IN THE UTAH COURT OF APPEALS

NORTHERN MONTICELLO ALLIANCE, LLC, a Utah limited liability company, Plaintiff/Appellant, v. SAN JUAN COUNTY COMMISSION, a political subdivision of the State of Utah and SAN JUAN COUNTY, a political subdivision of the State of Utah. Defendants/Appellees. SUSTAINABLE POWER GROUP, LLC and LATIGO WIND PARK, LLC, Intervening Respondents.	**BRIEF OF NORTHERN MONTICELLO ALLIANCE, LLC** Appellate Case No. 20180225-CA District Court Case No. 170700006

Appeal from the Seventh Judicial District Court, San Juan County, Utah
The Honorable Lyle Anderson, District Court Judge

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LIST OF CURRENT PARTIES

Northern Monticello Alliance, LLC, Plaintiff/Appellant

San Juan County Commission, Defendant/Appellee

San Juan County, Defendants/Appellee

Sustainable Power Group, LLC, Intervening Respondent

Latigo Wind Park, LLC, Intervening Respondents

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutions

Statutes

JURISDICTION

This Court has jurisdiction over this appeal pursuant to Utah Code Ann. § 78A-4-103(2)(j).

INTRODUCTION

This appeal arises from an administrative land use decision originally made by the San Juan County Planning and Zoning Commission ("**Planning Commission**") as the "land use authority" pursuant to Utah Code Ann. § 17-27a-103(29), upheld by the San Juan County Commission ("**County Commission**") as the "land use appeal authority" under Utah Code Ann. § 17-27a-701(1), and upheld on further appeal by the Seventh Judicial District Court in and for San Juan County, State of Utah (the "**District Court**").

The land use decision at issue is the September 14, 2015 decision of the Planning Commission (the "**P&Z Decision**") not to revoke an amended conditional use permit (the "**Amended CUP**") held by Sustainable Power Group, LLC ("**sPower**") to construct and operate a large wind turbine electric generating facility (the "**Wind Facility**"), comprising 27 wind turbines ("**Turbines**") that are approximately 453 tall – taller than any other building in the entire state of Utah – near Monticello, Utah. (R1772-73.)

Northern Monticello Alliance, LLC ("**NMA**") is comprised of and represents land owners ("**NMA Members**") who own individual parcels of 5-20 acres which total 70 acres land (the "**NMA Property**") that is essentially surrounded by the Wind Facility. NMA asks this Court to remand the P&Z Decision not to revoke the Amended CUP to the Planning Commission. Such remand to the Planning Commission is essential and required for three independent reasons.

First, the Planning Commission failed to "make findings of fact or conclusions of law that are adequately detailed so as to permit meaningful appellate review," as required by *McElhaney v. City of Moab*, 2017 UT 65, ¶ 41, __ P.3d __. The Planning Commission is the only body that can make findings of fact that are relevant to the legal standards governing its decision before any appeal authority or court can undertake meaningful appellate review. *See id.*

Second, at the hearing on revocation, NMA was denied any meaningful opportunity to participate and present evidence in support of revocation of the Amended CUP to the Planning Commission to protect the NMA Members' property interests. Third, the process by which the Commission upheld the P&Z Decision was illegal under the San Juan County Zoning Ordinance and the County Land Use, Development, and Management Act ("**CLUDMA**"), Utah Code Ann. § 17-27a-101 *et seq.*, and must be overturned.

ISSUES AND STANDARDS OF REVIEW

Issue 1: Whether the District Court erred by declining to review whether the Planning Commission's verbal land use decision was supported by substantial evidence under the standard articulated in *McElhaney v. City of Moab*, 2017 UT 65, __ P.3d __.

Standard of Review: The application of the wrong standard is a question of law. *See, e.g., Hansen v. Hansen*, 958 P.2d 931, 933 (Utah Ct. App. 1998); *T.B. v. M.M.J. (State ex rel. R.N.J.)*, 908 P.2d 345, 349 (Utah Ct. App. 1995). Appellate review of a district court's determination of a question of law is reviewed for "correctness," which means that "the appellate court decides the matter for itself and does not defer in any degree to the trial judge's determination of law." *State v. Pena*, 869 P.2d 932, 936 (Utah 1994).

Issue Preserved: NMA preserved Issue 1 by timely asserting before both the County Commission and the District Court that the Planning Commission's decision was not supported by substantial evidence. (R1972; R1975; R2394-400.) NMA specifically argued to the District Court that the *McElhaney* standard for determining substantial evidence should be applied as soon as that standard was articulated by the Utah Supreme Court. (R2394-400.)

Issue 2: Whether the District Court erred by failing to direct the County Commission to remand consideration of revocation of the Amended CUP to the Planning Commission to conduct a plenary evidentiary hearing with instructions to allow NMA to participate and submit evidence on why the Amended CUP should be revoked, as required by the Due Process Clause of the United States and Utah Constitutions and Utah Code Ann. § 17-27a-706(2)

Standard of Review: "Due process challenges are questions of law." *Augustus v. Vernal City*, 2017 UT App 195, ¶ 14, 407 P.3d 1007. Appellate review of a district court's determination of a question of law is reviewed for "correctness" and no deference is given to the determination of the district court. See *State v. Pena*, 869 P.2d 932, 936 (Utah 1994).

Issue Preserved: NMA preserved Issue 2 by timely raising its arguments both before the Commission (R1972; R1975) and before the District Court, in NMA's Motion for Summary Judgment on appeal from the Commission's decision to uphold the P&Z Decision. (R2400-03.)

Issue 3: Whether the District Court erroneously ruled that reconsideration by the County Commission of its Final Written Decision (which remanded consideration of the

Amended CUP to the Planning Commission with instructions to allow NMA and its Members to fully participate in a hearing where revocation would be considered under a non-deferential standard of review) was legal, where no state statute or county ordinance provides for or establishes a mechanism for the County Commission, as the appeal authority, to reconsider its final and issued decisions.

Standard of Review: Whether a land use decision is illegal is a question of law. *Outfront Media, LLC v. Salt Lake City Corp.*, 2017 UT 74, ¶ 12, 416 P.3d 389. Appellate review of a district court's determination of a question of law is reviewed for "correctness" and no deference is given to the determination of the district court. *See State v. Pena*, 869 P.2d 932, 936 (Utah 1994).

Issue Preserved: NMA preserved Issue 3 by timely raising its arguments both before the County Commission during NMA's appeal of the original land use decision (R1972; R1975) and before the District Court in NMA's Motion for Summary Judgment on appeal from the County Commission's decision to uphold the land use decision. (R2403-06.)

STATEMENT OF THE CASE

A. Issuance of the Amended CUP

On June 29, 2012, Wasatch Wind Intermountain, through its subsidiary Latigo Wind Park, LLC ("**Wasatch Wind/Latigo**"), filed an application for a conditional use permit to construct the Wind Facility in an A-zone of San Juan County (the "**County**") near Monticello, Utah. (R0875). The Wind Facility surrounds the NMA Property, which is sometimes referred to as "inholding parcels." (R0492, R0922.) Prior to the proposal to build the Wind Facility, the NMA Members purchased the NMA Property to build cabins with views of the mountains on large (5-20 acre) lots. (R0888.)

On July 5, 2012, the Planning Commission held a hearing and approved a conditional use permit (the "**July CUP**") to operate the Wind Facility. (R1336.) NMA Members never received notice of the hearing and subsequently learned that the Planning Commission had approved the July CUP. (R0951, R0959-60.) NMA timely filed a written complaint, objecting to approval of the July CUP. (R1921.) In response to the written objection, the Planning Commission held another hearing on the July CUP on October 4, 2012. (R0919–1005; R1336.)

At the October 4, 2012 Public Hearing, the Planning Commission issued the oral Amended CUP, which superseded the July CUP. (R1952.) The Amended CUP included mitigation conditions, which must be found in the minutes and transcript of the October 4, 2012 Public Hearing (the "**October 4, 2012 Transcript**"). (R0998, R1952.) The October 4, 2012 Transcript (R0919-1005) is attached for convenience as **Addendum G**.

However, there is no document setting forth the terms of the Amended CUP or the mitigation conditions proposed and agreed to by the applicant, Wasatch Wind/Latigo, or imposed by the Planning Commission.

Among the conditions proposed by Wasatch Wind/Latigo and accepted by the Planning Commission at the Public Hearing was the condition that, if a purchase agreement could be reached, Wasatch Wind/Latigo would purchase the inholding NMA Property. (R0963-64.) If no agreement could be reached, then specific mitigation steps for Sound, Light and Flicker would be taken as to the NMA Property. (*Id.*)

In accordance with the purchase condition of the Amended CUP, on or about February 12, 2013, NMA Members and Wasatch Wind/Latigo entered into a written Option to Purchase Real Property ("**Purchase Option**"), which required Wasatch Wind/Latigo to purchase the NMA Property "prior to commencing any significant construction activities of any wind farm project on parcels adjacent to the [NMA] Property." The Purchase Option is attached for convenience as **Addendum H**. (R0619-0643.) San Juan County Zoning Ordinance 6-9 provides that conditional use permits expire within a year after issuance "[u]nless there is substantial action" on the permit. The County may allow one extension of up to six months when in the public interest. *Id*. The term of the Purchase Option was for two years in order to allow Wasatch Wind/Latigo to move forward in developing the Wind Facility within the 18-month window provided by ordinance. Had Wasatch Wind/Latigo been unable timely to comply with the Amended CUP, it could decline to exercise the Option and would not be "stuck" with the NMA Property.

A specific condition and requirement of the Purchase Option was that NMA would withdraw its then pending appeal of the approval of the Amended CUP to the County Commission, acting as the Land Use Appeal Authority. (R0621-22.)

In reliance upon the Purchase Option, NMA withdrew its appeal of the Amended CUP to the County Commission and the Amended CUP became final and not subject to any further appeal or review. (R0621, R2087-88.) The Purchase Option did not require Wasatch Wind/Latigo to purchase the NMA Property if the construction of the Wind Facility did not go forward. (R0620, R2088-89.) However, Wasatch Wind/Latigo subsequently did commence significant construction activities to avoid expiration of the Amended CUP prior to obtaining a building permit on February 3, 2014. (R2071.) Nevertheless, Wasatch Wind/Latigo failed to exercise the Purchase Option and never purchased the NMA Property. (R2088.)

In or about January of 2015, Wasatch Wind/Latigo assigned their interest in the Wind Project to Sustainable Power Group, LLC ("**sPower**"). (R1993-94.) sPower, as successor in interest to Wasatch Wind/Latigo, assumed all benefits and liabilities of Wasatch Wind/Latigo, including the obligation to comply with all mitigation requirements of the Amended CUP and to purchase the NMA Property pursuant to the Purchase Option. sPower also failed and refused to exercise the Purchase Option prior to its expiration on February 13, 2015.

