for about the past 100 years as far as I'm aware of, legally, so I'm not sure what's going on there.

It concerns me in the fact that we are, as public servants there to help and serve and make sure people are being served, particularly with law enforcement, that the safety is going to be guaranteed for all the people in the community. I know that one of the biggest complaints that I still get is that the Sheriff's presence is not there and that the response time to a crash, to an alleged individual who has a gun or whatever the situation is, the Sheriff's office is not the first respondent. It's usually the Pojoaque Tribal Police.

So I'm hoping, and they were going to have discussions on this in terms of the commissioning on the officers, and hopefully clarify this so that essentially the people of the valley, their lives are not ensured that they're going to be safe, if they're not going to have the proper law enforcement response. So I'm just alerting the Commission as well because that is a concern that was brought to my attention by those two individuals and we're hoping – and like I said, I thought we had already discussed and covered the jurisdictional issue but apparently it's still a problem and to me it's even more of a problem when you start decommissioning officers. The whole purpose of the cross-commissioning is so that people can respond and respond in a timely manner, not 45 minutes after the fact or say, I'm not going to respond because we have no jurisdiction. So I just wanted to bring that to your all's attention as well. That's all I have, Madam Chair. Thank you.

CHAIR VIGIL: Question on that. Mr. Ross, despite whether or not an officer has a commission, as an officer of the court, he can respond to any jurisdiction. Is that not correct? Or is that something we need to clarify along with Commissioner Montoya's question.

MR. ROSS: With respect to Pueblo lands, in the absence of a special commission or cross-commission arrangement or a joint powers agreement, local, state law enforcement officers have no jurisdiction on the Pueblo.

CHAIR VIGIL: Commissioner Montoya, I think your concern is that the decommissioning of Pojoaque tribal officers is keeping them from responding to emergencies that are within their more immediate location, such as Pojoaque High School.

COMMISSIONER MONTOYA: Exactly.

CHAIR VIGIL: So it's not about us commissioning officers to go into Pueblo lands, right?

COMMISSIONER MONTOYA: Correct. Yes. It's exactly as you described.

MR. ROSS: Madam Chair, the easiest way to avoid those jurisdictional ambiguities is through the cross-commissioning process so that tribal police have state, local commissions and vice versa. So that everybody is out there and has a commission to act appropriately if there's a crime or if something occurs. That's the easiest way to do it. A more difficult way, a less expeditious way to do it is to through a joint powers agreement, by and between the relevant entities. But the easiest way is through the cross-commissioning process.

CHAIR VIGIL: Okay. Do we know, do we have a figure how many officers have been decommissioned?

COMMISSIONER MONTOYA: There were two for that day that I was told, from the Pojoaque tribal.

CHAIR VIGIL: Okay. Thank you. Commissioner Anaya.

COMMISSIONER ANAYA: So Commissioner Montoya, he decommissioned his officers to go to the Pueblo, or –

COMMISSIONER MONTOYA: No. To respond to the incident at the school.

COMMISSIONER ANAYA: And the school is on Pojoaque land?

COMMISSIONER MONTOYA: It's private. It's public school property. It's not on Indian property.

COMMISSIONER ANAYA: And what happened at the school?

COMMISSIONER MONTOYA: It took about 45 minutes before he finally realized that he couldn't do that and I guess by that time a Sheriff's officer showed up. So it was about 45 minutes from the time that the call went in and the initial response that I got was that he didn't even want to respond to it at all because he felt that it was on tribal property. And then when he found out that it was there, on the public school property, my understanding is that he then decommissioned those tribal officers, told them that they had no jurisdiction over there, and to leave the premises and that the Santa Fe Sheriff Department would take care of it.

COMMISSIONER ANAYA: He decommissioned all tribal officers in Santa Fe County?

COMMISSIONER MONTOYA: Those two – no, not from Santa Fe County. It was from the Pojoaque Pueblo tribal.

COMMISSIONER ANAYA: So they can't come into – they can't enforce Santa Fe County?

COMMISSIONER MONTOYA: They can't enforce Santa Fe County. Right. Exactly. And just as an example, even for a traffic crash that occurs, Pojoaque Pueblo's tribal police are always the first respondents before even the state or the Sheriff's office. So now, by being decommissioned they can't respond to that. I'm not sure. That's what I'm hoping got resolved, but like I said, I thought that had been resolved because we had actually met with the Sheriff, with the chief from Pojoaque Pueblo, with the superintendent to go over all of those issues in terms of jurisdiction, cross-commissioning, all of that. So I don't know. The process broke down last week.

COMMISSIONER ANAYA: Thank you.

COMMISSIONER MONTOYA: Sure.

CHAIR VIGIL: I'm concerned, and I will just direct the County Manager to update the Commission on how many decommissions have actually occurred, not only with tribal officers but if any decommissions have occurred with non-tribal officers.

COMMISSIONER MONTOYA: It's a public safety concern.

CHAIR VIGIL: Anything else, Commissioner Montoya?

COMMISSIONER MONTOYA: No. Thank you.

CHAIR VIGIL: I just wanted to report, I guess sort of dovetailing over what Commissioner Sullivan had said, I did participate in the BRC grand opening ceremonies last Friday night. That's the Buckman Recycling Center. And there were representatives from City, City of Española, Congressman Udall, and Senator Bingaman's office there. Staff with the Solid Waste Management Division really put together a very wonderful event. There were hors d'ouvres, and the

highlighted a lot of the recycling that's occurring out there. We actually had a podium made out of aluminum cans. They showed landscaping made out of recycled glass. In the opening ceremony, the ribbon was made with recycled plastic bags.

We had a tour of the facility and it really went very well. We understand from the Solid Waste Management Division that we are now really being identified as a regional project. We have products coming to us from as far as Clayton, New Mexico. We're working with Los Alamos, definitely with Española and even some of the surrounding communities. Pecos is now working on recycling. We're working with San Miguel County on some of that recycling. So all of the work that my predecessors and that had to be the Commissioners standing to my left and my right did on this was really highlighted at Friday night's opening, and I thought the event was done very well and staff is to be highly congratulated on that.

That is all I have to report. Anything else? Seeing none, we will go on to the items on the Consent Calendar that have been removed for discussion.

**XI. B. 2. Request Approval of a Utility Right of Way Easement Between Santa Fe County and the Public Service Company of New Mexico (PNM) on the County's South Meadows Open Space Property Near the Village of Agua Fria, in Santa Fe County, New Mexico (Community Services Department)**

PAUL OLAFSON (Community Services Department): Madam Chair, Commissioners, this is a request from PNM to place an easement on an open space property at South Meadows, approximately 22-acre property the County has purchased. We're actively engaged in planning more of an urban park facility there. The request is for a ten-foot easement along the eastern property line, along the extension of the newly created extension of South Meadows Road between Airport and Rufina.

We have worked with the developer, which is Centex Homes, as well as PNM for the request, and they've agreed to revegetate it as well as provide connections for the park facility at a future date. And I'll stand for any questions.

CHAIR VIGIL: Any questions? Commissioner Sullivan.

COMMISSIONER SULLIVAN: Madam Chair, I wasn't clear on this. This request was made by Centex Homes who's developing a subdivision adjacent to the park. Is the purpose of the easement to provide utility service to Centex Homes?

MR. OLAFSON: Madam Chair, Commissioner Sullivan, yes.

COMMISSIONER SULLIVAN: Okay. And they're doing that on County open space land.

MR. OLAFSON: Madam Chair, Commissioner, yes. Well, the easement will cross

COMMISSIONER SULLIVAN: I would think that there should be some consideration to the County to this, i.e., money.

MR. OLAFSON: Madam Chair, Commissioner Sullivan, we didn't request any

financial reimbursement. We requested instead in-kind services which would be the pedestals for hookups for power to the park facility at a future date, as well as a driveway cut, as well as a trail access across the easement, etc.

COMMISSIONER SULLIVAN: A trail access across Centex Homes?

MR. OLAFSON: No. Across the easement. It's basically our easement anyway, but to ensure there would be no future conflict, I guess.

COMMISSIONER SULLIVAN: I guess it's a little hard for me to envision without a map of this, but how long is this easement?

MR. OLAFSON: It's approximately a block, maybe two city blocks. And it's adjacent to the newly constructed South Meadows Road.

COMMISSIONER SULLIVAN: Three thousand feet? Something like that?

MR. OLAFSON: Not even. Just off the top of my head it's hard to calculate it. I'd say maybe 2500 feet.

COMMISSIONER SULLIVAN: 2500? Okay. So are these power lines going to be underground?

MR. OLAFSON: Underground. Gas and power.

COMMISSIONER SULLIVAN: Okay. Underground gas and power. And the County would in return receive a pedestal for future connection in the park? Is that –

MR. OLAFSON: Madam Chair, Commissioner Sullivan, three pedestals.

COMMISSIONER SULLIVAN: Three pedestals. Pedestals being what?

MR. OLAFSON: I'm not knowledgeable enough to speak exactly what it is. It's to have a future connection box to the power system, if we wanted to provide power to the park facility for lighting or other needs we might have on the park site.

COMMISSIONER SULLIVAN: Okay, and then –

MR. OLAFSON: The idea there is then we wouldn't have to dig it up and put in another thing if we ever wanted to come in and use access to that power line.

COMMISSIONER SULLIVAN: Okay. And then some kind of a driveway connection?

MR. OLAFSON: Yes. It's hard to describe again without a map, and I'm sorry, I didn't anticipate to be able to speak to this today, but at the corner of Rufina and South Meadows, Rufina dead-ends there, and they plan a turn-around or a turn-about there, and on the western edge of the turnabout we have also tentatively planned a parking space or parking area for the park facility and we've asked them then to provide a driveway cut and then the parking, they've also agreed to do the parking area for us, basecourse it.

COMMISSIONER SULLIVAN: To basecourse a parking area at the end of Rufina.

MR. OLAFSON: Correct.

COMMISSIONER SULLIVAN: And "they" is Centex or PNM?

MR. OLAFSON: Centex.

COMMISSIONER SULLIVAN: Okay. And what would you estimate the value of these improvements would be?

MR. OLAFSON: Off the top of my head I couldn't even guess. A couple of

thousand dollars, maybe. In the range of \$5,000.