B. Proceedings to Revoke Amended CUP

After the County received complaints that sPower had failed to comply with the Amended CUP conditions, including the requirement to purchase the NMA Property, the

Planning Commission held a public hearing on September 9, 2015, to determine whether the Amended CUP should be revoked pursuant to San Juan County Zoning Ordinance 6-10 for failure to comply with the conditions upon which the Amended CUP was issued. (R0174-75.) Surprisingly, at the hearing the Planning Commission muzzled NMA by precluding NMA and NMA Members from presenting any evidence or argument regarding sPower's violations of the conditions of the Amended CUP in support of revocation. (R1971-72.) Among the evidence that NMA was barred from presenting to the Planning Commission in support of revocation of the Amended CUP was the failure of sPower to fulfill either the purchase requirement or alternative mitigation requirements of the Amended CUP. (R1772-1967.)

After hearing sPower's presentation, and after prohibiting NMA Members from participating in the hearing, the Planning Commission decided to postpone its determination on revocation pending review of "other pertinent information." (R0721-22.) At a public meeting on September 14, 2015, the Planning Commission issued an oral ruling that sPower had complied with the conditions of the Amended CUP. (R0724.) Once again, NMA was prohibited from speaking or submitting any evidence to the Planning Commission. In fact, the Chair of the Planning Commission seized materials NMA tried to present to the Planning Commission. (R0190.)

The Planning Commission failed to issue any written findings of fact or conclusions of law and voted not to withdraw the Amended CUP on a roll call vote. (R0724). The Planning Commission failed to identify what "other" information, if any, it reviewed between September 9, 2015, and September 14, 2015. (R0724.) In fact, the Planning

Commission failed to make any a record of the evidence it considered in reaching the P&Z Decision. (R0724.)

C. Appeal of Decision Not to Revoke Amended CUP

NMA timely appealed the decision of the Planning Commission to the County Commission, sitting as the land use appeal authority, on October 13, 2015, and the parties filed written submissions on November 5, 2015. (R1772–1968.) Pursuant to San Juan County's ordinances, the County Commission reviewed the Planning Commission's decision only on a deferential arbitrary and capricious standard, to determine if the Planning Commission's decision was supported by substantial evidence. (R0177.) sPower's November 5, 2015 submission failed to indicate what evidence it had actually presented to the Planning Commission prior to the Planning Commission's September 14, 2015 decision. (R1319-34.)

In fact, sPower improperly submitted new evidence that it later admitted was not presented to the Planning Commission prior to, or at, the hearing on September 14, 2015. The County Commission accepted the new evidence that was never before the Planning Commission. (*Compare* documents sPower contends were submitted to the Planning Commission prior to its September 14, 2015, revocation hearing *with* evidence sPower presented to the County Commission on appeal, set forth in **Addendum I**.)

The submission of new evidence to the County Commission violated Utah Code Ann § 17-27a-707, which only allows a deferential review by a land use appeal authority if the appeal is heard on the record. In other words, if submission of new evidence to the

land use appeal authority is allowed, the standard of review is *de novo*, without deference to the land use authority. Utah Code Ann. § 17-27a-707(2).

D. Reconsideration of Remand to the Planning Commission

After hearing presentations from both NMA and sPower on November 10, 2015, the County Commission issued its Written Decision on December 2, 2015 ("**Final Written Decision**"), reversing the P&Z Decision and remanding to the Planning Commission the issue of whether sPower had met all of the mitigation conditions of the Amended CUP, including the requirement to purchase NMA Property. (R0173–85.) The County Commission also directed the Planning Commission to receive evidence from NMA. (R0180.)

Although nothing in either Utah state law or San Juan County ordinances provides for reconsideration by the County Commission, on December 3, 2015, sPower's counsel sent an *ex parte* communication to the County Commission (the "**Request for Reconsideration**"), demanding that the County Commission immediately reconsider and amend its Final Written Decision and implicitly threatening a $100 million damages lawsuit if the County Commission did not immediately reverse its Final Written Decision and acquiesce to sPower's demands. (R0168–72.)[1]

sPower's Request for Reconsideration did not specifically identify any actual evidence considered by the Planning Commission to determine that sPower complied with

[1] In essence sPower, through its legal counsel, threatened to sue the County for $100 million simply for remanding the issue of revocation to the Planning Commission for a full and fair hearing. The County Commission did not revoke the Amended CUP.

the Amended CUP. (R0168–72.) Instead, sPower referenced specific materials provided to the Planning Commission on September 23, 2015, *after* the September 14, 2015 P&Z Decision. (R0170-71.) NMA Members were never afforded the opportunity to refute these materials, which were never properly before either the Planning Commission or the County Commission, or to provide rebuttal evidence before either the Planning Commission or the County Commission. (R1977.)

Neither CLUDMA nor San Juan County Ordinances provide for rehearing or reconsideration or provide any sort of mechanism for rehearing or reconsideration. Nevertheless, in a closed executive session on December 7, 2015, the County Commission reconsidered its Final Written Decision in light of sPower's $100 million threat. (R0145.) On December 8, 2015, the County Commission issued an *Amendment to Written Decision* ("**Amended Decision**"), whereby it abruptly reversed itself and, rather than remanding the issue to the Planning Commission for a fair hearing, upheld the Planning Commission's decision in its entirety. (R0144–49.)

Commissioner Phil Lyman issued a stinging Dissent (R0157-66), noting, among other things, that the County Commission did not know what evidence had been presented to the Planning Commission prior to September 14, 2015 P&Z Decision. (*See* R0161-62.)[2] He also observed that sPower had failed to fulfill the financial mitigation requirements of the Amended CUP prior to issuance of a building permit, that sPower's counsel, Sean

[2] Commissioner Lyman's uncertainty is understandable. Sean McBride said the Planning Commission had six documents in front of it. However, sPower presented 32 documents to the County Commission on appeal. *See* Addendum I.

McBride, "falsely" claimed that payment to NMA Members under the Purchase Option represented the actual full value of the properties, that sPower's assertion that "The NMA property owners have been paid full value for their properties under the mitigation agreement" is "***absurd***," and that sPower's assertion "that it provided mitigation through compensation to NMA land owners, is ***completely false***." (R0162-64.) Commissioner Lyman concluded that the decision of the County Commission to reconvene and to reverse the Final Written Order was "misguided and capricious" and that the matter should have been remanded to the Planning Commission. (R0163, R0165.) The Dissent ("**Lyman Dissent**"), (R0157-67), is attached for convenience as **Addendum J**.

E. First Appeal to District Court.

NMA timely appealed the Amended Decision to the District Court, arguing that the County Commission's unauthorized reconsideration was arbitrary, capricious, and illegal. (R2743-46.) The District Court heard arguments on NMA's motion for Summary Judgment and issued its *Memorandum of Decision on the August 30, 2016 Hearing* on September 9, 2016 ("**Initial District Court Decision"**). (R2738-46.)

The District Court stated that it could not find that the County Commission's decision was unsupported by substantial evidence (R2743); however, the District Court did find that the County Commission's decision to reconsider the Final Written Decision in a closed meeting without notice to NMA Members was illegal because it denied NMA Members the opportunity to present evidence and be heard on the Request for Reconsideration, in violation of NMA Members' due process rights. (R2744-45.)

NMA's counsel prepared a proposed order vacating the Amended Decision and remanding the matter to the Planning Commission - the only body that had the power to determine if the Amended CUP should be revoked utilizing a non-deferential standard of review - for renewed proceedings on revocation of the Amended CUP in which NMA could, for the first time, actually participate. (R0091-92.) However, the District Court declined to enter the order remanding the matter to the Planning Commission and instead entered an order vacating the Amended Decision and remanding the matter to the County Commission solely for the purpose of allowing NMA to belatedly argue against reconsideration that has already been granted under threat of a $100 million damage claim. (R0096, R2744-45.)

Understanding that the Initial District Court Decision in actuality did not, and likely would not, provide NMA with any real relief, *i.e.*, an evidentiary hearing before the Planning Commission, NMA appealed to this Court. (R2748-49) However, the Court, on its own motion, summarily dismissed NMA's appeal, determining that, despite the fact that NMA had only prevailed on a single limited issue that would not likely lead to the actual relief sought by NMA – the ability to introduce evidence and participate fully in a revocation hearing on the Amended CUP before the Planning Commission – NMA had "received what [it] asked for" because the Amended Decision had been vacated. (R2748.)

F. Remand to County Commission

NMA's concern that the limited grounds for the District Court's remand to the County Commission would not result in an evidentiary hearing before the Planning Commission proved to be prophetic. On remand, the County Commission instructed the

parties that it would not hear any additional evidence. (R1977.) Nevertheless, sPower submitted an affidavit that – for the first time – purported to testify regarding what evidence was presented to the Planning Commission in reaching its September 14, 2015 decision to not revoke sPower's Amended CUP. (R2103-04.)[3]

After hearing the arguments otherwise based on the record previously before the District Court, and despite the fact that NMA and its Members never had the opportunity to present evidence and argument to the Planning Commission regarding revocation, on February 21, 2017, the County Commission issued its *Amended Written Decision on Remand* ("**Remand Decision**"), in which it again upheld the P&Z Decision not to revoke the Amended CUP. (R1970-79.)

In issuing the Remand Decision, the County Commission itself failed to provide any findings of fact or reasoning for determining that the P&Z Decision was supported by substantial evidence. Instead, it reaffirmed its *ex parte* and vacated Amended Decision and made only the conclusory ruling that "We cannot say that the Planning Commission's decision not to revoke the [Amended] CUP lacked substantial evidence." (R1978.)

G. Second Appeal to District Court

NMA again timely appealed to the District Court. Shortly after NMA filed its *Complaint and Petition for Judicial Review* (the "**Second Appeal**") in the District Court, the Utah Supreme Court issued its decision in *McElhaney v. City of Moab*, 2017 UT 65, __

[3] This was a transparent effort to attempt to legitimize belated and improper evidence that was not before the Planning Commission when it decided not to revoke the Amended CUP on September 14, 2015. (R0161.)

P.3d__, which clarified the requirements a decision issued by a land use authority such as the Planning Commission must satisfy to be supported by substantial evidence. *McElhaney* also prescribed that the proper relief for the failure to make required findings was a remand to the land use authority so that it could rectify its errors. 2017 UT 65, ¶ 42.[4]

At a hearing on the parties' competing motions for summary judgment in the Second Appeal, the District Court declined to consider whether the County Commission's Remand Decision was supported by substantial evidence, even though the issue of whether *McElhaney* applied was fully briefed by the parties. (R2877) The District Court declared that it had already considered the substantial evidence issue in NMA's previous appeal of the since-vacated Amended Decision, and it did not need to do so for the Remand Decision. (*Id.*)

The District Court then upheld the County Commission's Remand Decision because the County Commission had allowed NMA to argue its case on the rehearing, even though NMA was not permitted to present any evidence not already in the record during the County Commission rehearing. (R2878.) Most importantly, NMA was never able to present any evidence or argument to the Planning Commission – the only body that can consider and act on revocation without any deference.

Notwithstanding its prior ruling in its Initial District Court Decision that the Amended Decision was illegal because it originated from an *ex parte* communication that denied NMA the opportunity "to argue its side of the case with regard to that evidence or

[4] Ironically, the original Final Written Decision by the County Commission had come to the same conclusion and result.

to present its own evidence" (R2741), the District Court stated in its *Order Denying Petitioner's Motion for Summary Judgment and Granting Respondents' Cross-Motion for Summary Judgment* ("**Final Order**") that it "did not mean for the county commission to take evidence if it hadn't taken evidence in the first place," a legally and factually erroneous standard. (R2878.) NMA timely appealed the Final Order.

SUMMARY OF ARGUMENT

First, during NMA's appeal, the Utah Supreme Court issued *McElhaney v. City of Moab*, which clarified that a land use authority must "produce findings of fact capable of review on appeal," or its decision is arbitrary and capricious. 2017 UT 65, ¶¶ 35-37, 39-41, __ P.3d __. The Planning Commission, the land use authority in this case, failed to produce any findings of fact – written or otherwise – when it determined not to revoke sPower's Amended CUP.

Under the *McElhaney* standard, the County Commission, as the land use appeal authority, was required to remand the matter back to the Planning Commission to produce such findings. The County Commission's failure to do so was arbitrary and capricious, and any subsequent decision holding to the contrary was erroneous. *See McElhaney*, 2017 UT 65, ¶ 42. NMA argued this point before the District Court, however, that court wholly failed to consider or apply the *McElhaney* standard. The District Court's failure to apply binding Utah Supreme Court precedent is erroneous, as it allowed the court to uphold an arbitrary and capricious land use decision.

Second, the District Court's decision to uphold the County Commission's decision further deprived NMA Members of their due process rights. sPower's Amended CUP is

conditioned on mitigation of the negative effects on neighboring property owners, such as NMA Members. If sPower fails to comply with those conditions, those property owners will necessarily be injured. Accordingly, NMA Members, as neighboring property owners surrounded by the Wind Facility, have a property interest in sPower's compliance with its Amended CUP.

Consequently, as originally recognized by the District Court in the Initial District Court Decision, NMA Members are entitled to due process, which requires "at a minimum, adequate notice and 'an opportunity to be heard in a meaningful manner.'" *Salt Lake City Corp. v. Jordan River Restoration Network*, 2012 UT 84, ¶ 111, 299 P.3d 990. Such due process has been denied to the NMA Members as at no time have they been permitted to present any evidence as to sPower's failure to comply with the mitigation conditions of the Amended CUP or to rebut or contradict the evidence and argument presented by sPower. In fact, NMA Members were not permitted to participate at all in the Planning Commission's original determination - a denial made significantly more problematic by the fact that no additional evidence could be presented or properly considered in the subsequent proceedings.

Third, the District Court erroneously upheld the County Commission's illegal decision to reconsider its Final Written Decision. When first asked to review the P&Z Decision not to revoke the Amended CUP, the County Commission determined that the Planning Commission's decision was not supported by substantial evidence. Rather than appealing that decision to the District Court, as provided by law and ordinance, sPower demanded that the County Commission reconsider. The County Commission acquiesced

and reversed its Final Written Decision. The County Commission was not authorized by any law, ordinance or rule to reconsider its Final Written Decision after it was issued. The District Court erred in allowing the County Commission to reconsider and reverse its Final Written Decision.

ARGUMENT

I. The District Court Erred in Declining to Review Whether the Planning Commission's Decision was Supported by Substantial Evidence Under the *McElhaney v. City of Moab* Standard.

A. The failure of the Planning Commission to produce written findings renders its decision not to revoke the Amended CUP arbitrary and capricious.

The Utah Supreme Court has declared that a CLUDMA land use authority, such as the Planning Commission, must "produce findings of fact capable of review on appeal," or its decision is necessarily arbitrary and capricious. *McElhaney v. City of Moab*, 2017 UT 65, ¶¶ 35-37, 39-41, ___ P.3d ___. The Court reasoned that without specific findings of fact, a land use decision cannot be supported by substantial evidence because "in the absence of explicit findings of fact and conclusions of law, the reasoning behind the [land use authority's] decision is an amorphous target" that is unamenable to "meaningful appellate review." *Id.* at ¶¶ 31, 41.

In this case, the Planning Commission, as the land use authority, failed to provide a written decision or any explicit findings of fact supporting its decision not to revoke the Amended CUP. Accordingly, the P&Z Decision cannot be affirmed under *McElhaney*. The Planning Commission is the only entity authorized to take evidence and make factual findings. *See* Utah Code Ann. § 17-27a-707(3); San Juan County Zoning Ordinance 6-10.

In fact, the County Commission and the District Court are *expressly prohibited* from divining the Planning Commission's reasoning in the absence of explicit findings of fact and conclusions of law. *See McElhaney*, 2017 UT 65, ¶¶ 31, 40-41; San Juan County Zoning Ordinance 2-2(2)(e). Any attempt to do so is reversible error. *Id.* ¶ 41.

Nevertheless, instead of remanding the matter to the Planning Commission for findings of fact and conclusions of law capable of appellate review, the County Commission upheld the P&Z Decision in its Remand Decision. This was clearly erroneous, as the County Commission did not know what documents the Planning Commission consulted or what testimony it considered persuasive when it made the P&Z Decision, much less the rationale for that decision.[5] In upholding the unwritten and unsupported P&Z Decision, the Remand Decision was also arbitrary and capricious and is unsupportable under a substantial evidence standard. *McElhaney*, 2017 UT 64, ¶¶ 31, 41. Consequently, the District Court was required to overturn the County Commission's Remand Decision. *See id.*; Utah Code Ann. § 17-27a-801(3)(b).

[5] At the January 3, 2017, hearing before the County Commission, sPower presented the Declaration of Sean McBride dated December 22, 2016, that described six mitigation documents sPower claims were before the Planning Commission when it determined not to revoke sPower's Amended CUP. However, there is no evidence in the voluminous record generated prior to December 22, 2016, that substantiates Mr. McBride's belated assertion that the Planning Commission considered these materials. (*See* Lyman Dissent, R0161.) This new evidence was not properly before the County Commission and cannot be used to infer the Planning Commission's reasoning in the P&Z Decision. *See* San Juan County Zoning Ordinance 2-2(2)(e).

B. The only remedy is remand to the Planning Commission.

The only way to cure the chain of arbitrary, capricious and illegal decisions is to remand this matter back to the Planning Commission to permit the Planning Commission to "craft findings of fact and conclusions of law capable of appellate review," in accordance with *McElhaney*. 2017 UT 65, ¶ 42. After all, the District Court and the County Commission can only review the Planning Commission's decision based exclusively on the evidence and arguments presented to the *Planning Commission*. Utah Code Ann. § 17-27a-801(3)(b)(ii); San Juan County Zoning Ordinance 2-2(e).

Moreover, *McElhaney* clearly identified the respective obligations of the land use authority, the land use appeal authority, and subsequent reviewing courts:

> [T]he district court valiantly attempted to fill the void by parsing the comments neighbors made at Council meetings. The district court also examined Google Maps and drew conclusions about the traffic that the bed and breakfast might bring. ***We commend the district court for its willingness to take on this project, but it was error because the analysis allowed the district court to base its conclusion on what it believed the Council's decision relied upon***—increased traffic in the neighborhood. The district court framed the issue this way even though no councilmember explicitly cited traffic as the reason for the decision. The district court may have correctly read the tea leaves; traffic was a concern that many neighbors raised. But ***it was the Council's responsibility to define the basis for its decision, not the district court's.***

McElhaney, 2017 UT 65, ¶ 40 (emphasis added).

This exact scenario exists in the present matter. The County Commission and the District Court, in reviewing the Planning Commission's decision for "substantial evidence," have attempted to divine the basis for that decision. However, it was the *Planning Commission's* responsibility to explicitly set forth the basis for its decision, which

it failed to do. The County Commission and District Court are powerless to correct that error. Remand is the only remedy.

Even if the District Court or the County Commission were entitled to correct the insufficiencies in the P&Z Decision, they failed to do so. The Remand Decision is devoid of any findings of fact or rationale for upholding the P&Z Decision. The County Commission conclusorily states that "We cannot say that the Planning Commission's decision not to revoke the Latigo CUP lacked substantial evidence." (R1978.)

Similarly, the District Court made no findings of fact, but simply declared "the Court . . . may, as it has considered and decided these matters on effectively the same record in *NMA I* once before, determine that it need not reconsider them and instead rely on its prior determination that, but for the due process violation, the county commission's decision was not illegal and was supported by substantial evidence." (R2825, R2877.) The District Court did not point to any specific findings in the County Commission's Remand Decision and instead relied on its prior analysis of the County Commission's *vacated* Amended Decision.[6] Such scant analysis, which fails to "disclose the steps by which" the

[6] The District Court's reliance on the vacated Amended Decision was faulty in its own right, as the District Court had previously *nullified* the Amended Decision. *See* VACATE, BLACK'S LAW DICTIONARY (10th ed. 2014). In any event, the District Court's original substantial evidence ruling regarding the vacated Amended Decision was limited to the following two sentences: "[T]he County found sound, light, and flicker studies that it relied on to conclude that sPower's mitigation efforts met the requirements of the permit. Accordingly, the court cannot find that the County's decision was unsupported by substantial evidence." (R2061.) Significantly, there was no evidence before the District Court at that time that any of the studies the County Commission relied on in its Remand Decision were before the Planning Commission when it made the original P&Z Decision. (*See* Lyman Dissent, R0157-66, R0161 ("The September 23, 2015 letter from Sean

County Commission and District Court reached their conclusions, preclude this Court from "protecting the parties and the public from arbitrary and capricious administrative action." *McElhaney*, 2017 UT 65, ¶ 36.

C. Mitigation conditions in the Amended CUP have been violated.

Additionally, the District Court made no effort to consider evidence that "fairly detracted" from sPower's position, in contravention of Utah's substantial evidence standard. *See Grace Drilling Co. v. Bd. of Review of Indus. Comm'n of Utah*, 776 P.2d 63, 68 (Utah Ct. App. 1989). Had the District Court considered evidence fairly detracting from the P&Z Decision, it would realize – even in light of NMA being barred from presenting evidence – that there is substantial detracting evidence in the record that sPower failed to perform its mitigation obligations under the Amended CUP. Yet the District Court did not analyze or even mention that evidence in its Final Order.

Further, the County Commission failed – or refused – to consider the evidence presented by NMA in its "Written arguments for the appeal of the San Juan County Planning Commission with Respect to the Latigo Wind Park" dated November 5, 2015 ("**2015 Appeal Brief**"), and its nearly 200 pages of supporting documentation (R1629-1826). As neither Utah nor San Juan County have adopted any standards to mitigate the

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McBride detailing mitigation work is useful to a limited extent, but there is no evidence that even this letter was considered by the Planning and Zoning Commission at their September 9, or 14, 2015 meetings. The date on the letter would indicate that they would not have had the letter, *but may have had* similar information.") (emphasis added.) Sean McBride's declaration of what evidence was before the Planning Commission was not signed until December 22, 2016, three months after the District Court's order to vacate the Amended Decision. (Compare R2103-04 with R2056-64.)

negative impact of Sound, Flicker, Light and Ice Throw on properties adjacent to a Wind Facility, NMA submitted Oregon state standards for wind farms (R1774-75; R1796-1934) and Oregon state standards for wind turbine noise (R1774-75; R1847). NMA also submitted evidence regarding relocation of the Turbines (one of which was moved over a mile) after the Amended CUP was approved (R1773, R1794), increased Flicker, Sound and Ice Throw impacts on the NMA Property from relocated turbines (R1774; R1948), increased Sound impacts based on turbine selection (R0174), and sPower's failure to implement any meaningful light mitigation through "OCAS" or "Dark Sky" technology (R1776-78).