MR. LUJAN: Madam Chair, Commissioner Sullivan, it's more like \$15,000 for the curb return and the parking lot and the basecourse. This easement would run parallel to the roadway, right off the roadway. And yes, I think it's approximately 1500 feet. It started back in December and that's why we took it back to PFMD because it was on the open space.

COMMISSIONER SULLIVAN: So there's a roadway going right down the boundary of the property? Is that it?

MR. LUJAN: Correct. It's Meadows. Whatever you want to call it, South or West Meadows. It's Meadows that ties from Agua Fria to Airport Road. It's parallel to that on the shoulder. It would be behind the curb. There just wasn't enough room from the curb to the fence line. And I believe they're going to replace a fence for us also. They're going to replace all that fence – it's some old fencing that they're going to place in there also.

COMMISSIONER SULLIVAN: And Centex didn't have room for this easement on this property? Did somebody forget that?

MR. LUJAN: I believe it comes back from the old Eberline and it's on that side of the road. So it was the shortest distance, probably, and PNM ran it on that side of the roadway and then it's got to cross over Meadows into Centex development. But it would also accommodate our open space. I believe we get three meter loops is what it is. It will be ready to hook up if we ever need it.

COMMISSIONER SULLIVAN: Okay. Thank you.

CHAIR VIGIL: I'm familiar with this property and it concerns me now. The ten-foot easement that's required here, is it easement from north to south in the open space area, on the west side of South Meadows?

MR. OLAFSON: Madam Chair, that's correct. It sits ten feet, basically, from the road right-of-way from the curb into the open space property.

CHAIR VIGIL: And again, why could this not be on the east side of South Meadows where the development actually is?

MR. OLAFSON: Madam Chair, my understanding, as James said, it was PNM's request to put it on this west side for their purposes.

MR. LUJAN: Madam Chair, it's coming from the three-phase on Eberline's, on that side, and that's where the closest utilities are.

CHAIR VIGIL: But James, at some point in time, those utilities, that easement is going to have to cross the road to go to the development.

MR. LUJAN: Correct.

CHAIR VIGIL: So why couldn't we from the Eberline cross the road and then put the easement in this area?

MR. LUJAN: I can't answer why they didn't get an easement on the east side but there must have been some conflict with an easement coming from the east side.

CHAIR VIGIL: Because this is property that got annexed into the city. It's the Lowe's development. It's the Jeff Branch development, correct?

MR. LUJAN: Yes.

CHAIR VIGIL: There's a lot that was done that the County had very little input in

through the process of this development. They only input that they had is from the residents that actually live there that I actually heard and perhaps Commissioner Anaya heard, that the residents who live there are going to be impacted by the traffic. They're going to be impacted by the density, and the problems that were associated with them that affect County residents were not addressed through the annexation process, and of course this is another issue that concerns me too, because the open space that COLTPAC has purchased there is open space that should remain pristine, so I'm sort of amazed that they're deciding to run utility lines through the open space.

I participated in some of their group process with regard to this being an educational site for students and things of that nature. So I'm not sure that all sites have been explored here. And I also, in accordance to an issue that Commissioner Sullivan brought up, am concerned that we don't have some sort of an agreement for easements and we just kind of do in-kind transfers. While those are really good and they're incentives, this easement is in perpetuity, correct?

MR. OLAFSON: Correct.

CHAIR VIGIL: And while the developer may be able to assist us with our parking and pedestals and things of that nature, the fact that it's in perpetuity, there should be some kind of consideration for. Steve, do we usually grant easements for in-kind exchanges, and is that a practice we should adhere to?

MR. ROSS: Madam Chair, easements are – when you value an easement at its fair market value it's a value for the use of a buried, underground utility line. So they're not very expensive if you go get an appraisal on the value of an easement it's not a lot of money. So I think that it's actually fairly customary what Mr. Olafson did, which is barter for features and things that he wants in exchange for an easement. In general PNM doesn't pay anything for easements from anybody.

CHAIR VIGIL: Is that a standard practice in the industry throughout the nation, or is it just something particular to PNM? Do we know?

MR. ROSS: I don't know, since I've lived in New Mexico since the eighties, but I think it is fairly common. It depends on the individual of course. Some people want to negotiate with a right-of-way specialist and demand money and most people don't.

MR. OLAFSON: Madam Chair, if I might add, this request did go through the open space committee, the County Open Land and Trails Planning Committee, and they did ask for these considerations. The recommendations came through this committee. And it was also felt that this land, while very valuable for our open space program, is not terribly – the disturbance that would come from the easement could be easily remedied and revegetated and it wasn't felt that it would destroy the property. It's not cutting across the middle of the property, it's not creating a massive scar. It's really paralleling a new road and that will also be where people will be crossing into it at different points into the open space as it becomes a park. So the committee did look at these things and consider them. The question of financial compensation was not really discussed because it was understood that it's a fairly traditional aspect to grant or not grant the easement and then have a condition if you had chosen. The company has agreed to revegetate the entire disturbed area, as well as provide the pedestals.

CHAIR VIGIL: And I agree that it was probably methodically done. I just do not have a clear understanding why, because this is servicing City-annexed property that it's not

pursued through an easement through the city. So I can't support this. But are there any other comments? Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, Paul, did they already trench this?

MR. OLAFSON: Madam Chair, Commissioner Anaya, they began trenching it. They did not have permission. We ran out and cited them and said you cannot do this until we get this easement brought to the Board. And that was I believe an oversight, because Centex had come to us and requested this easement via PNM. Or PNM had come to us via Centex in December. We passed it through COLTPAC. We sent them back a communication saying that the committee voted to approve this with these conditions and get back to us when you have an answer on these conditions. That never happened. They started to dig. We went out there and said you guys can't dig; you have no easement. Stop. They agreed to stop and we're now pending this discussion and this decision before the actual work would continue.

COMMISSIONER ANAYA: So the trade-off is they're going to get us some either pedestals and they're going to have an easement through our open space. The calls that I've been getting is that is our open space and why are we allowing them to do that? I don't know. Is there any other way to get power to that Centex Homes?

MR. OLAFSON: Madam Chair, Commissioner, I don't know. I can't speak to PNM or Centex and how they work.

COMMISSIONER ANAYA: And we don't have a map, so I don't know exactly where trenching –

MR. LUJAN: Madam Chair, Commissioner Anaya, meeting with some of the developers, Alan Ortega, there could be access through Jemez Road. Again, it's going to have to come from another easement or from Agua Fria. Like I say, Ebberline had the three-phase and I think it started in an open space right behind Ebberline that's not anybody's land, but Ebberline, that was the shortest route. That's why they pursued that area. And it's parallel to the highway. It's curb and gutter and then there's probably a four-foot space between the curb and gutter and the fence line. I understand it's going to go between the curb and gutter, remove the fence and then add to that, ten feet is what it is? So it's all part of that, right?

And normally utilities go behind the curb and gutter but on this case I can't speak where else. The closest one would be coming through Jemez Road. And that's –

COMMISSIONER ANAYA: Are you recommending approval?

MR. LUJAN: I would recommend it. I don't see a – I'd rather have it there than overhead through some of the other places that they might go through, because there's a lot of residents on Jemez Road and I think they'd tear up more on Jemez Road and impact those people more so on Jemez.

CHAIR VIGIL: James, why couldn't they do it on the east side of South Meadows? It's right across the street?

MR. LUJAN: Madam Chair, we can find that out. I really don't know why. I believe it's because the closest is from Ebberline, which is on the same side. That's all I can come up with why. It's on the side of Ebberline already.

CHAIR VIGIL: But Jemez is further east.

MR. LUJAN: That's correct. We can ask them.

CHAIR VIGIL: I don't think we have sufficient information. I don't know if the Commission would consider tabling this to get further information.

COMMISSIONER ANAYA: So moved.

COMMISSIONER MONTOYA: Second.

CHAIR VIGIL: There's a motion for a table.

**The motion to table consideration of the utility easement on South Meadows passed by unanimous [4-0] voice vote.**

COMMISSIONER SULLIVAN: We need a map.

CHAIR VIGIL: We need a map, yes.

MR. OLAFSON: Madam Chair, Commissioners, again, I didn't anticipate having this discussion. Next time we bring it to you, which I anticipate will be the end of next month, we'll provide maps as well as details of other options as they might be.

CHAIR VIGIL: And if you can speak to Centex or PNM to look at other options on this, I think it would be helpful for us.

MR. OLAFSON: Yes, Madam Chair.

**XI. B. 6. Resolution No. 2007-\_\_\_. A Resolution to Confirm the Transfer of Maintenance of Roads Located in the City of Edgewood (Growth Management Department)**

CHAIR VIGIL: Do you want to give us a briefing on this?

MR. MARTINEZ: Madam Chair, Commissioners, the City of Edgewood has annexed properties where County maintained roads lie, and the exhibit that's attached to this memo identifies the roads, the start point, the end point and the distance. Public Works is recommending the approval of this resolution.

COMMISSIONER MONTOYA: So moved.

COMMISSIONER ANAYA: Second.

CHAIR VIGIL: What roads? Are the roads listed there? Through the motion and the second.

COMMISSIONER MONTOYA: Yes, they're on Exhibit A.

MR. MARTINEZ: Madam Chair, it's an exhibit attached to the resolution.

CHAIR VIGIL: And was this proposed to us by the City of Edgewood?

MR. MARTINEZ: Madam Chair, they already annexed. They performed their annexations, and these roads are within the areas that have annexed.

CHAIR VIGIL: So we're just basically giving them to the municipality.

MR. MARTINEZ: That is correct. For maintenance purposes.

CHAIR VIGIL: Okay. And for ownership, correct?

MR. MARTINEZ: That is correct. You see some of these distances are really short. This will help eliminate or close those gaps that have been discussed numerous times about

the types of annexations that are happening that are creating these voids. These stretches or these parcels that are being annexed are helping fill in those voids.

CHAIR VIGIL: Okay. Thank you, Robert. There's a motion and a second. Any further discussion? Commissioner Sullivan.

COMMISSIONER SULLIVAN: My concern, Madam Chair and Robert is that – my understanding is that all of these parcels were annexed without the County's – without the request for the County's dedication of the road to it. And this is the same issue that we're dealing with in Las Soleras now, where the Boundary Commission has been very clear that you need to have County approval for roads to be included before annexation can occur. Were all of these parcels approved by the Boundary Commission for annexation?