Although, due to the lack of reviewable findings of fact, NMA is still not sure exactly what evidence it must combat to demonstrate the lack of substantial evidence, the County summarily claims that the evidence in the record demonstrates that sPower incorporated as much Flicker, Light, and Sound mitigation to the NMA Property as possible. However, the reports, studies, and other mitigation evidence presented by sPower fail to provide any meaningful data or analysis relative to mitigation of detrimental effects on the *NMA Property*, which is largely and purposely ignored due to the fact that it was under contract to be purchased and incorporated into the Wind Facility. Entirely ignoring the effects of Flicker, Light and Sound on NMA Property is reckless, arbitrary, and capricious.

1. sPower failed to fulfill financial mitigation conditions.

First, it is indisputable that sPower has failed to provide the financial mitigation required by the Amended CUP. In the process of receiving the Amended CUP, sPower's

predecessor, Wasatch Wind/Latigo, proposed financial mitigation that would be accomplished in one of two ways: (1) Wasatch Wind/Latigo or its successor would purchase the NMA Property if the parties were able to enter into an agreement to do so; or (2) if no agreement could be reached, Wasatch Wind/Latigo or its successor would make "a value reduction mitigation payment, based on appraisal standard processes." *See* October 4, 2012 Transcript, (R0963–64). These financial conditions were accepted by the Planning Commission. (R099-1003.) Other mitigation conditions were imposed in the event that an agreement to purchase the NMA Property could not be reached. (R0963-66.)

An agreement to purchase was in fact reached. In the Purchase Option, NMA Members were required to withdraw their pending appeal of the approval of the Amended CUP. In reliance on the fulfilment of the approval of the Amended CUP that "all and any new land purchase lease deals be in writing for any contiguous and affected landowners … at the time of building permit issuance" (R0998), NMA Members withdrew their pending appeal, and filed no appeals for two years thereafter (R0158), thus allowing the Amended CUP to become final and not subject to any further appeals or review, as NMA was the only one to timely appeal following approval of the Amended CUP by the Planning Commission.

However, despite the clear terms of the Purchase Option requiring Wasatch Wind/Latigo and its successor, sPower, to purchase the NMA Property *prior to commencement* of significant construction activities, and Wasatch Wind/Latigo's

application for, and receipt of a building permit[7] *an entire year* before the Purchase Option expired (R1321), sPower waited until just after the Purchase Option expired, and long after it commenced construction, before offering to purchase the NMA Property for a significantly lower price than that agreed to in the Purchase Option. (*See* R0460.)

Having purposely failed to exercise its Purchase Option, in violation of its commitment to purchase prior to commencement of significant construction activities on the Wind Facility, sPower determined that it could instead obtain the NMA Property for as little as $3,000.00 per acre (R0455-60) – less than a third of the Purchase Option price – or not at all, and leave the NMA Members surrounded by the towering Turbines as close as 879 feet (268 meters) from the NMA Property. (R2795.)

While the Wind Facility is now operational, sPower has not paid any financial mitigation required by the Amended CUP. (R0152, R0157-59.) As recognized by Commissioner Lyman, "Latigo did not mitigate in relation to the NMA Land Owners" and

[7] Because sPower was obligated to demonstrate compliance with the financial mitigation conditions of the Amended CUP *at the time the building permit was issued*, sPower should have presented the County with proof of purchase of the NMA Property to demonstrate its compliance. Indeed, Marcia Hadenfeld, the chair of the Planning Commission stated that: "When they come to Greg (Adams) and Bruce and say, we're ready for Tower 1, oh, we didn't finish that part, or oh, we didn't make our payments, Bruce and Greg are going to say, then you're not ready for Tower 1, get out." (R0972.) However, Greg Adams, the building inspector who was coincidentally the brother of Rob Adams, Director of Sustainable Property Holdings for sPower, frankly conceded he had made no effort to ensure that sPower had complied with any conditions of the Amended CUP when he issued the building permit. (R2343, 2345-46, 0012, 2357 R0076.) sPower and the County both violated the conditions of the Amended CUP by not assuring that financial mitigation had occurred *at the time the building permit was issued*. *See* Lyman Dissent (R0164-65.)

sPower's false representation that "[t]he NMA property owners have been paid full value for their properties under the mitigation agreement is absurd." Lyman Dissent (R0162-63.)

2. Any failure by the Planning Commission to clearly enunciate the financial mitigation condition does not excuse its violation.

One argument by the County below was that the financial mitigation condition was not explicitly made part of the Amended CUP. This argument springs from the confusion arising from the failure of the Planning Commission to create or issue a written conditional use permit, requiring one to divine the conditions of the Amended CUP from the 100-plus page October 4, 2012 Transcript. (R0919-1004.) In reading the October 4, 2012 Transcript, the only record available as to the specifics of the Amended CUP, a number of conditions, including financial mitigation, were proposed by Wasatch Wind/Latigo, discussed, and either accepted or rejected by the Planning Commission. The sometimes-rambling back and forth discussion is less than a model of clarity. *See* R0919-1004.

The financial mitigation condition was first mentioned by Michelle Stevens, representing Wasatch Wind/Latigo, who stated: "We've submitted offers for options to purchase the 80 acres that you've referred to – the in-holding properties." (R0924.) She later confirmed that Wasatch Wind/Latigo was trying to buy the NMA Property and deferred to Thomas Ellison, counsel for Wasatch Wind/Latigo, to explain the financial mitigation condition. (R0943.) Later during the hearing, Mr. Ellison proposed the financial mitigation condition as one of a number of conditions to be satisfied at the time of building permit issuance to address concerns raised by NMA regarding the severe impact of the surrounding Wind Facility on the NMA Property:

> **Ellison**: Now, I think it's quite clear, it's come up enough tonight, that we are interested in buying this property. We do have a valuation difference, apparently. We do believe we've made a good faith offer and several times of what Mr. Cook has indicated, or a range of values for the land. But notwithstanding that, we think this Commission needs to understand that its decision can go forward, understanding that there will be processes put in place, to address, you know, basic concerns. So over and above the mitigation, we've talked to you about, already, of the specific pain that's, which again, have been indicated to be applicable to these in-holding parcels. So even though there are no residences there, we want to preserve the ability to construct homes on these parcels with the appropriate mitigation. So those payments are there, but the additional thing is to try to address the proximity factor that's associated with these in-holdings.

(R0961.)

> **Chairwoman**: Just to clarify, you're not saying that you have to buy the property, but you're saying, if you've come into agreement to buy a property, it will be done by the time you go _____.
>
> **Ellison**: That's correct. ***If we're able to come into agreement, we will buy it***, but otherwise, we're offering a value reduction mitigation payment, based on appraisal standard processes.

(R0964.) (emphasis added.)

This proposed condition was accepted by the Planning Commission, which moved forward on the basis of this condition to issue the Amended CUP. (*See generally* R0988-R1004.) The specific language of the adopted motion to approve the Amended CUP was:

> **Chairwoman**: Okay. Does anyone have an action? I would move that the Planning and Zoning Commission amend, or supplement - put an addendum on the Conditional Use Permit for Wasatch Wind's Latigo Wind Park, as issued in July 2012, to incorporate as much flicker, light, sound, mitigation as possible, and to meet all industry standards of those challenges, and that all - reiterating that all and any new land purchase lease deals be in writing for any contiguous and affected landowners. I further say that any mitigation and standards and conditions of this CUP must be met by any and all project development people, be they owners now or in the future, and all of these be met at the time of building permit issuance.

(R0998.)

While this is as clear a statement of a financial mitigation condition as one could expect under the circumstances, the County has claimed it is not clear enough. Ignoring its culpability in failing to prepare and issue a written conditional use permit and instead relying solely upon verbal statements, the County argues that the financial mitigation condition regarding purchase of the NMA Property surrounded by the Wind Facility was in reality no condition at all. First, sPower's predecessor, through its legal counsel Thomas Ellison, clearly not only proposed, but clearly accepted and agreed to this condition. The motion to approve the Amended CUP specifically adopts this condition. The existence of this condition is further verified by the actions of sPower's predecessor and NMA Members who negotiated and signed the Purchase Option following the meeting where the Amended CUP was approved.

Second, any uncertainty or ambiguity in the terms of the Amended CUP is caused solely by the failure of the Planning Commission to adhere to the requirements enunciated in *McElhaney* to provide a written record of findings of fact and conclusions of law. The County, and not NMA, must bear the consequences of the County's failure to create a written conditional use permit and the County should be estopped from arguing that the financial condition is not clearly part of the Amended CUP.

3. Alternate mitigation conditions have been violated.

There is no evidence in the record that demonstrates that sPower undertook any of the mitigation efforts required in the event an agreement to purchase the NMA Property was not reached. For example, the condition of mitigating as much Flicker as possible was

not fulfilled, as none of the evidence of mitigation submitted by sPower provides any analysis of Flicker on the *NMA Property*. (R0759). Indeed, the Updated Shadow Flicker Impact Assessment dated January 28, 2014, *did not even analyze* the effect of Flicker on the NMA Property because it explicitly assumed the NMA Property *was to be purchased* by Wasatch Wind/Latigo or its successor pursuant to the requirement in the Amended CUP to do so, and the resulting Purchase Option, which was in place at that time. (R0756, R0762, R2142.)

Looking at the Flicker map, it is abundantly clear that relocating Turbines substantially closer to the NMA Property subsequent to the issuance of the Amended CUP without any further approval increased the Flicker effects and that the NMA Property would be affected by Flicker far beyond the 30-hour, 30-day standard articulated by sPower's experts.[8] (R0871-72, R0886.) But sPower has not, and cannot provide, based on existent studies, any evidence that it has somehow mitigated that Flicker on *NMA Property*.

[8] "Micrositing" is the process of choosing the type of wind turbine and its exact position. Each position must comply with several requirements regarding existing wind resource, distances from other wind turbines, and neighboring properties. Normally there have to be at least 500 m [1,640 ft] between the turbine and the next residence. See National Wind Watch https://www.wind-watch.org/documents/micrositing/ The Amended CUP and its requirement of mitigating the detrimental effects of Flicker, Light, Sound, and Ice Throw were based on specifically approved Turbine sites subject only to "micrositing." (R0924-25, 0929, 0963, 1052-53, 1058, 1065, 1071, 1074.) However, the final Turbine locations fail to follow industry standards. Turbine #9 was moved to within 879 feet of the NMA Property and Turbine #18 to the north of the NMA Property was moved from 1,207 feet away from the NMA Property to only 715 feet. (R0203.) There is no evidence in the record that the final turbine sites were actually approved by San Juan County or that the County agreed to put turbines only 715 and 879 feet away from the NMA properties. While there may have been some leeway in the CUP for micrositing, moving Turbine #9 over 1.5 miles to the west, closer to the NMA Property, is not micrositing.

Further, Sound mitigation evidence submitted by sPower fails because none of the analyses account for the noisier GE turbines actually utilized for the Wind Farm. (R0730-54.)[9] Even the most recent Sound mitigation letter dated July 28, 2015, fails to mention the switch to the noisier GE turbines. (R0730.) While the letter indicates "the current project is proposed to be constructed with wind turbines having a sound power level of 107.5 dBA on 80-meter towers," it does not specify what kind of wind turbines were analyzed or whether those unspecified turbines were subsequently utilized by sPower. (R0730.)

Any conclusion that the July 28, 2015, letter was referring to the Sound levels and effects of the GE Turbines currently used on the Wind Farm is mere conjecture. There is simply nothing in the record to indicate what the actual sound data is for sPower's GE Turbines. Further, there is no breakdown of the specific noise impact on the *NMA Property* of the GE Turbines. In other words, use of the noisier GE turbines disqualifies and invalidates the use of the study relying on the quieter Vestas turbines as evidence that sPower had employed "as much Sound mitigation as possible" with respect to the NMA Property, as required by the Amended CUP. In fact, not only does it disqualify the study, it in fact proves the violation of the Amended CUP through the conscious and intentional decision to use noisier GE turbines.[10]

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[9] The 2013 analysis submitted by sPower assumed that the Vestas turbines would be used. (R0833.)

[10] Several Vestas turbine models with lower sound levels were available, but not used by sPower. (R1774.)

Furthermore, as sPower readily admits, "the single largest component of flicker and sound impact is proximity to the turbine locations." (R2037.) sPower moved the turbines significantly closer to the NMA Property after the Amended CUP was approved. (Compare R1207 (the 2012 sound analysis map) with R0743 (the 2013 sound analysis map).) Because proximity is the single largest component of Sound and Flicker impact, it is necessarily true that, by locating Turbines closer to NMA Property, sPower has *increased*, not mitigated, the Sound and Flicker on NMA Property – no matter what Turbines it used. Thus, there is no way the Planning Commission or the County Commission could reasonably conclude that sPower has provided as much Sound or Flicker mitigation as possible, as required by the Amended CUP. (R.1952.) It was erroneous for the District Court to uphold those fatally flawed determinations.

sPower touts that it negotiated the number of red aircraft safety lights, which flash throughout the night, required by the FAA from 27 down to 14. While that claim may seem plausible on its face, sPower has not presented *evidence* regarding which Turbines have lights and which do not. Without evidence on that issue, it is impossible to say whether the *NMA Property* will be less impacted by the light from the current Turbine locations than it would have been by the light from the approved Turbine locations. If the 14 Turbines closest to the NMA Property all have red safety lights, then the negative impact of light on NMA Property may be worse now that the Turbines are closer to the Property than when all the Turbines had red lights, but were farther away.

Wasatch Wind, the original developer of the Wind Facility, committed to install radar-controlled dark sky lighting ("**Dark Sky Technology**") on the towers at the Wind

Facility. (R 0206.) Dark Sky Technology uses radar technology to activate flashing red aircraft safety lights on each 453-foot Turbine only when an aircraft is in the area, thereby dramatically reducing the time periods when the flashing red aviation warning lights are in operation. (R206-207.) Michelle Stevens of Wasatch Wind committed to the Planning Commission on October 4, 2012, when it was considering the issuance of the Amended CUP, to "select FAA approved lighting for *towers* that minimizes impact to the surrounding area" and to "work with the best technology that we can." (R0930.) (emphasis added.) sPower uses Dark Sky Technology at sPower's Pioneer Wind Park in Glenrock, Wyoming, (R0207-08), however, sPower's plan for the Wind Facility failed to incorporate Dark Sky technology. Consequently, the red flashing aircraft warning lights on 453-foot-tall Turbines flash continually throughout the night, every night, and can be seen for a distance of at least 3.1 miles. (R1062.) This is another clear example of sPower's failure to abide by the conditions of the Amended CUP.[11]

Further, sPower's self-serving representation that it had mitigated detrimental Light as much as possible by negotiating with the FAA to reduce the number of Turbines required to be lit from 27 to 14 is belied by Wasatch Wind's Supplemental Statement in Support of the Conditional Use Permit Application for the Latigo Wind Park dated September 28, 2012, which acknowledges that the FAA does not typically require that all turbines be lit – it typically requires only that turbines on the perimeter be lit. (R1062.)

[11] In light of sPower's repeated failure to meet any of the mitigation standards in the Amended CUP, it is not surprising that it "hit the panic button" and threatened a $100 million damage claim when the County Commission simply remanded the issue of revocation back to the Planning Commission for hearing.

Additionally, there nothing in the record, excepting bald assertions in self-serving letters from sPower, that indicates that sPower actually negotiated with the FAA to install fewer red lights than required by FAA regulations. sPower has not provided the federal regulations or any documentation of their negotiations with the FAA. There is, accordingly, no evidence that sPower has provided any Light mitigation *relative to the NMA Property*.

In fact, the opposite is true. The County's treatment of NMA Property is the epitome of arbitrariness. Turbine #9 was relocated over a mile closer to the NMA Property from the original location approved by the Amended CUP. That Turbine, which is 453 feet tall, is now within 879 feet of the NMA Property. (R1773, R1794.) sPower has admitted that this relocation increases, not mitigates, the Flicker, Light, and Sound affecting the NMA Property. (R2037.) Yet, the County and the District Court have ignored the violation of the Amended CUP and San Juan County Zoning Ordinance 6-1, which require sPower, as the holder of a conditional use permit, to "mitigate or eliminate the detrimental impacts" of its conditional use on the NMA Property.

If Turbine #9 had been relocated the same distance to the south-east, it would now be in the middle of Monticello. Undoubtedly, the County would require abundant up-to-date mitigation studies and reports regarding every piece of property that could conceivably be negatively affected by that relocation. The County is not entitled to indiscriminately ignore the negative effects of the relocation simply because the Turbines were moved closer to NMA Property, rather than closer to town. The requirement to undertake "as much flicker, light, sound, mitigation as possible" is meant to protect all property owners, not just property owners in an incorporated municipality.

Despite NMA's arguments regarding these issues to the District Court, that court chose not to analyze the arguments at all. (R2875-78.) That decision was clearly erroneous, and this Court should reverse the District Court's Final Order.

II. The District Court's Final Order deprived NMA Members of their due process rights under the United States Constitution and the Utah Constitution.

While the District Court's Order properly found that NMA Members are entitled to due process, the District Court's Order is illegal. It violates the Due Process Clause of the United States Constitution, which provides that "[n]o State shall make or enforce any law which shall … deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, § 1. It further violates the Utah Constitution, which provides that "[n]o person shall be deprived of life, liberty or property, without due process of law." UTAH CONST. Art. I, § 7.[12]

If a party's property interest is at stake, "[d]ue process requires, at a minimum, adequate notice and 'an opportunity to be heard in a meaningful manner.'" *Salt Lake City Corp. v. Jordan River Restoration Network*, 2012 UT 84, ¶ 111, 299 P.3d 990 (quoting *Salt Lake Legal Defender Ass'n v. Atherton*, 2011 UT 58, ¶ 2, 267 P.3d 227). "Typically, a hearing must provide parties the ***opportunity to present 'evidence, objections, and arguments***, to the end that the ... court may be enabled to fairly and intelligently pass upon and determine the questions presented for decision.'" *Id.* (quoting *McGrew v. Indus. Comm'n*, 96 Utah 203, 85 P.2d 608, 616 (1938) (emphasis added)).

[12] Utah Code Ann. § 17-27a-706(2) also requires the appeal authority to "respect the due process rights of each of the participants."

A. NMA Members are entitled to due process protections.

NMA Members have a property interest in the unrestricted use and enjoyment of the NMA Property, which is now surrounded by the Wind Facility and its towering Turbines. *See United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 54 (1993) (acknowledging a property owner's interest in "the right to unrestricted use and enjoyment" of its property); *cf. View Condominium Owners Ass'n v. MSICO, L.L.C.*, 2004 UT App 104, ¶ 17, 90 P.3d 1042 (restrictive covenants are "strictly construed in favor of the free and unrestricted use of property").

The Planning Commission's decision, erroneously upheld by both the County Commission and the District Court, not to revoke the Amended CUP in the face of sPower's continuing failure to comply with multiple conditions of the Amended CUP to mitigate the impact of the Wind Facility on the NMA Property, either through purchase or other mitigation, is depriving NMA Members of any economically viable use or peaceful enjoyment of the NMA Property.

In fact, the property that NMA Members purchased for primary and vacation homes to be built now sits in the middle of a beehive of Turbines, the closest of which is only 268 meters away, with noise levels of between 107.5 and 108 decibels, lights which flash all night, blades 80 meters long that create a flicker of reflected sunlight and glare and which, in the winter time, can throw chunks of ice large enough to kill a person up to 312 meters, or over ***1,000 feet*** – a sufficient distance to reach a portion of the NMA Property. (R0204, R208, R936, R1774, R2795-96, R2817, R2821.)

Accordingly, the County must provide NMA a meaningful opportunity to be heard, including an opportunity to present evidence, objections, and arguments to the Planning Commission as to why the Amended CUP should be revoked for sPower's multiple failures to abide by the conditions upon which it was given approval to construct and operate the Wind Facility. The County has denied NMA this opportunity, and the District Court erred by upholding this denial.

B. NMA Members have never been given a meaningful opportunity to be heard.

It is insufficient that NMA be given a belated opportunity to argue before the County Commission or the District Court because those entities can only review the Planning Commission's decision exclusively on the evidence and arguments presented to the Planning Commission. Utah Code Ann. § 17-27a-801(3)(b)(ii); San Juan County Zoning Ordinance 2-2(e). These reviews have a much more deferential "arbitrary and capricious" standard favoring the holder of a conditional use permit. The Planning Commission is the only body where the standard of review is whether or not a conditional use permit should be revoked based on a preponderance of the evidence. *See* San Juan County Zoning Ordinance 6-10.

Simply put, the Planning Commission is the only body that can provide NMA any "meaningful" opportunity to present its case, especially where the Commission must "presume that the [Planning Commission's] decision applying the land use ordinance is valid …." San Juan County Zoning Ordinance 2-2(2)(e). (R0550.) Neither the Planning

Commission, the County Commission, nor the District Court has ever afforded NMA a "meaningful opportunity to be heard."

Before the Planning Commission, NMA will be able to provide evidence concerning sPower's failure to abide by not only the purchase condition of the Amended CUP by not purchasing the NMA Property, but also the alternate financial mitigation conditions, as well as the detrimental effects sPower's actions have had on NMA's Property. As discussed above, there is no meaningful data in the record regarding mitigation of the adverse impacts of the Wind Facility to the *NMA Property*. This is a direct result of NMA's being barred from presenting evidence or argument before the Planning Commission and the assumption in sPower's studies that the NMA Property would be purchased and integrated into the Wind Facility.