MR. MARTINEZ: Madam Chair, Commissioner Sullivan, I'll have to defer that to the County Attorney.

MR. ROSS: Madam Chair, Commissioner Sullivan, I don't know these annexations but my guess is that they're petition method annexations. I don't think Edgewood has ever gone to the Boundary Commission.

COMMISSIONER SULLIVAN: So the petition method happens when they're contiguous. Is that –

MR. ROSS: When a landowner or landowners sign a petition.

COMMISSIONER SULLIVAN: They still have to be contiguous, right?

MR. ROSS: And they have to be contiguous and –

COMMISSIONER SULLIVAN: But even in the petition method, if there's a County road in there, how can they just annex it without the County's authorization?

MR. ROSS: Well, they really shouldn't. There really should be discussion in advance, but I don't think there was in this case. I think that's what Robert is trying to clear up.

COMMISSIONER SULLIVAN: Well, my concern is that it's continuing. They're continuing to annex this way is my understanding. I should have brought it up while the mayor was here, after we gave him \$400,000, and said, by the way, the County has got to approve County roads for annexation. And I understand the rationale of putting together some of these little gaps and pieces of roads that have occurred because of the piecemeal annexation. They haven't occurred because of anything the County has done. They occurred because these annexations that developers ask for are done in little pieces á la Airport Road and in the end what you have is a tenth of a mile of County road and a tenth of a mile of Town of Edgewood road, then a tenth of a mile of County road and on and on and on. Drives the Sheriff nuts to figure out whose jurisdiction it is.

So somehow we need to send a message here. I think it makes sense to do this but I don't think this is the proper way to do it. I think that the County has got to be involved ahead of time in the annexation process to determine if we're in agreement with the roads being a part of the annexation or if there's some other consideration we need to throw into the mix. It may have to do with maintenance or connection of other roads or what have you. I'm concerned that – they know about this. They've done this. It's better to ask for forgiveness than it is to ask for permission. That's I think the process that we're confronted with here.

MR. ABEYTA: Madam Chair, I can contact the Town of Edgewood and coordinate a meeting with them and perhaps we could reach some kind of MOA between the both

of us that addresses this issue.

COMMISSIONER SULLIVAN: I certainly think we need to because this is the same problem that has led Santa Fe County and Santa Fe City into what's occurred on Airport Road and other areas that have just been piecemeal pieces of annexations. Well, that's the problem I had with it. I see the rationale that I don't see that we've been a party to the process and we should be.

MR. MARTINEZ: Madam Chair, Commissioner Sullivan, a couple months ago, Jack Kolkmeier, the Land Use Administrator, brought to the Commission the information about this annexation and at that time I believe the Board addressed this issue with staff and we believed that this was the mechanism that the Board wanted in order to relinquish these roads. So this resolution was brought forth based on the discussion a couple of months ago by the Board and the Land Use Administrator.

COMMISSIONER SULLIVAN: Tell me, what is the difference between ownership and maintenance responsibility? This resolution gives them maintenance responsibility. Who owns the road?

MR. MARTINEZ: Madam Chair, Commissioner Sullivan, the Town of Edgewood would also retain ownership of them.

COMMISSIONER SULLIVAN: This resolution only confirms the transfer of maintenance, but in reality, they know they're decommissioned, as it were, as County roads. Right?

MR. MARTINEZ: Madam Chair, Commissioner Sullivan, that's correct.

COMMISSIONER SULLIVAN: The County road signs come off; the Town of Edgewood street signs go up.

MR. MARTINEZ: Madam Chair, Commissioner Sullivan, that is correct. And then we would no longer include these on our road list inventory.

COMMISSIONER SULLIVAN: Right. And they would plow their own roads and so forth.

MR. MARTINEZ: That is correct.

COMMISSIONER SULLIVAN: It makes sense, although I think the resolution needs to include ownership in it. Those are my comments. Thank you, Madam Chair.

CHAIR VIGIL: Any further discussion? Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, so it doesn't include ownership, but they would own it?

MR. MARTINEZ: Madam Chair, I need to defer to the County Attorney again because the Legal Department is the one that drafted this resolution.

MR. ROSS: Well, Madam Chair, Commissioner Anaya, it's unclear at this point, looking at this resolution from my vantage point, whether we own any of these roads. It depends on the circumstances that are actually out there on the ground. Maybe some of these roads were platted to the County and the County owns them. Maybe they're prescriptive rights-of-way which are there by virtue of the road being maintained for years and years and years. I think it's probably important to figure out who does own them. That's why the statute requires a consultation in advance when there's an annexation so the municipality and relevant County can work these things out in advance, figure out, like for example, if the road is owned by the County, who's going to have

ownership after annexation? Who's going to have maintenance responsibility? Because they're two different things.

So that's why we're supposed to talk about this stuff in advance of annexation. It's already annexed without that discussion having taken place so we need to have a mechanism to clean it up.

COMMISSIONER ANAYA: So would it be okay to approve this one and then let them know? And I thought they were talking to us and letting us know. I know they were sending us letters.

MR. ROSS: The letters are required by state statute now, a new state statute requires the letters, and we do comment. But I think Roman's suggestion is a very good one, that we probably need to talk to them specifically about the road issue, maybe in a formal way, because the letter is required by statute to effect a petition for annexation, but the road issue is a different statute and a different issue entirely. Although we comment when they send us the letters, they don't have to even consider the comments. They just receive them and then do the annexation. So we probably need a more formal process established by an agreement that requires us to all sit down and agree what happens to the ownership and what happens to the maintenance in advance of the annexation so that we can settle those things before the property gets annexed and not afterwards.

Because there's a liability issue as well. The person who maintains the road is the one liable for accidents that occur that are related to unsafe conditions on the road. So we certainly want the liability with the person who's maintaining the road, not with a different party.

COMMISSIONER ANAYA: So I would say that what we have here today is okay, because we do – because there is signs – Santa Fe County maintained road begins. Santa Fe County maintenance – I think we have 100 signs like that down there, and this would eliminate that.

MR. ROSS: Right. This clarifies the maintenance issue fairly well. I'd like to see it accepted by the City of Edgewood. This is a unilateral decision. It's not anything that the City of Edgewood is going to accept. It's not like a contract. We're just saying we're not maintaining it. We're just sort of declaring that but we don't have the City of Edgewood's agreement that they will take over the maintenance.

COMMISSIONER ANAYA: But yet they annexed it and I think they do believe that these are their roads now.

MR. ROSS: It would be nice if we got some sort of a statement back from them that they've accepted these roads, and that would close the loop, and then we wouldn't be in the liability loop, and then these roads would be maintained by Edgewood. If we have to look into the ownership issue we can do that subsequently.

COMMISSIONER ANAYA: Are you okay with that, Commissioner?

COMMISSIONER SULLIVAN: Well, I think it would be nice to know that they agree with this solution. We've played out our trump here and we haven't even asked for them to put a card down.

COMMISSIONER ANAYA: Do we approve it and send it to them.

COMMISSIONER SULLIVAN: I think it should be a joint resolution the way we do City/County resolutions with the City of Santa Fe and with Santa Fe County. We pass it. They pass it. If they tinker with it then it has to come back to us. We go back and forth but in the end we

have something we've both agreed with. We're just saying – and then I see, my concern is we get back from their attorney, something like, well, that's very nice. However, this is our opinion of it, and it's a little different. And then where are we? I think maybe making it a joint resolution would start the process that Mr. Abeyta is talking about of getting together and saying, look, we need to establish a formal process for accepting – for the town accepting this road and the County taking it off its road inventory. That would be my suggestion. It would be a joint resolution.

CHAIR VIGIL: Let me – Robert, do you want to address that?

MR. MARTINEZ: Madam Chair, the legal staff prior to Steve Ross had informed the Public Works Department, because we've been dealing with annexations with the City of Española, City of Santa Fe, and Edgewood, that if an entity annexed up to a roadway, that it's statute that they provide maintenance on that roadway. Is that not correct, Steve?

MR. ROSS: Madam Chair, there's a statute that says if you annex up to the edge of a roadway you have to annex to the far right-of-way boundary of the roadway. But it still doesn't address the maintenance issue. It just addresses where the boundary is to be drawn and so that's to keep municipalities from annexing up to a road that really serves as the boundary of a municipality without them having maintenance responsibility for that road. The statutes aren't – they don't tie the whole annexation thing, as we've all discussed in the last year or so – they don't tie it all up in a nice, coherent picture. It's all very disjointed. It's very difficult to read between the lines in those statutes. They're fairly old. My interpretation would be that that issue is unresolved with respect to a boundary.

CHAIR VIGIL: Commissioner Anaya, there are two recommendations that I'm hearing thus far. One, that perhaps we consider a joint powers agreement and another that communication be had with the Town of Edgewood and perhaps even establishing a protocol for identifying this and actually a third one that allows for those discussions to identify whether in fact the maintenance is also going to include ownership and if a joint powers agreement of some kind would clarify that. And with that, I'm wondering if it's necessary to move forward on this particular resolution or if we could get those issues ironed out and come forward with a clean joint powers agreement after discussions with the City of Edgewood, that we might have a better understanding of how a protocol can be established for identifying – not only for Edgewood, but I think it's going to need to happen for the City of Santa Fe and the City of Española.

How do you feel about perhaps tabling this until we can get all that work done?

COMMISSIONER ANAYA: That's fine. Move to table.

CHAIR VIGIL: There's a motion to table.

COMMISSIONER MONTOYA: And I think the other thing is the joint resolution. Either JPA or joint resolution.

COMMISSIONER SULLIVAN: I think a joint resolution is easier than a JPA. JPA has to be approved by DFA.

COMMISSIONER MONTOYA: Second.

CHAIR VIGIL: There's a motion and a second to table this. I need to take a vote on a tabling motion.

**The motion to table the road transfer agreement passed by unanimous [4-0] voice**

**vote.**

MR. LUJAN: So do we continue maintaining these roads in town, inside the city limits?

CHAIR VIGIL: You have to maintain the status quo until we have a clear agreement.