C. The Planning Commission lacked the evidence it needed to make a fair decision on revocation.

If NMA had been permitted to participate in the hearing before the Planning Commission, the record would contain all of NMA's evidence, and sPower would have to rebut that evidence with current studies and reports *specific to the NMA Property*, rather than the extant reports that excluded the NMA Property. Otherwise, sPower would fail to demonstrate compliance with the requirements of the Amended CUP. sPower would also have to explain why, after committing to the Planning Commission to purchase the NMA Property, sPower failed and refused to exercise the Purchase Option.

NMA's arguments before the County Commission and the District Court were necessarily limited by NMA's lack of a meaningful opportunity to be heard before the

Planning Commission for two reasons. First, the County Commission and District Court, as appellate bodies, were limited to the deficient record created by the Planning Commission. Second, ambiguities and uncertainties in the substance of the Amended CUP due to the failure of the Planning Commission to prepare and adopt a written Amended CUP[13] made it impossible for the County Commission or the District Court to discern the basis for the Planning Commission's decision not to revoke the Amended CUP. This limited consideration is a direct and unacceptable result of the Planning Commission's decision to permit only sPower to participate in the revocation hearing.

Unsurprisingly, sPower limited the discussion before the Planning Commission to the specific mitigation requirements mentioned in the October 4, 2012 Transcript of the meeting approving the Amended CUP. sPower did not address the general requirements placed on every CUP by Chapter 6 of the San Juan County Zoning Ordinance to "mitigate or eliminate … detrimental impacts," to "impose such requirements and conditions as are necessary for the protection of adjacent properties and the public welfare," to ensure that a conditional use, such as the Wind Facility, "will not, under the circumstances of the particular case, be detrimental to the health, safety or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity," and to ensure "[t]hat the proposed use will comply with intent, spirit, regulations and conditions specified in this Ordinance for such use and the zoning district where the use is to be

[13] A review of the October 4, 2012 Transcript amply demonstrates that not even the Planning Commission knew exactly what conditions it actually imposed on the Amended CUP. *See* Transcript, R.0998-1004.

located, as well as make the use harmonious with the neighboring uses in the zoning district." San Juan County Zoning Ordinance 6-1, 6-4 (R0559-60.) (*See also* R0776-0862.)

The Planning Commission refused to receive evidence from NMA regarding increased Ice Throw risk based on relocation of the Turbines, sPower's failure to provide any financial mitigation to NMA Members, sPower's failure to implement Dark Sky Technology, and the County's issuance of the building permit without requiring evidence of compliance with the conditions of the Amended CUP. Accordingly, neither the County Commission nor the District Court could consider such evidence.

D. NMA Members were deprived of due process.

Where NMA Member's property interests are at stake, the Planning Commission's failure to receive evidence of adverse impacts by affected parties violated NMA's due process rights. NMA is entitled to meaningfully raise its arguments regarding, *inter alia*, the safety hazards and other pitfalls resulting from the relocation of the Turbines. And it will only have the opportunity to do so by presenting its evidence and making its arguments to the Planning Commission.

In its decision, the District Court reinforced the County's decision to deny NMA any meaningful participation. Rather than allow NMA present its own evidence to the Planning Commission, the District Court declared that its earlier direction to the Commission to permit NMA to present evidence "did not mean for the county commission to take evidence if it hadn't taken evidence in the first place." (R2878.) The District Court, consequently, upheld the Commission's Remand Decision—again based solely on the one-sided evidence.

By upholding the Planning Commission's decision to preclude NMA from participating in the revocation hearing, the District Court has wrongfully limited NMA's ability to meaningfully present its full panoply of evidence, objections, and arguments. *See Jordan River Restoration Network*, 2012 UT 84. The District Court has, therefore, violated NMA's right to Due Process.

III. The District Court erroneously ruled that reconsideration by the County Commission of its issued Final Written Decision was legal, where no state statute or county ordinance authorizes the County Commission to reconsider its final and announced decisions.

The District Court further erred by not reinstating the County Commission's Final Written Decision remanding the matter to the Planning Commission with instructions to allow NMA to participate. Under CLUDMA and San Juan County Zoning Ordinances 2-3 and 6-7, the County Commission had authority to hear and act on NMA's appeal of the P&Z Decision. Pursuant to that authority, and in accordance with Utah Code Ann. § 17-27a-708, which provides that "[a] decision of an appeal authority takes effect on the date when the appeal authority issues a written decision," and that "[a] written decision … constitutes a final decision under Subsection 17-27a-801(2)(a)," the County Commission rendered its Final Written Decision on December 3, 2015.

However, rather than petitioning for review with the District Court, which was the only avenue available to sPower following the Final Written Decision (R0184), sPower sent its Request for Reconsideration to the Commission, demanding reconsideration and amendment to the Final Written Decision and threatening a $100 million damage claim if

the County Commission did not acquiesce to sPower's demands by "4:00 p.m. MST Monday, December 7, 2015" – only four days hence. (R0168-72.)

A. The County has no authority or mechanism for rehearing or reconsideration.

Neither CLUDMA nor San Juan County ordinances provide for or allow a final written decision to be reconsidered or amended after issuance by the County Commission. Indeed, pursuant to Utah Code Ann § 17-27a-801, the only further relief that may be sought by an adversely affected person is not to demand that the County Commission reconsider and amend its decision, but to "file a petition for review of the decision with the district court within 30 days after the local land use decision is final."

While the County has previously noted that the Utah Supreme Court has stated that "[i]nherent in the power to make an administrative decision is the authority to reconsider a decision," *Clark v. Hansen*, 631 P.2d 914, 915 (Utah 1981), it was determining only whether the State Engineer was empowered "to adopt rules which provide for rehearings." *Id.* The State Engineer had rules in place that implemented and governed its authority to reconsider its decisions, and the Court determined that "the Engineer did not err in construing the rules to permit the granting of the petition for rehearing." *Id.*

The County, on the other hand, has not established any mechanism to permit and control reconsideration of final and issued decisions of the County Commission in its role as the land use appeal authority. The County could, if it so desired, easily establish such rules by ordinance under Utah Code §17-27a-701, but for whatever reason, it has mandated instead that the only avenue for challenging a ruling by the County Commission is to appeal

it to the district court. (R0298.) Thus, any inherent authority the County Commission may have to reconsider its decisions has not been implemented by a duly adopted ordinance.

Furthermore, CLUDMA does not create a global automatic initiation of a county's inherent authority to reconsider its decisions. Unlike Section 63G-4-302 of the Administrative Procedures Act, which constrains administrative agencies to reconsider their decisions by granting interested parties the automatic right to reconsideration, CLUDMA does not recognize or grant any reconsideration. Instead, CLUDMA requires that an adversely affected party "specifically challenge a land use authority's decision . . . *in accordance with local ordinance*." Utah Code Ann. § 17-27a-701(2) (emphasis added). It further mandates that each appeal authority "*shall* conduct each appeal and variance request *as described by local ordinance*." Utah Code Ann. § 17-27a-706(1) (emphasis added). Where, as here, the local ordinance does not empower the appeal authority to reconsider its decision, CLUDMA accordingly prohibits any reconsideration—as a reconsideration is outside the description given by the San Juan County Zoning Ordinance. *Career Serv. Review Bd. v. Utah Dep't of Corr.*, 942 P.2d 933, 945 (Utah 1997) (stating that the inherent power to reconsider does not exist where no statutory provisions state to the contrary.)[14]

[14] The lack of a reconsideration mechanism in the San Juan County Zoning Ordinance is especially compelling in light of the Utah Supreme Court's 2006 directive—long after the *Clark* and *Career Serv.* cases were decided—that "[h]ereafter, when a party seeks relief from a judgment, *it must turn to the rules to determine whether relief exists,* and if so, direct the court to the specific relief available. Parties can no longer leave this task to the court by filing so-called motions to reconsider and relying upon district courts to construe the motions within the rules." *Gillett v. Price*, 2006 UT 24, ¶ 8, 135 P.3d 861 (emphasis added).

B. Reconsideration was ultra vires, illegal and void.

Notwithstanding its lack of authority to do so, the County Commission quickly capitulated to the threat of a multimillion dollar lawsuit by sPower and on December 7, 2015, in a closed meeting, reconsidered the Final Written Decision. (R0144-49.) The next day, the County Commission illegally reversed course, amended the Final Written Decision, upheld the P&Z Decision, and deleted the requirement that the Planning Commission, with appropriate technical assistance, determine if sPower was actually complying with the requirement in the Amended CUP to implement "as much flicker, light, sound, mitigation as possible." (*Id.*)

Because neither the reconsideration of the original Final Written Decision nor the issuance of the Amended Decision was authorized by law, ordinance, or rule, the County Commission's actions were ultra vires and void. Indeed, by taking such action, the County Commission illegally arrogated to itself the District Court's exclusive authority to review the final decisions of CLUDMA appeal authorities.

On NMA's subsequent appeal, the District Court remanded the case back to the County Commission and directed the County Commission to hold new proceedings on sPower's Request for Reconsideration because "NMA should have been heard in opposition" to that request. (R2745.) On January 3, 2017, the County Commission held a non-evidentiary hearing on sPower's request, precluding introduction of any evidence not already in the record.

In its Remand Decision on February 21, 2017, the County Commission noted that "the purpose of our rehearing was solely to consider sPower's request for reconsideration

based upon its complaint that, contrary to our finding, it had indeed provided evidence of mitigation beyond its bare representations." (R1977.) In other words, the County Commission was once again reconsidering its own Amended Decision. Accordingly, its Remand Decision was based exclusively on that reconsideration. As discussed above, any reconsideration was impermissible, yet the District Court upheld the Remand Decision. Consequently, the District Court's decision was erroneous.

The Final Written Decision should be reinstated and is now final. The 30-day period for sPower to properly appeal has long since passed. Moreover, the 30-day period should not be tolled because sPower was explicitly advised in the Final Written Decision that the only further recourse was to appeal the Final Written Decision to the District Court. Nevertheless, sPower decided to take different, unauthorized action instead. sPower should not benefit from its clear disregard of the proper legal and administrative procedure, let alone the naked bullying threat of crushing financial liability. Therefore, the Final Written Decision should be reinstated and the case remanded to the Planning Commission pursuant to the County Commission's original Final Written Decision.

CONCLUSION

The District Court erred by failing to apply, or even address, the correct rule of law for determining whether the Planning Commission's land use decision was supported by substantial evidence. The District Court further erred by depriving NMA Members of their due process rights by denying them any opportunity to provide evidence in support of their rights. Finally, the District Court erred in upholding the County Commission's decision to reconsider its original Final Written Decision, which was an illegal reconsideration. Based

on these errors, this case should be remanded to the Planning Commission to receive NMA's evidence and to produce written findings suitable for appellate review.

DATED this 28th day of June, 2018.