MR. ABEYTA: Madam Chair, we'll get on a meeting right away. We'll make a call to the manager either today or tomorrow morning and start working this out.

MR. MARTINEZ: Madam Chair, I've got another question. What about the roads that the Town of Edgewood has taken over from previous annexations that hasn't gone through the process that's being described?

CHAIR VIGIL: Right. I think that's why we're concerned because none of that has been really communicated very well. No protocol has been established. This is the first time, at least from my vantage point, a request to identify maintenance of roads and we have an issue as to whether or not that also includes ownership and how this should be done. Perhaps once we know how it should be done, the roads that have been annexed can come through that process.

MR. MARTINEZ: So do we need to go back from the very first road that they've annexed and include that in the discussion?

MR. ABEYTA: Madam Chair, we'll include everything in the discussion with them. We'll get it all resolved.

COMMISSIONER SULLIVAN: Put them all in. Get the whole thing cleaned up in one fell swoop. Then we know and they know and take down all those signs that say maintenance starts and maintenance ends.

MR. ABEYTA: We'll get it all resolved. I'm make sure that Robert and James are at the meeting with me.

CHAIR VIGIL: Very well. Thank you. That item has been tabled.

**XI. B. 9. Request Authorization to Accept and Award a Price Agreement with Maxim Healthcare Services in Response to RFP #27-1822-CORR/MS to Provide Temporary Nursing Staff to the Adult Detention Center (Corrections Department)**

RICHARD MARTINEZ (Purchasing Division): Madam Chair, Commissioners, I'm here to attempt to answer any questions.

CHAIR VIGIL: I think I pulled this one in particular. It seems to me like we're expanding the opportunity for another vendor to bring in nursing staff.

MR. MARTINEZ: Madam Chair, that is correct. If you recall, I believe it was a couple of months ago the County Commission approved an agreement with Temps, Inc. for temporary nursing services. This contract with Maxim would partner with that agreement.

CHAIR VIGIL: Okay. This probably isn't for you, Richard. This is probably more for Roman. Roman, through all of the correspondence and communications that we've had at our

detention facility, one of the concerns that I had is that as we do contract the nurses that there's the appropriate kind of training for those nurses, that they be trained in particular for dealing in detention facility issues. Is that part of how we're contracting for these nurses?

MR. ABEYTA: Yes, Madam Chair, and we're hoping to get to the point where the only purpose of having these contracts is for like when there are vacancies, shortages. But we hope to have our own nursing staff, fully staffed with our own nurses one day out at the facility and the only purpose for these contracts would be, like I said, in the case where we have vacancies or a special occasion. And we're heading towards that direction with the facility now, to have our own staffing and the only purpose of this contract is so that we have more than one vendor on our list so that if do have an emergency we can contact this vendor. But even with that, we're going to make sure that these vendors do have training in a corrections setting and facility.

CHAIR VIGIL: Okay. And certainly now with the new medical director, that component could be addressed more stringently.

MR. ABEYTA: Right.

CHAIR VIGIL: Okay. I have no further questions. Does anyone else?  
Commissioner Montoya, then Commissioner Sullivan.

COMMISSIONER MONTOYA: Richard, based on the responses that you got from the other ones, are these sorts of organizations or agencies experiencing shortages of nursing staff also?

MR. RICHARD MARTINEZ: Madam Chair, Commissioner Montoya, if I'm understanding you correctly, you're asking if these agencies that we're contracting with, are they experiencing shortages as well?

COMMISSIONER MONTOYA: Right.

MR. RICHARD MARTINEZ: I don't think I can answer that. My understanding, and this is more of an assumption on my part, Commissioner Montoya, is that if we're attempting to contract with these firms, they were solicited through the RFP process and they responded to the RFP, it almost sounds as though they should have the staff to accommodate whatever the Corrections Department may need as far as shortfalls are concerned. But I do not know or I'm not aware of any shortages that these firms may be seeing.

COMMISSIONER MONTOYA: So this is just to provide us with another option.

MR. RICHARD MARTINEZ: Madam Chair, Commissioner Montoya, yes, it is. As Roman stated, this is more of a contingency. Any shortfalls in nursing staff at Corrections, that's what these agencies will be used for.

COMMISSIONER MONTOYA: Thank you, Madam Chair.

CHAIR VIGIL: Are these local agencies?

MR. RICHARD MARTINEZ: Madam Chair, I believe so. If I'm not mistaken, Madam Chair, I believe that they are local firms. Maxim Healthcare is out of Albuquerque.

CHAIR VIGIL: Okay. Commissioner Sullivan.

COMMISSIONER SULLIVAN: I'm a little confused. The letter of April 12<sup>th</sup> says that you went through a solicitation. You got six firms responding, and the staff recommended Maxim Healthcare. One of the firms that had responded was Temps, but they weren't recommended. You've recommended Maxim. Now, this is just dated the 12<sup>th</sup>. Are you coming for

approval of Maxim, or has Maxim already been approved by the Board?

MR. RICHARD MARTINEZ: Madam Chair, Commissioner Sullivan, for this particular contract, Maxim is being recommended for a contract. Temps, Inc. was awarded a contract under this same solicitation. I believe that contract was approved a month or two ago by the Board of County Commission. But this particular contract is for recommendation of Maxim.

COMMISSIONER SULLIVAN: Well, was there another solicitation?

MR. RICHARD MARTINEZ: Madam Chair, Commissioner Sullivan, no sir. This was the same solicitation. I believe that it was due to some budgetary issues or concerns that Corrections had, and that's kind of the reasoning for the lapse in time from recommending to award the first contract, Temps, Inc. and then a little while after now with the recommendation for Maxim. But it essentially is the same solicitation.

COMMISSIONER SULLIVAN: So even though this is a memo dated April 12, 2007, Request approve of professional services agreement for temporary nursing staff for adult detention facility. But you say we've already done that. We've already done that for Maxim? Is that correct?

MR. RICHARD MARTINEZ: Madam Chair, Commissioner Sullivan, no. We've already done that for Temps, Inc.

COMMISSIONER SULLIVAN: Excuse me, for Temps.

MR. RICHARD MARTINEZ: Sure. And this recommendation is for Maxim.

COMMISSIONER SULLIVAN: Okay. Now, did the solicitation allow award to more than one contractor?

MR. RICHARD MARTINEZ: Madam Chair, Commissioner Sullivan, yes it did. It was intended to be a multiple award.

COMMISSIONER SULLIVAN: But we only made one.

MR. RICHARD MARTINEZ: Actually, the first recommendation which was contracted was Temps, Inc. and this being the second recommendation for that solicitation would be Maxim. And those two vendors would be contractors through this one solicitation.

COMMISSIONER SULLIVAN: Okay. So Temps was the most highly ranked firm the first time.

MR. RICHARD MARTINEZ: Madam Chair, Commissioner Sullivan, I believe so. Maxim and Temps were the top two highest rated, but I do not have the information in front of me as far as who the highest rated was, but Temps and Maxim were the two top highest rated.

COMMISSIONER SULLIVAN: Okay. And my last question is, you say that – or somebody says that in the past there was at least three vendors accommodating services and one vendor's contract is already expired, with the remaining two vendors being expired or being canceled due in part to getting better pricing in reducing the buy-out criteria on the new RFP that has now taken place. What does that mean – reducing the buy-out criteria?

MR. RICHARD MARTINEZ: Madam Chair, Commissioner Sullivan, it's my understanding, and I hope that I'm responding correctly here, but it's my understanding that the original agreements for these services, for nursing services, that there was an immediate need to get these contractors on board, and I think that based on the need, that they entered into agreements with these contractors that may have not been most advantageous to the County. And so in

recognizing that up to date, based on budget and other issues, Corrections had requested to initiate this request for proposals in efforts to acquire new contracts, perhaps with better pricing, more specified services as far as the scope of work is concerned, but the efforts to put these contracts together is to put contracts that are a bit more advantageous to the County and to Corrections.

COMMISSIONER SULLIVAN: Well, the memo goes on to say, in the past our cost in using agency nurses has been overwhelming and uncalled for. That's pretty strong. What does that mean? Does that mean what I think it means?

MR. RICHARD MARTINEZ: Madam Chair, Commissioner Sullivan, I apologize. I don't think I can answer on that. I had requested from Steve Aguirre with Corrections to help further justify our initial memo to the BCC for this contract. So I'd be a little reluctant to kind of clarify on Mr. Aguirre's memorandum.

COMMISSIONER SULLIVAN: So getting back to reducing buy-out criteria, is it your understanding from a procurement standpoint that these contracts that we had with these other agencies – and I understand there were unique circumstances as we took over the jail, we had to do a lot of things quickly and we had to get important services in place. We were under orders from the Bureau of Prisons and so forth. But was there some criteria, was there some termination clause in those contractors that said if we were going to terminate them we had to give them some buy-out amount? Is that your understanding of what that is?

MR. RICHARD MARTINEZ: Madam Chair, Commissioner Sullivan, unfortunately, I am not entirely familiar with those agreements. It's my understanding that Corrections, based on the award of these two contracts had either intent of allowing the existing agreements to either expire or potentially pursue termination. Based on that intent, I imagine that there would be a termination clause in there but I am not aware –

COMMISSIONER SULLIVAN: I think someone from the Finance Department has a thought on that.

MS. MARTINEZ: Madam Chair, Commissioner Sullivan, the buy-out clause is actually related to if we employed one of these agencies' nurses then we would have to pay a buy-out fee for basically taking one of their nurses and making them a County full-time employee.

COMMISSIONER SULLIVAN: So by reducing the buy-out criteria, are we saying we're going to cancel their contracts and then maybe hire these nurses anyway?

MS. MARTINEZ: Madam Chair, Commissioner Sullivan, I think that's probably not best worded. I don't think there was a reduction of the buy-out. I think it was overall cost and attempting to do a reduction for the entire contract. We had one buy-out and it was an expensive buy-out so I don't think the County would entertain that again.

COMMISSIONER SULLIVAN: Okay. So you had three vendors before and two of them have expired. The two that expired are not Temps or Maxim. Right? They're other firms. Is that right?

MR. RICHARD MARTINEZ: Madam Chair, Commissioner Sullivan, if I'm not mistaken I believe we did have contracts with both Temps and Maxim, and those were two of the three or four agreements that they Corrections was either going to allow to expire or pursue termination.