SMITH HARTVIGSEN, PLLC

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CERTIFICATE OF COMPLIANCE WITH UTAH RULE OF APPELLATE PROCEDURE 24(A)(11)

Certificate of Compliance with Page or Word Limitation, Typeface Requirements, and Addendum Requirements

1. This brief complies with the type-volume limitation of Utah R. App. P. 24(g)(1) because:

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2. This brief complies with the addendum requirements of Utah R. App. P. 24(a)(12) because the addendum contains a copy of:

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   Filings containing other than public information and records. If a filing, including an addendum, contains non-public information, the filer must also file a version with all such information removed. Non-public information means information classified as private, controlled, protected, safeguarded, sealed, juvenile court legal, or juvenile court social, or any other information to which the right of public access is restricted by statute, rule, order, or case law.

J. Craig Smith
Attorney's or Party's Name

June 28, 2018

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of June, 2018, I served the foregoing **Brief of Appellant Northern Monticello Alliance, LLC** via email, to the following:

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4836-2643-1334, v.10

ADDENDA

Addendum A: Constitutional Provisions

Addendum B: Statutory Provisions

Addendum C: San Juan County Zoning Ordinances

Addendum D: Memorandum of Decision on the August 30, 2016 Hearing

Addendum E: Order Denying Petitioner's Motion for Summary Judgment and Granting Respondents' Cross-Motion for Summary Judgment

Addendum F: Amended Written Decision on Remand, February 21, 2018

Addendum G: Transcript of October 4, 2012 San Juan County Planning and Zoning Commission Meeting

Addendum H: Option to Purchase Real Property

Addendum I: List of Evidence Presented By sPower

Addendum J: Dissent of Commissioner Phil Lyman to Amendment to Written Decision, December 8, 2015

Addendum A

United States Code Annotated
Constitution of the United States
Annotated
Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection; Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement

U.S.C.A. Const. Amend. XIV-Full Text

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Currentness

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

<Section 1 of this amendment is further displayed in separate documents according to subject matter,>

<see USCA Const Amend. XIV, § 1-Citizens>

<see USCA Const Amend. XIV, § 1-Privileges>

<see USCA Const Amend. XIV, § 1-Due Proc>

<see USCA Const Amend. XIV, § 1-Equal Protect>

<sections 2 to 5 of this amendment are displayed as separate documents,>

<see USCA Const Amend. XIV, § 2,>

<see USCA Const Amend. XIV, § 3,>

<see USCA Const Amend. XIV, § 4,>

<see USCA Const Amend. XIV, § 5,>

U.S.C.A. Const. Amend. XIV-Full Text, USCA CONST Amend. XIV-Full Text
Current through P.L. 115-188. Also includes P.L. 115-190, 115-191, and 115-193. Title 26 current through P.L. 115-193.

Article I, Section 7 [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law.

Addendum B

17-27a-701 Appeal authority required -- Condition precedent to judicial review -- Appeal authority duties.

(1) Each county adopting a land use ordinance shall, by ordinance, establish one or more appeal authorities to hear and decide:
  (a) requests for variances from the terms of the land use ordinances;
  (b) appeals from decisions applying the land use ordinances; and
  (c) appeals from a fee charged in accordance with Section 17-27a-509.
(2) As a condition precedent to judicial review, each adversely affected person shall timely and specifically challenge a land use authority's decision, in accordance with local ordinance.
(3) An appeal authority:
  (a) shall:
    (i) act in a quasi-judicial manner; and
    (ii) serve as the final arbiter of issues involving the interpretation or application of land use ordinances; and
  (b) may not entertain an appeal of a matter in which the appeal authority, or any participating member, had first acted as the land use authority.
(4) By ordinance, a county may:
  (a) designate a separate appeal authority to hear requests for variances than the appeal authority it designates to hear appeals;
  (b) designate one or more separate appeal authorities to hear distinct types of appeals of land use authority decisions;
  (c) require an adversely affected party to present to an appeal authority every theory of relief that it can raise in district court;
  (d) not require an adversely affected party to pursue duplicate or successive appeals before the same or separate appeal authorities as a condition of the adversely affected party's duty to exhaust administrative remedies; and
  (e) provide that specified types of land use decisions may be appealed directly to the district court.
(5) If the county establishes or, prior to the effective date of this chapter, has established a multiperson board, body, or panel to act as an appeal authority, at a minimum the board, body, or panel shall:
  (a) notify each of its members of any meeting or hearing of the board, body, or panel;
  (b) provide each of its members with the same information and access to municipal resources as any other member;
  (c) convene only if a quorum of its members is present; and
  (d) act only upon the vote of a majority of its convened members.

Amended by Chapter 92, 2011 General Session

17-27a-706 Due process.

(1) Each appeal authority shall conduct each appeal and variance request as described by local ordinance.

(2) Each appeal authority shall respect the due process rights of each of the participants.

Enacted by Chapter 254, 2005 General Session

Effective 5/9/2017

17-27a-707 Scope of review of factual matters on appeal -- Appeal authority requirements.

(1) A county may, by ordinance, designate the scope of review of factual matters for appeals of land use authority decisions.

(2) If the county fails to designate a scope of review of factual matters, the appeal authority shall review the matter de novo, without deference to the land use authority's determination of factual matters.

(3) If the scope of review of factual matters is on the record, the appeal authority shall determine whether the record on appeal includes substantial evidence for each essential finding of fact.

(4) The appeal authority shall:

(a) determine the correctness of the land use authority's interpretation and application of the plain meaning of the land use regulations; and

(b) interpret and apply a land use regulation to favor a land use application unless the land use regulation plainly restricts the land use application.

(5) An appeal authority's land use decision is a quasi-judicial act, even if the appeal authority is the legislative body.

(6) Only a decision in which a land use authority has applied a land use regulation to a particular land use application, person, or parcel may be appealed to an appeal authority.

Amended by Chapter 84, 2017 General Session

17-27a-708 Final decision.

(1) A decision of an appeal authority takes effect on the date when the appeal authority issues a written decision, or as otherwise provided by local ordinance.

(2) A written decision, or other event as provided by ordinance, constitutes a final decision under Subsection 17-27a-801(2)(a) or a final action under Subsection 17-27a-801(4).

Amended by Chapter 240, 2006 General Session

Effective 5/8/2018

17-27a-801 No district court review until administrative remedies exhausted -- Time for filing -- Tolling of time -- Standards governing court review -- Record on review -- Staying of decision.

(1) No person may challenge in district court a land use decision until that person has exhausted the person's administrative remedies as provided in Part 7, Appeal Authority and Variances, if applicable.

(2)

(a) Any person adversely affected by a final decision made in the exercise of or in violation of the provisions of this chapter may file a petition for review of the decision with the district court within 30 days after the decision is final.

(b)

(i) The time under Subsection (2)(a) to file a petition is tolled from the date a property owner files a request for arbitration of a constitutional taking issue with the property rights ombudsman under Section 13-43-204 until 30 days after:

(A) the arbitrator issues a final award; or

(B) the property rights ombudsman issues a written statement under Subsection 13-43-204(3)(b) declining to arbitrate or to appoint an arbitrator.

(ii) A tolling under Subsection (2)(b)(i) operates only as to the specific constitutional taking issue that is the subject of the request for arbitration filed with the property rights ombudsman by a property owner.

(iii) A request for arbitration filed with the property rights ombudsman after the time under Subsection (2)(a) to file a petition has expired does not affect the time to file a petition.

(3)

(a) A court shall:

(i) presume that a land use regulation properly enacted under the authority of this chapter is valid; and

(ii) determine only whether:

(A) the land use regulation is expressly preempted by, or was enacted contrary to, state or federal law; and

(B) it is reasonably debatable that the land use regulation is consistent with this chapter.

(b) A court shall:

(i) presume that a final decision of a land use authority or an appeal authority is valid; and

(ii) uphold the decision unless the decision is:

(A) arbitrary and capricious; or

(B) illegal.

(c)

(i) A decision is arbitrary and capricious if the decision is not supported by substantial evidence in the record.

(ii) A decision is illegal if the decision is:

(A) based on an incorrect interpretation of a land use regulation; or

(B) contrary to law.

(4) The provisions of Subsection (2)(a) apply from the date on which the county takes final action on a land use application for any adversely affected third party, if the county conformed with the notice provisions of Part 2, Notice, or for any person who had actual notice of the pending decision.

(5) If the county has complied with Section 17-27a-205, a challenge to the enactment of a land use regulation or general plan may not be filed with the district court more than 30 days after the enactment.

(6) A challenge to a land use decision is barred unless the challenge is filed within 30 days after the land use decision is final.

(7)

(a) The land use authority or appeal authority, as the case may be, shall transmit to the reviewing court the record of its proceedings, including its minutes, findings, orders and, if available, a true and correct transcript of its proceedings.

(b) If the proceeding was recorded, a transcript of that recording is a true and correct transcript for purposes of this Subsection (7).

(8)

(a)

(i) If there is a record, the district court's review is limited to the record provided by the land use authority or appeal authority, as the case may be.

(ii) The court may not accept or consider any evidence outside the record of the land use authority or appeal authority, as the case may be, unless that evidence was offered to the land use authority or appeal authority, respectively, and the court determines that it was improperly excluded.

(b) If there is no record, the court may call witnesses and take evidence.

(9)

(a) The filing of a petition does not stay the decision of the land use authority or appeal authority, as the case may be.

(b)

(i) Before filing a petition under this section or a request for mediation or arbitration of a constitutional taking issue under Section 13-43-204, the aggrieved party may petition the appeal authority to stay its decision.

(ii) Upon receipt of a petition to stay, the appeal authority may order its decision stayed pending district court review if the appeal authority finds it to be in the best interest of the county.

(iii) After a petition is filed under this section or a request for mediation or arbitration of a constitutional taking issue is filed under Section 13-43-204, the petitioner may seek an injunction staying the appeal authority's decision.

Amended by Chapter 339, 2018 General Session

Addendum C

SAN JUAN COUNTY
UTAH

ZONING ORDINANCE
(Amended Sept. 2011)

CHAPTER 1

GENERAL PROVISIONS

1-1 Short Title

This Ordinance shall be known and may be so cited and pleaded as the "ZONING ORDINANCE OF SAN JUAN COUNTY, UTAH"

1-2 Purpose

This Ordinance is designed and enacted for the purpose of promoting the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of SAN JUAN COUNTY, including, among other things, the lessening of congestion in the streets or roads, securing safety from fire and other dangers, providing access to adequate light and air, classification of land uses and distribution of land development and utilization, protection of the tax base, securing economy in governmental expenditures, fostering agricultural and other industries, and the protection of both urban and non-urban development.

1-3 Interpretation

In interpreting and applying the provisions of this Ordinance, the requirements contained herein are declared to be the minimum requirements for the purposes set forth.

1-4 Conflict

This Ordinance shall not nullify the more restrictive provisions of covenants, agreements, other ordinances or laws, but shall prevail notwithstanding such provisions which are less restrictive.

1-5 Definitions

For the purpose of this Ordinance certain words and terms are defined as follows: (Words used in the present tense include the future; words in the singular number include the plural and the plural the singular; words not included herein but defined in the Uniform Building Code shall be construed as defined therein).

(1) Accessory Building. Building not used for human occupancy which is secondary to the main structure on the same piece of property such as a shed or garage.

(2) Affected Entity. A county, municipality, local district, special service district created under state law, school district, interlocal cooperation entity established under state law, specified property owner, property owners association, public utility, or the Department of Transportation.