COMMISSIONER SULLIVAN: So we're dealing with the same vendors but

maybe on better contract terms. Is that what I'm hearing?

MR. RICHARD MARTINEZ: Madam Chair, Commissioner Sullivan, that is correct.

COMMISSIONER SULLIVAN: Is that right, Teresa?

MS. MARTINEZ: Madam Chair, Commissioner, that's right. In addition to those two I know we've dealt with Medical Staffing and Nursefinders in the past, so they may have been the two referenced within the memo.

COMMISSIONER SULLIVAN: Okay. Thank you, Madam Chair.

CHAIR VIGIL: Any further questions? What's the pleasure of the Commission?

COMMISSIONER MONTOYA: You're recommending approval, right?

MR. RICHARD MARTINEZ: Madam Chair, Commissioner Montoya, yes sir.

COMMISSIONER MONTOYA: Move for approval.

CHAIR VIGIL: Motion. Is there a second?

COMMISSIONER ANAYA: Second.

CHAIR VIGIL: We're voting on item B. 9.

**The motion to authorize the price agreement for nursing services passed by unanimous [4-0] voice vote.**

**XI. B. 11. Consideration and Possible Approval of an Airspace Agreement By and Between the New Mexico Department of Transportation, and the Board of County Commissioners of Santa Fe County for the Northeast Connector (Legal Department)**

MR. ROSS: Madam Chair, this is the third of three agreements concerning the Northeast Connector. The first agreement was a little MOU that we did with the state. The second one was an agreement we did with the developer, Oshara Village, LLC and in that second agreement Oshara agreed to construct the Northeast Connector. This third agreement is essentially the easement upon which the Northeast Connector will be built. I have been discussing the terms of this agreement with the Highway Department, Department of Transportation for many months and they have agreed to make a number of changes. You can see from the memo that the agreement is a 50-year one. I'll stand for questions. We have representatives of the developer here in case you have any questions concerning their proposed construction activities. But this gives us basically the right to use the alignment between the end of Rabbit Road and Richards, along the federal property.

CHAIR VIGIL: Questions? Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Ross, why is it an airspace agreement. Oshara will be building a road on the ground, right? What does that mean?

MR. ROSS: Commissioner Sullivan, I'm not 100 percent sure what that means. I never did get a good answer from the Department of Transportation on that. I surmise that it has something to do with the fact that the right-of-way is owned by the federal government and probably cannot be formally dedicated to anyone, other than the federal government. That's just a

guess on my part. So we have the right to use the space from the ground up, essentially.

COMMISSIONER SULLIVAN: Kind of like a condominium from the wall out, but not the wall itself.

MR. ROSS: Right. The title of the agreement is airspace agreement but the phrase used consistently through the agreement is right-of-way. So I conclude that this is a right-of-way, 50 years.

COMMISSIONER SULLIVAN: Okay, and then in the agreement it lays out various duties of the County. Then in the agreement we've already executed with Oshara Village, LLC, it states that Oshara assumes those duties of the County, and they have agreed to design and construct the Northeast Corridor pursuant to the memorandum of understanding. So this agreement is coming – this airspace agreement is coming after we signed the Oshara agreement.

MR. ROSS: Correct.

COMMISSIONER SULLIVAN: So I'm assuming that Oshara is still in agreement with assuming the role and the duties of the County in this airspace agreement.

MR. ROSS: Madam Chair, Commissioner Sullivan, there's certain things that I don't think that Oshara would assume under this specific agreement. In fact, Section 2.a.1, the driveway permit process. I don't think they're planning on assuming that particular function. But some of the other functions, I'm sure that in connection with the construction and maintenance of the road they will assume the bulk of the responsibilities that the County has. But the guts of what they're supposed to do was set out in the MOA and that's specifically what I think they're planning to assume. But they're here; you can certainly ask them.

COMMISSIONER SULLIVAN: Okay. But on the agreement with Oshara, 1.a in Oshara says Oshara assumes the County's obligations under the County and NMDOT agreement to design and construct and pay for the design and construction of the Northeast Corridor from the intersection of St. Francis Drive and Rabbit Road through phase 1 of Oshara Village to Richards Avenue. So that's still in place.

MR. ROSS: Yes.

COMMISSIONER SULLIVAN: There's nothing – this airspace agreement says the County will assume that responsibility but our agreement with Oshara says Oshara assumes that responsibility.

MR. ROSS: Right. Also the proposed airspace agreement also says that if we fail in our duties that the right-of-way goes back. So it's to Oshara's best interest to comply with the paragraph you just read. In other words to construct the road and take on that responsibility. Otherwise we don't have an easement and they can't construct the road.

COMMISSIONER SULLIVAN: Okay, so Oshara has assumed the responsibility to design and to build it. Who has the responsibility to maintain it?

MR. ROSS: My understanding is that it's the County's responsibility to maintain it.

COMMISSIONER SULLIVAN: Is this a private road or is this a County road. I don't think the Oshara Roads are County roads.

MR. ROSS: I think this will be a public road. But that's really a question for Mr. Hoffman or Mr. Herdman, because I don't really remember what the ownership of the road –

COMMISSIONER SULLIVAN: This particular agreement only deals with the little piece that's going across the DOT right-of-way.

MR. ROSS: Correct. Correct. And the agreement itself says that that's a County road.

COMMISSIONER SULLIVAN: So that piece is a County road. Which agreement says that? The airspace agreement?

MR. ROSS: The airspace agreement.

COMMISSIONER SULLIVAN: Okay. So then we don't have a determination then on what the rest of the road is. We're just responsible for maintaining –

MR. ROSS: Well, if your memory is accurate and it usually is, then the roads within Oshara are private roads and we wouldn't have any obligation to maintain those.

COMMISSIONER SULLIVAN: It doesn't mean that they can't request that they be turned over to the County but I don't think in our subdivision approval we've accepted dedication of any roads in Oshara or the Northeast Connector. We've done several resolutions that authorized application to DOT and so forth. Maybe, Mr. Herdman, you could shed some light on that for me.

FRANK HERDMAN: Madam Chair, Commissioner Sullivan, I guess I'm unclear as to the particular question.

COMMISSIONER SULLIVAN: The question is who's going to maintain the road.

MR. HERDMAN: There are two parts of the road. This airspace agreement deals with that portion of the road that is outside of the private property. The balance of the road is on private property. And it's my recollection – although I'd have to double-check. I didn't research all of the conditions that were imposed in connection with the subdivision phase 1 for purposes of this agreement, because it deals with a different portion of the road. So it's my recollection that it's a standard practice that that's offered for dedication. I remember that particular part of the subdivision plat. What it states specifically on maintenance, I'd be remiss in speculating at this time without going back and double-checking it. But I can assure you that the County did its job in scrutinizing phase 1 of Oshara Village and I'm sure that whatever is done is in accordance with its usual practice and requirements.

COMMISSIONER SULLIVAN: Okay, well let's presume then, which is normally the case, that the roads may be designed to County standards as required by the Community College District. That does not confer/convey acceptance as a County road upon any of the roads. It simply says those roads have to have certain standards, depending on whether they're local collectors or whatever they are. So assuming that we haven't accepted the road, then it would be your understanding that the County would have responsibility for maintaining this piece that's on the federal right-of-way. Oshara or the homeowners association would have the responsibility for maintaining the balance of the Northeast Connector. Right?

MR. HERDMAN: Again, it's been a long time since I've seen the subdivision plat and the conditions of approval for phase 1. It's my vague recollection that there is the standard requirement for maintenance of a private road, that is a part of the subdivision plat. It's been months. I just need to say that I came prepared to discuss this part of the road today. I didn't review the conditions associated with the balance of the road. That's not part of this agreement.

COMMISSIONER SULLIVAN: Okay. Anyway, Mr. Ross, by executing this agreement we're – I think we, the County are responsible, at least we know for this piece of the road. Oshara doesn't assume that responsibility.

MR. ROSS: Madam Chair, Commissioner Sullivan, in the absence of anything else, and I just glanced through all the other agreements, I think we're probably responsible for maintaining this piece of road.

COMMISSIONER SULLIVAN: Okay. Thank you, Madam Chair.

MR. ROSS: The existing County road at Rabbit Road and the boundary of the Oshara property.

CHAIR VIGIL: Any further questions?

COMMISSIONER MONTOYA: Move for approval.

CHAIR VIGIL: There's a motion. Is there a second?

COMMISSIONER ANAYA: Second.

CHAIR VIGIL: Motion and second to approve this item. Any further discussion?

**The motion to approve the airspace agreement with DOT passed by unanimous [4-0] voice vote.**

**XII. B. 13. Request approval for amendment #1 to MOA #27-0717 PFMD-RH with the Cundiyo Mutual Domestic Water Consumers Association to expend the remainder of the grant proceeds in the amount of \$191,000 for FY2007 for construction of the Cundiyo water system improvements project [Exhibit 2: Staff Memo]**

CHAIR VIGIL: Mr. Olafson, you've been called on again.

COMMISSIONER SULLIVAN: Madam Chair.

CHAIR VIGIL: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I need to recuse myself on this matter.

CHAIR VIGIL: Okay. Commissioner Sullivan will recuse himself from this item.

Would you please proceed, Mr. Olafson.

MR. OLAFSON: Madam Chair, we're asking for basically an amendment to the existing agreement with the mutual domestic to allow for an increase in compensation to allow for the final expenditure of funds. The Board did approve the transfer of funds to this contract and to this water system project. This is basically a housekeeping mechanism to allow for the funds to actually be spent out through the existing agreement. I'll stand for any questions.

COMMISSIONER MONTOYA: Madam Chair, are these the Cuatro Villas funds?

MR. OLAFSON: Madam Chair, Commissioner Montoya, yes.

COMMISSIONER MONTOYA: Oh, they are. Okay. So we're just getting it done now.

MR. OLAFSON: Yes. Excuse me, Madam Chair, Commissioner. The Board did approve changing these funds over. The financial mechanism's been done, but we did not amend the agreement to increase the sum to allow these funds to be spent through. So this is housekeeping basically.

COMMISSIONER MONTOYA: Okay. Move for approval.

COMMISSIONER ANAYA: Second.

CHAIR VIGIL: Motion and second. I have a question. These are federal dollars?

MR. OLAFSON: Madam Chair, yes.

CHAIR VIGIL: Any further discussion?

**The motion to approve the Cundiyo water agreement passed by s [3-0] voice vote, with Commissioner Sullivan having recused himself.**

### **XIII. STAFF AND ELECTED OFFICIALS' ITEMS**

#### **A. Community Services Department**

##### **1. Request Approval of an Agreement Between Santa Fe County and COMARK Building Systems, Inc to Purchase and Install a Modular Building at the Agua Fria Fire Station to Provide for Fire Fighter Living Quarters**

CHAIR VIGIL: Do they really have to sleep? Is that yours, Mr. Olafson?

MR. OLAFSON: We're requesting an agreement between the County and COMARK as well as a memorandum of understanding that will deal with the cooperative educational services to purchase and install a modular building to serve as living quarters for the fire station in Agua Fria. This will allow for the firefighters to reside at the station 24/7 and provide full-time service at this station. This is the first step in providing more or additional services throughout the county for fire and EMS services. We are working with COMARK because they are able to provide the service within the required time frame, which is a target date of July 1<sup>st</sup> to have this station opened, or the living quarters of the station up and opened. The station is already up and functioning.

The agreement is through a cooperative agreement with CES and so it's similar to a state contract agreement. And I will stand for any questions. Chief Holden is here to answer any questions as well.

CHAIR VIGIL: Thank you. Commissioner Montoya.

COMMISSIONER MONTOYA: What is the funding source for this?

MR. OLAFSON: Madam Chair, Commissioner Montoya, it will come through the fire –

COMMISSIONER MONTOYA: Through the fire fund?

STAN HOLDEN (Fire Chief): It's the existing quarter cent gross receipts tax.

COMMISSIONER MONTOYA: Oh, okay.

CHAIR VIGIL: Further questions? Commissioner Sullivan.

COMMISSIONER SULLIVAN: Does this \$350,000, Paul, include the CES fee?

MR. OLAFSON: Madam Chair, Commissioner Sullivan, yes it does. And actually, the numbers that we're looking at are lower than the \$350,000. When we prepared this memo we were still in the process of finalizing the design. I neglected to also point out it's about 1200 square foot facility that will provide living, bathroom and sleeping quarters for the firefighters. We're looking at about \$200,000 actually on this agreement.

COMMISSIONER SULLIVAN: I was going to say, \$300 a square foot for a metal building is a bit steep.

MR. OLAFSON: Yes, and Madam Chair, it is. That's one of the reasons we're going with the modular is the affordability of it, as well as the timeliness to get it in place in time, so the cost is quite substantially lower and that whole \$200,000 includes all the site work and all the additional services, aside from simply the building itself.

COMMISSIONER SULLIVAN: You said \$290,000?

MR. OLAFSON: \$199,000.

COMMISSIONER SULLIVAN: \$199,000. That's very good.

MR. OLAFSON: Also to clarify for the record that we're asking for approval of this agreement pending final legal review. We've been trying to push this through rather quickly because of the time frame, and we want to allow for the final legal review before we finish it.

COMMISSIONER SULLIVAN: Thank you.

CHAIR VIGIL: Any other questions? I have a question. Will this modular unit be complementary to what currently exists there? Are we purchasing it from the same vendor? And where will it be located in relation to the fire station? Will it be behind the garages? Next to the classroom area?

MR. OLAFSON: Madam Chair, the facility will be stuccoed and I believe the Chief also intended to stucco the existing fire station so they will eventually have a similar look and color and texture. And it will be located to the left of the bays, if that makes sense. I believe it's the northwest corner of the property, so it will be the opposite side from the classroom area.

CHAIR VIGIL: Okay. And how many firefighters will it house? I know that we approved five FTEs, but for full evening shift, how many?

CHIEF HOLDEN: Madam Chair, Commissioners, actually it's four. The building will accommodate four 24/7. What the Commission has approved to date is two to be on duty 24/7. That's actually six FTEs. There are three shifts of two each. So that's how we make up a complement of having two firefighter/paramedics on duty at a time.

CHAIR VIGIL: And Chief Holden, have we been able to recruit already for these positions? Are these positions FTEs in training? Where are we in terms of recruitment for this?

CHIEF HOLDEN: Madam Chair, Commissioners, I wish I could report successfully that we are ready to fully implement but we are not. We are hiring individuals and as fast as we can hire we're losing individuals to other departments. We just recently lost a couple to the Rio Rancho Fire Department. So we continue to struggle as other agencies do with recruitment. The new FTEs that have been approved, we hope to have approved in July will be firefighter cadets. Those cadets will be those individuals who have previously no fire or EMS training and we will hire them from the local community and then train them to be firefighter/EMTs and we're hoping

that that connection between the community and the Fire Department training will keep them with our organization longer.

But at some point I do have to make the Commission aware that the compensation issue which the County Manager was attempting to address by having a salary survey done – I know that study is supposed to be released her some time in the future. We need to look at that very seriously in regards to what we're paying our firefighters in comparison with other localities. Los Alamos Fire Department is recruiting. Santa Fe City Fire Department is recruiting. Bernalillo County Fire Department is recruiting, and we're all recruiting for the same type of individual. So it's very difficult.

CHAIR VIGIL: Okay. Thank you very much. And I have one more question. Paul Olafson, this is only related. I assume that the well that we have out there that we have in place for the community center is something that will be assisting for water for this particular building?

MR. OLAFSON: Madam Chair, yes. We've spoken with the Utilities, Water Resources Department.

CHAIR VIGIL: And when will that get going?

MR. OLAFSON: That is nearing completion. They are working on it as we speak right now. And I can't give an exact percentage, if it's 50, 70 percent of the way, but I believe they're very close to finishing that well renovation project. We've consulted with the utility folks and they've agreed that that well will provide capacity to serve this new living quarters as well.

CHAIR VIGIL: Okay. No further questions. What's the pleasure of the Commission?

COMMISSIONER ANAYA: So moved.

COMMISSIONER SULLIVAN: Second.

CHAIR VIGIL: There's a motion and a second.

**The motion to approve the agreement with COMARK passed by unanimous [4-0] voice vote.**

COMMISSIONER SULLIVAN: Madam Chair, under Matters from Elected Officials. I see the Sheriff is here. I know the Sheriff wanted to comment –

CHAIR VIGIL: Sheriff, I didn't even see you here, I apologize. Did you want to address the Commission?

GREG SOLANO (County Sheriff): Madam Chair, Commissioners, I was contacted by the media about 20 minutes ago, 30 minutes ago and told that the Commission had been brought up in reference to the Sheriff's Department and the incident that happened at Pojoaque High School. I start out with going through that incident so that you have an understanding of what we're going through. I think it's very important that you have an understanding of how law enforcement looks at a situation like this and what we dealt with that day. I would never want to say that I know everything about land use issues and I would hope that the same respect would be given to law enforcement.

So at 11:24 – well, let me start out with on Wednesday, earlier in the week we had decided we were going to post officers at all junior highs and high schools within Santa Fe County on Friday, which is the anniversary of Columbine. There was no specific threat but it's something that we've

done every year. On Wednesday, before this incident, before the anniversary of Columbine, we received rumors of a threat within the City of Santa Fe schools. Acting on those rumors and in conjunction with the City Police Department, our officers in Edgewood as well as our Pojoaque Tribal officers, we decided to move that up from Friday and put officers at every junior high and high school on Thursday as well as Friday.

So at the time that this incident happened, which was on Thursday, we had officers, both Pojoaque officers and deputies posted at Pojoaque mid-high and junior high. Our deputy was roving back and forth between the junior high and the high school. And at the time this incident occurred, which was 11:24, our deputy was on the road between the two schools. Once Pojoaque called at 11:24 that they had an incident on the school grounds, the officer who was in between the two schools arrived within seconds. In fact I asked dispatch to print out a log of the times and because it doesn't keep track of seconds, it shows the time that Pojoaque called as 11:24 and the time that the officer arrived as 11:24. So that means that it was within one minute.

When the officer arrived, the two students were detained for investigative purposes and a shotgun was found behind the seat of a pickup truck. The reason the shotgun was found is because when Pojoaque officers first approached the truck they saw a shotgun shell on the seat. That alerted them and they started checking the truck for weapons. At 11:47 detectives were dispatched to the scene so that we could start to investigate this matter with detectives.

All this time we were trying to decide about jurisdictional issues, and this is where it gets touchy. Some time ago we had a stabbing that occurred behind the high school in some vacant land. That stabbing case was handled by district attorney Henry Valdez' office and we investigated the case. That case went to court and in district court, we lost that case based on jurisdictional issues. So when this incident occurred I wanted to make sure that we would not lose any kind of case based on any jurisdictional issues.

The Chief of Police called me and while the Chief was calling me actually from Pojoaque we had already contacted – come of my people had contacted Henry Valdez' office. Henry Valdez was out of state but somebody in his office in his place told us that we could not handle the case, based on that previous stabbing incident. At that point I wanted to make sure that we could get somebody to handle the case, so I began contacting BIA, ATF, FBI, and the US Attorney's Office. I personally made every one of these calls while we had these people detained.

During this time the tribal police, the chief called me and I spoke to the tribal police. The advised me that the school was not tribal land and even though the two students were Native Americans, that the only way they could handle it was under my commission. At that time I told the chief that Henry Valdez' office, the DA's office had told me that we could not handle the case. So if the Sheriff's office couldn't handle it under our commission, I definitely could not allow tribal officers to handle under our commission. And I say not allow, because there was no order given; I just explained this to the chief and I told him, hold off. We're trying to determine jurisdiction.

Once again, I had ATF, BIA FBI and the US Attorney's Office all returning calls and helping me determine jurisdiction. All of the federal agencies felt that it was not in their jurisdiction as well, so I now had every federal agency as well as our own state agency and BIA telling me that they could not handle the case. I called Henry's office back, found out he was out of state, and I called Henry Valdez on his cell phone. I reached him out of state. He called me back in about ten or

fifteen minutes, and after we discussed the issue it was agreed that we would handle the case and we would try to work out the jurisdictional issues later but that the Sheriff's office would handle the case.

That took probably 45 minutes or more. Probably even more. But the thing is to have your case that can be prosecuted, as the chair knows, or have a case that we end up arresting somebody and perhaps being charged with false arrest, or having a case that we couldn't prosecute. So once that determination was made, I called – and by then, I had also been in contact with Mr. Demalla, I can't remember his first name, who is the Pojoaque Tribal attorney. He had been in contact with the Pojoaque Tribal Governor. When Mr. Demalla called me back again, I informed him – in fact he called me right as I hung up the phone with Henry Valdez, and I informed Mr. Demalla that I had gotten an okay from Henry Valdez for us to handle the case and that what I would to happen was for Pojoaque Tribal to give up the case, give it to us, and let us handle it.

The Pojoaque attorney agreed. Wholeheartedly agreed. He said, fine, that's great. And I said, okay, so can you call the chief and let him know because I wanted – the chief was a little – of course everybody on this was unsure. So the chief was a little unsure about handing them over to us, so I asked the Pojoaque Tribal attorney can you call the chief of the police at Pojoaque and let him know we've come to this agreement. He said yes. We took custody of the two students and we handled the case. There was absolutely no delay in response. There was absolutely, positively, and I don't even know where this came from, any deputies decommissioned or any Pojoaque Tribal people decommissioned.

There were jurisdictional issues that had to be worked out and this is our expertise. We know what we're doing when we handle these kind of case. This series of event that we went through was the proper way to handle this case to make sure that if this case had gone, and may still go to court, that it would be successful.

I just don't understand, and I'm looking at comments that were given to me by the media, Commissioner Montoya, that you made, and almost every one of them is misinformation. I just don't understand – and everybody, if you want my cell phone, it's out there in the public, 470-7795, that you would not call me and ask me these questions before bringing misinformation to a public forum. This is very embarrassing for the County and the Sheriff's office and I'm upset that we have to deal with this in a public forum like this.

The dispatch logs are being provided to the media. I have asked the governor's office of Pojoaque to provide a statement backing up what I'm saying right now. I hope that they will do so. I've called the Pojoaque police chief and he's the one who referred me to the governor's office because he says the governor's office is the only one who can handle the media. I'll answer any other questions, but this is exactly what happened and I wish that in the future that before anyone questions law enforcement activities that you would call us and at least allow us to answer the questions.

CHAIR VIGIL: Questions? Commissioner Sullivan.

COMMISSIONER SULLIVAN: Sheriff, on the case that you referred to before that you lost, was that a case on tribal land? That you had gone into tribal land?

SHERIFF SOLANO: The whole argument over that case was whether or not it was really tribal land or not. And if it was tribal land we would not have jurisdiction. If it was not

tribal land, we would. And this was involving a Native American. These issues are very complicated and as a matter of fact are still being debated in courts of law today. This is not something that for 200 years jurisdiction has been in place, because right now, in the last legislative session, State Police and in the current – the Governor of New Mexico, the State Police, are still trying to work out jurisdiction for something as simple as a DWI on tribal lands. Those are still being debated today.

That case involved jurisdiction. When I called the Pojoaque Chief over this, and I can't really straight out answer your question, but when I called the Pojoaque Tribal Chief over this incident, the shotgun incident, even the Chief told me, well this is no-man's land after that case. And I didn't agree to that. There can't be no-man's land. We have to have some agency that can handle a criminal case in this area. Even some tribal agencies, as well as the federal government weren't sure whether this was or wasn't tribal land.

Pojoaque Governor, through Mr. Demalla, their attorney, when he called me said, look, this land is not tribal land; it's in between two tribal lands, and it's not. And I realize we're having to fight this back and forth every time we have an incident here, and it's not. So based on that, when I talked to Henry, I told Henry, look, I have the governor of the tribe telling me this is not tribal land, so who else would know?

COMMISSIONER SULLIVAN: I can't see – my understanding is that was purchased from the land grant. That land, 60 acres was bought from the land grant for the school, and that it never was, there's never any history of it being tribal land. It has a public school on it. A public high school, an intermediate school, an elementary school. Where did that idea come from that it was tribal land?

SHERIFF SOLANO: The court case that we lost. And I don't have the specifics on that case and I don't know if my Major does. He dealt with the DA's office on it. No? But we lost the court case on that land.

COMMISSIONER SULLIVAN: Not this piece? The Pojoaque?

SHERIFF SOLANO: My understanding it was vacant land immediately behind the school, that we lost the stabbing case on.

COMMISSIONER SULLIVAN: Behind the Pojoaque school

SHERIFF SOLANO: Yes. And the criminal case –

COMMISSIONER SULLIVAN: Are you talking about –

COMMISSIONER MONTOYA: The old school.

COMMISSIONER SULLIVAN: The Pojoaque campus or the Jacona campus?  
This incident took place at the Jacona campus, right?

COMMISSIONER MONTOYA: Right.

COMMISSIONER SULLIVAN: The one up towards [inaudible]

SHERIFF SOLANO: Our understanding is that where this incident happened? Is that correct, Major Madrid?

COMMISSIONER SULLIVAN: Yes, well there are pieces, the Pojoaque campus

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SHERIFF SOLANO: Even putting all this aside, I was following the proper steps to make sure that the proper jurisdiction handled the case. And there was no delay. Our deputies

were on campus. Our deputy was in between the two at the time, but we were on campus at the time. So any talk of any delaying, any talk of any decommissioned officers, any talk about anything but proper law enforcement is wrong.

COMMISSIONER SULLIVAN: Okay. I understand that. But then you indicated that the tribal deputies were reluctant to hand the two students over. Wouldn't they, if they were commissioned, or cross-commissioned, wouldn't they be allowed to handle the case? If you indicate that you haven't decommissioned anybody wouldn't it be just as appropriate for them to handle it as it would be for your deputies?

SHERIFF SOLANO: Madam Chair and Commissioner Sullivan, no. Another case which our own legal handled just about a year ago involved a magistrate court case in which a Pojoaque officer arrested an individual during a traffic stop. During that case the attorney – and understand that criminal courts and attorneys being able to convince juries and judges of boundaries and things are totally different than what we all may look at too. But in that case it was laid out that the cross-commissioning was given so that they can assist us in cases, not so that they can handle them as original cases. And in fact there's a working document between the tribes and Sheriff's office, that I commission them to assist us so that if they get there first they can start to handle things. If it's a misdemeanor or small case they can be allowed to handle it, but still with us handing the case over to them.

In other words, if they get there first and it's a misdemeanor case, it's something very simple that they can handle, then we may not show up at all and may tell, okay, you guys can go and handle it. If it's a major case, it's very specifically put out there, and major cases are defined as felonies, that if it's a felony or major case, they will stabilize the situation, and wait for us to get there and then we will handle it. And we were operating under that agreement. Those cross-commissions are given under that agreement.

COMMISSIONER SULLIVAN: Thank you, Madam Chair.

CHAIR VIGIL: So, Sheriff Solano, you will agree that cross-commissioning is necessary between law enforcement agencies to assist each other, and then once each law enforcement officer has been cross-commissioned at least you have an argument on a jurisdiction issue through that cross-commissioning.

SHERIFF SOLANO: That's correct. That's why I cross-commission them.

CHAIR VIGIL: And let me ask, have you in the last six months decommissioned any officers?

SHERIFF SOLANO: Anywhere in the state?

CHAIR VIGIL: Anywhere in Santa Fe County?

SHERIFF SOLANO: Absolutely. Two at the jail, which they are not law enforcement officers; they are jail investigators, and the chaplain. And I can speak to that if you'd like, right now.

CHAIR VIGIL: When did you decommission them?

SHERIFF SOLANO: After I received a letter from the County Manager saying that the commission that I gave them allowed them to investigate felonies at the jail. And once again, I never commissioned them to investigate felonies at the jail. What I commissioned them for was to handle administrative paperwork, the two investigators. The two investigators were commissioned

to handle remand and releases, which is for those who may not know, when a judge orders somebody to go to jail, to be fingerprinted, photographed and release.

Now, for anybody we've booked in the jail, that person has to be booked in by a law enforcement officer. What happened is that when a judge ordered them just to be remand and released, I would have to pull a deputy off the streets where they could be responding to emergencies to go down and fulfill paperwork functions. The other paperwork function was service of warrants of somebody already in jail. So if somebody is in jail already, and a new warrant or an additional warrant is issued, once again I would have to send an officer off the streets to go to the jail and do the paperwork to serve them a warrant and book them on the new warrant.

What I did in order to keep deputies on the streets was I had commissioned the two jail investigators strictly to handle these administrative functions, not to handle – not even misdemeanors, but not to handle felony cases at the jail. When I found out from the letter from the County Manager stating that he felt that they were okay investigating, at least through an initial investigation on cases at the jail, based on that commission, my back was then against the wall to remove that commission, because I cannot have jail investigators conducting felony investigations. I just cannot. I can't imagine that the district attorney's office would agree to that. I can't imagine anybody would, that I can have a jail investigator investigating felony cases, so I had to pull those two.

As far as the chaplain was concerned, he was commissioned as a reserve deputy about a year and a half ago. It was something that he wanted to do at the time. Later he decided that he wasn't comfortable wearing a uniform and carrying a weapon, which is part of being a reserve deputy. And one of the reasons he went through the reserve program was so that I could provide him a County vehicle to go to incidents, because he would go and use his own gas, his own 1950-some VW bug to get to homicides and deaths and things like that, and I wanted to provide the chaplain a way to go to these cases also. So by him becoming a reserve deputy, I could provide him a car and he would be covered by the reserve insurance that we have.

So that was another thing we talked about him becoming a reserve deputy. He did go through the training. He did become a reserve deputy. However, he wasn't comfortable doing it anymore and he never continued – you're required to do firearms training and a lot of other training on a yearly basis. He stopped going to those trainings. But he never turned in his firearm. He never turned in his weapons. And we kind of let it go, and to be honest with you, I'll tell you right now, it was also a way by keeping him as a reserve deputy it was a way I could help him with gas and a vehicle.

Once I was informed by the County Manager saying that the conditions of the jail allowed them to do investigations. I had to make sure that no one at the jail who's not directly under the Sheriff's office had a commission. So I revoked the reserve deputy commission from the chaplain, and in the letter I sent to him it was very clear, and because there has been some misunderstanding over that – and I use misunderstanding as a word lightly – I provided copies of that letter to the media as well, and to each of you. And that letter clearly states that I wanted him to turn in all his reserve equipment, that I was revoking his reserve commission, which is his law enforcement commission, but that he could still be chaplain and keep any chaplain-related equipment.

And it was very clear in that letter. I cannot even believe that anyone would have a

misunderstanding. So those are the only commissions that I have removed at least recently. There has been commissions over the years that have been removed for malfeasance by officers in other agencies, and I take that commission not lightly at all. If someone is acting under that commission, they're acting under my authority and if you misuse that authority I will revoke that commission.

COMMISSIONER MONTOYA: Madam Chair.

CHAIR VIGIL: Go ahead.

COMMISSIONER MONTOYA: Why did it take you three years if you take it that seriously before you decommissioned him?

SHERIFF SOLANO: It was about a year and a half, as I said.

COMMISSIONER MONTOYA: It was 2004 was the letter that he showed us what he said he was done with the reserve.

SHERIFF SOLANO: His letter was – and I don't know when the date exactly was he became reserve, but he also told the media and you all that he had no equipment. He had a gun that he turned in just days ago. He had a uniform. He had all the equipment that I mentioned, as well as a vehicle. And as I said, I let it go that he was not going to training but I also understood that he wasn't able to use going out as a deputy in uniform. But I let it go because I was trying to help him have a County vehicle and gas so that he could go to these incidents and not have to use money out of his own pocket.

I fully, whole-heartedly supported the chaplain program, and I was the only law enforcement agency, because he was chaplain to numerous law enforcement agencies, and I was the only law enforcement agency that provided him clothing, that provided him gas, that provided him a vehicle – that was how much I supported him more than anyone.

COMMISSIONER MONTOYA: And Madam Chair, just in response to Commissioner Sullivan on the jurisdictional case, that actually went all the way to the Supreme Court where they didn't even here it. It didn't even get on the docket because it was clear that any jurisdictional issue was that any tribal property is overseen by federal law enforcement. That was a case, and again, that's been for 100 years. That's been the case in terms of jurisdiction. And it's clear to me that the delay in the 45 minutes was the time that the whole process got started to the time that there was finally some determination that well, hey, Pojoaque Schools is not under tribal jurisdiction, it's under County or state or whatever jurisdiction. So that's where I think the frustration came in. And I think the other thing, just so that you know, Sheriff, is the manner or the manners in the way this thing was dealt was somewhat taken offensively by both the superintendent and the Pueblo governor. So those were a couple of things that they had mentioned to be as well, so that you know. And I'd be more than glad to sit with you and talk to you about these things. I found this out yesterday from the governor.

SHERIFF SOLANO: Madam Chair and Commissioner Montoya, these legal issues can be very frustrating, but understand that I had an ADA, and assistant district attorney tell us we could not handle that case. And then it took us about 30 minutes before we got a hold of Henry and he overruled that decision. I know that if you call their office they will tell you that's what happened. I'm not making this up. And it's very frustrating for those like a school superintendent or Commissioners who don't understand the legal process that we go through.

I know that Commissioner Vigil would definitely understand the legal process because she

was an ADA. But it's frustrating for me too. I'm calling the FBI, ATF, BIA, US Attorneys Office. I am very frustrated too because I'm not going to have anyone walk onto campus with a shotgun and let them walk away. My people can tell you that I was very frustrated too, as I was calling all over. And it's frustrating for people who don't understand the legal process but there is a process here and we have to follow it.

CHAIR VIGIL: I agree. I hope there's some common ground that we're coming to with regard to this because we as elected officials hear from our constituents from superintendents from other law enforcement. So we experience the frustration from a different perspective. So the more we can communicate, I think on these issues the better off we are. It just seems interesting to me, Sheriff Solano, that your first responders are such a critical component of our safety issues today. There's nothing that's become more apparent to that for any of us, for any citizens. So the cross commissioning is to me very, very critical and I'll speak even as a previous ADA, once those cross commissions occur, whether they be in our jail, or whether they be with the tribal police officer, you are creating the best possible case for an assistant district attorney to prosecute.

So I guess underlying this I have a little bit of concern that you have decommissioned officers at the jail, and I think perhaps further discussion needs to be done about that. I agree, and you have a significant point that there has to be some kind of expertise available to respond to felony cases, but I think what's happened particularly in the jail with the cases was that there had to be some kind of – because these are the first responders. These are the officers that are in the jail. These are administrators. These are people – and I hope that the jail and what we go towards as a community being alert and responsive. And I think that's what we're feeling we might be going towards.

But it would seem more appropriate to me that we work totally in cooperation so that those people who are in the jail, who are the first responders, who are the tribal officers being the first responders to Pojoaque School can work very closely in cooperation so that they can assist you in your investigation. And if that means covering them by cross-commissioning them or deputizing them, I think perhaps that issue needs to be discussed further with the district attorney and through open communications, because if someone – if an incident does occur at the jail and they contact you and you're availability for response creates some gap in time, whatever happens between the time an incident occurs and the time a police officer or Sheriff's office responds is really critical to an investigation.

So someone at the jail needs to be able to be responsive as the first responder, as an assistant to the entire prosecution case. And if you have an administrator that's decommissioned, that through commissioning might be able to gain some jurisdictional authority, I think we're at a better place. And perhaps that's something that needs to be further discussed with the district attorney's office, but I'm worried about the gap in time for investigation, whether it's a misdemeanor or a felony, that we don't have anyone at the jail being responsive and responsible to that. So anyway, with that, are there any further questions? Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, Sheriff, I'm glad to see that you came and explained what exactly had happened. When I heard that you were decommissioning other officers in the area I thought maybe you had lost your mind.

SHERIFF SOLANO: I lost my mind when I heard that you said that.

COMMISSIONER ANAYA: But I'm glad to hear that that's not true and thanks for coming and explaining it so that it stops right here.

SHERIFF SOLANO: Thank you, Commissioner Anaya. Madam Chair, the only thing I'd like to add, it's that first initial response that's so important in felonies is why I revoked the commissions because we had felonies there that weren't reported to us for two weeks. One of them for less than two weeks and one of them for two weeks, and I couldn't have that. And the commission was used as an excuse, so I couldn't have that.

CHAIR VIGIL: But you understand through your investigations, Sheriff Solano and I understand from prosecuting the investigations that I've seen, that often times when a felony is committed there are no witnesses, the witnesses that are there, particularly in a setting such as jail, aren't willing to speak. There's a lot of investigation that needs to be done. I realize why you might be alerted when you understand a felony may have been committed, but without us knowing whether or not it was a misdemeanor or felony or a grievance, how can we jump to these conclusions?

Why can't we work cooperatively with commissioning officers within the jail to be able to do that first response, because there's so many uncharacteristic features of jail crime that requires a strong support system, more so even than the crime that's outside of jail. So I think it's really critical that we streamline the communications and make sure that those cases are investigated thoroughly and that those first responders have no jurisdictional issues. So I think we're on the same page. I hope we are, and if we need to continue speaking about that, I'm happy to. Anything further?

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

MR. ABEYTA: Madam Chair, I only have one thing for the Commission this afternoon and that is that on May 16<sup>th</sup> we're going to have the special presentation BCC. However, before that, at 8:30 in the morning, we are going to have the groundbreaking ceremony at the new Public Works Facility off of 599. So if you can put that on your calendars. It's the same day that we have the presentation meeting. So we'll start out there with the groundbreaking and come back here for the special meeting.

COMMISSIONER SULLIVAN: What were those times again, Roman?

MR. ABEYTA: Eight thirty a.m.

COMMISSIONER ANAYA: What time does the special session start?

MR. ABEYTA: The special session I believe starts at 10 a.m. We wanted to schedule it for the same day so we wouldn't have to get you guys over here again. And then the only other thing, Madam Chair, is that we are going to be scheduling a series of special meetings, or trying to, in May, with the Commission. The first would be a special session to discuss the upcoming budget. And we're still working on a special meeting between St. Vincent Hospital board and the County Commission, and we also need to schedule an affordable housing study session. But we'll be polling you individually and seeing what the best date for these meetings will be for all of you.

CHAIR VIGIL: Okay. Anything further?

MR. ABEYTA: That's all I have, Madam Chair.

CHAIR VIGIL: The EZA meeting that was scheduled for Thursday has but one case on it. Do we need to hear that case? Is it time sensitive or can it be rescheduled for the May EZA? I'll check with the Land Use Division and see if we have to have that meeting or not. And we can do that this afternoon. We'll go check now.

CHAIR VIGIL: Thank you. Any other questions? Seeing none, we must go into executive session.

**XIII. C. Matters from the County Attorney**

**1. Executive Session**

- a. Discussion of Pending or Threatened Litigation**
- b. Limited Personnel Issues**

MR. ROSS: Madam Chair, we need a closed executive session to discuss pending or threatened litigation and limited personnel issues.

CHAIR VIGIL: Okay.

COMMISSIONER MONTOYA: So moved.

CHAIR VIGIL: There's a motion to go into executive session.

COMMISSIONER SULLIVAN: Second.

CHAIR VIGIL: And there's a second.

**The motion to go into executive session passed by unanimous [4-0] roll call vote with Commissioners Anaya, Montoya, Sullivan and Vigil all voting in the affirmative.**

[The Commission met in executive session from 4:20 to 5:05.]

CHAIR VIGIL: We need a motion to come out of executive session.

COMMISSIONER SULLIVAN: So moved, where we discussed pending and threatening litigation and limited personnel issues.

CHAIR VIGIL: Is there a second?

COMMISSIONER ANAYA: Second.

**The motion to come out of executive session passed by unanimous [4-0] voice vote.**

CHAIR VIGIL: Are there any other matters?

**XIV. ADJOURNMENT**

Chair Vigil declared this meeting adjourned at approximately 5:05 p.m.

Approved by:

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Board of County Commissioners  
Virginia Vigil, Chair

Respectfully submitted:

Karen Farrell, Wordswork  
227 E. Palace Avenue  
Santa Fe, NM 87501

ATTEST TO:

VALERIE ESPINOZA  
SANTA FE COUNTY CLERK