(3) Agriculture. The tilling of the soil, the raising of crops, horticulture and

gardening, including the grazing and pasturing of domestic animals, but not including any agricultural business or industry, such as fruit-packing plants, fur farms, animal hospitals or similar uses.

(4) Agricultural Industry or Business. An industry or business involving agricultural products in packaging, treatment, sales, intensive feeding, or storage, including but not limited to animal feed yards, fur farms, commercial milk production, food packaging or processing plants, commercial poultry or egg production and similar uses as determined by the planning commission.

(5) Airport. A landing area used regularly by aircraft for receiving or discharging passengers or cargo. (FAA definition)

(6) Airstrip. An airfield without normal airport facilities.

(7) Alley: A public thoroughfare less than twenty-five (25) feet wide.

(8) Anemometer. An instrument for measuring wind force and velocity.

(9) Animal Unit. One (1) cow, one (1) horse, five (5) sheep or goats, or an equivalent number of smaller animals or fowl as determined by the Planning Commission.

(10) Appeal Authority. The person, board, commission, agency, or other body designated by this ordinance to decide an appeal of a decision of a land use application or variance.

(11) Basement. A story partly underground. A basement shall be counted as a story for the purposes of height measurement if its height is one-half (1/2) or more above grade.

(12) Bed & Breakfast/Boarding House. A building with not more than five (5) guest rooms, where, for compensation, meals are provided for at least five (5) but not more than fifteen (15) persons.

(13) Building. Any structure having a roof supported by columns or walls for the housing - or enclosure of persons, animals or chattels.

(14) Building, Accessory. A detached subordinate building clearly incidental to and located upon the same lot occupied by the main building.

(15) Building, Height of. The vertical distance from the average finished grade surface to the highest point of the building roof or coping.

(16) Building Line. A line parallel to the front, side or rear lot line and established at the point where that lot line is closest to any part of the building or structure exclusive of the ordinary projections of skylight, sills, belt courses, cornices, chimneys, flues and ornamental features which do not project into a yard more than two and one-half (2-1/2) feet, and open or lattice enclosed fire escapes, fireproof outside stairways and balconies open upon fire towers which do not project into a yard more than five (5) feet.

(17) Building, Main. The, principal building or one of the principal buildings upon a lot, or the building or one of the principal buildings housing a principal use upon a lot.

(18) Car Port. A private garage not completely enclosed by walls or doors. For the purposes of this Ordinance, a car port shall be subject to all of the regulations prescribed for a private garage

(19) Conditional Use. A land use that, because of its unique characteristics or potential impact on the county, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

(20) Condominium. The ownership of a single unit in a multi-unit project, together with an undivided interest in the common areas and facilities of the property.

(21) Corral. A space, other than a building, less than one (1) acre in area, or less than one hundred (100) feet in width, used for the confinement of animals.

(22) Dwelling. Any building, or portion thereof, which is designed for use for residential purposes, except hotels, apartment hotels, bed & breakfast/boarding houses, lodging houses, tourist courts and apartment courts.

(23) Dwelling, Farm or Ranch. A building to provide housing for migratory or temporary farm workers, persons permanently working on a farm or ranch, or for family members of the main household who are engaged full-time in operating the farm or ranch.

(24) Dwelling, Multiple-family. A building arranged or designed to be occupied by three (3) or more families,

(25) Dwelling, Single-family. A building arranged or designed to be occupied by one (1) family, the structure having only one (1) dwelling unit.

(26) Dwelling, Two-family. A building arranged or designed to be occupied by two (2) families, the structure having only two (2) dwelling units.

(27) Dwelling Unit. One or more rooms in a dwelling, apartment hotel or apartment motel, designed for or occupied by one (1) family for living or sleeping purposes and having one (1) but not more than one (1) kitchen or set of fixed cooking facilities, other than hot plates or other portable cooking units.

(28) Evaporation Pond. Artificial ponds with very large surface areas that are designed to efficiently evaporate water by sunlight and exposure to the ambient temperatures.

(29) Family. One or more persons occupying a dwelling unit and living as a single housekeeping unit, as distinguished from a group occupying a boarding house, lodging house or hotel, as herein defined.

(30) Fire Hazard. Any situation, process, material or condition that may cause a fire or explosion or provide a ready fuel supply to augment the spread or intensity of the fire or explosion and that poses a threat to life or property.

(31) Frontage. All the property fronting one (1) side of the street between intersecting or intercepting streets, or between a street and a right-of-way, waterway, end of dead-end street, or political subdivision boundary, measured along the street line. An intercepting street shall determine only the boundary of the frontage on the side of the street which it intercepts.

(32) Garage, Private. An accessory building designed or used for the storage of not more than four (4) automobiles owned and used by the occupants of the building to which it is accessory, provided that on a lot occupied by a multiple dwelling, the private garage may be designed and used for the storage of one and one-half (1 1/2) times as many automobiles as there are dwelling units in the multiple dwelling, if the garage and dwelling have a roof or wall in common.

(33) Garage, Public. A building or portion thereof, other than a private garage designed or used for servicing, repairing, equipping, hiring, selling or storing motor-driven vehicles.

(34) General Plan. The document adopted by the county that sets forth general guidelines for proposed future development of the unincorporated land within the county.

(35) Geologic Hazard. One of several types of adverse geologic conditions capable of causing damage or loss of property and life.

(36) Gravel Pit. A pit from which gravel is obtained.

(37) Home Occupation. Any use conducted entirely within a dwelling and carried on by persons residing in the dwelling unit, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof and in connection with which there is not display, nor stock in trade. The home occupation shall not include the sale of commodities except those which are produced on the premises, and shall not involve the use of any accessory building or yard space or activity, outside of the main building, not normally associated with residential use. Home occupation shall include the use of the home by a physician, surgeon dentist, lawyer, clergyman, engineer, or other professional persons for consultation or emergency treatment but not for the general practice of his profession. In all cases where a home occupation is engaged in, there shall be no advertising of said occupation, no window displays, or signs except as hereinafter permitted, and no employees employed.

(38) Hotel. A building designed for or occupied as the temporary abiding place of sixteen (16) or more individuals who are, for compensation, lodged.

(39) Household Pet. Animals or fowl ordinarily permitted in the house, and kept for company or pleasure such as dogs, cats, and small caged birds, but not including a sufficient number of dogs to constitute a kennel, as defined in this Ordinance.

(40) Industry. The organized action of making of goods and services for sale.

(41) Junk Yard. The use of any lot, portion of a lot, or tract of land for the storage, abandonment of junk, including scrap metals or other, or for the dismantling, demolition or abandonment of automobiles, or other vehicles, or machinery or parts thereof; provided that this definition shall be deemed not to include such uses which are clearly accessory and incidental to any agricultural use permitted in the zone.

(42) Kennel. The keeping of three (3) or more dogs, at least four (4) months old.

(43) Land Use Application. An application required by the county's land use ordinance.

(44) Land Use Authority. The person, board, commission, agency, or other body designated by the local legislative body in this ordinance to act upon a land use application.

(45) Land Use Ordinance. A planning, zoning, development, or subdivision ordinance of the county, but does not include the general plan.

(46) Land Use Permit. A permit issued by the land use authority.

(47) Legislative Body. The county legislative body.

(48) Local District. Any entity created under state law – Local Districts, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or the state.

(49) Lodging House. A building where lodging only is provided for compensation to five (5) or more, but not to exceed fifteen (15) persons.

(50) Lot. A parcel of land occupied by a building or group of buildings, together with such yards, open spaces, lot width and lot area as are required by this Ordinance, having frontage upon a street or upon a right-of-way or upon a right-of-way not less than sixteen (16) feet wide. Except for group dwellings and guest houses, not more than one (1) dwelling structure shall occupy any one (1) lot.

(51) Lot Area. The total gross land area of a parcel of land, not including street right-of-ways dedicated to the public.

(52) Lot, Corner. A lot abutting on two intersecting or intercepting streets, where the interior angle of Intersection or interception does not exceed one hundred thirty-five (135) degrees.

(53) Lot Depth. The horizontal distance between the front yard and the rear lot lines measured in the main direction of the side lot lines.

(54) Lot Line Adjustment. The relocation of the property boundary line in a subdivision between two adjoining lots with the consent of the owners of record.

(55) Lot Line, Front. For an interior lot, the lot line adjoining the street; for a comer lot or through lot, the lot line adjoining either street, as elected by the lot owner.

(56) Lot Interior. A lot other than a corner lot.

(57) Lot Line, Rear. Ordinarily, that line of a lot which is opposite and most distant from the front line of the lot In the case of a triangular or gore-shaped lot, a line ten (10) feet in length within the parcel, parallel to and at a maximum distance from the front lot line. In cases where these definitions are not applicable, the zoning administrator shall designate the rear lot line.

(58) Lot Line, Side. Any lot boundary line not a front or rear lot line. A side lot line separating a lot from another lot or lots is an interior side lot line; a side lot line separating a lot from a street is a street side lot line.

(59) Lot Width. The horizontal distance between the side lot lines, measured at the required front yard setback line or rear yard setback line, whichever is shorter.

(60) Mining. Mining is the extraction of valuable minerals or other geological materials from the earth usually from an ore body, vein or (coal) seam. Materials recovered by mining include base metals, precious metals, iron, uranium, coal, diamonds, limestone, oil shale, rock salt and potash. Also to include, drilling, testing, mining related storage facilities whether they be underground or above-ground.

(61) Mobile Home. A detached, single-family dwelling unit of not less than thirty (30) feet in length, designed for long-term occupancy, and to be transported on its own wheels or on a flatbed or other trailers or detachable wheels; containing a flush toilet, sleeping accommodations, a tub or shower bath, kitchen facilities, and plumbing and electrical connections provided for attachment to appropriate external systems, made ready for occupancy except for connections to utilities and other minor work. Pre-sectionalized, modular, or prefabricated houses not placed on permanent foundations, shall be regarded as mobile homes.

(62) Mobile Home Park. A space designed and approved by the local jurisdiction for occupancy by mobile homes, to be under a single ownership or management, and meeting all requirements of the zoning ordinance for mobile home parks.

(63) Mobile Home Subdivision. A subdivision designed and intended for residential use where the lots are to be individually owned or leased, and occupied by mobile homes exclusively.

(64) Moderate Income Housing. Housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross income for households of the same size in the county in which the housing is located.

(65) Modular Home. A permanent dwelling structure built in prefabricated units, which are assembled and erected on the site, or at another location and brought as a unit to the site; said modular home is classed as a mobile home until it is placed on a permanent foundation and complies with all governing building codes.

(66) Motel. A building or group of buildings for the drive-in accommodation of transient guests, comprising individual sleeping or living units, and designed and located to serve the motoring public.

(67) Natural Waterways. Those areas, varying in width, along streams, creeks, gullies, springs, or washes which are natural drainage channels as determined by the Building Inspector, and in which areas no buildings shall be constructed.

(68) Nonconforming Building or Structure. A building or structure or portion thereof, lawfully existing before its current lands use designation and because of one or more subsequent land use ordinance changes, does not conform to the setback, height restrictions, or other regulations, excluding those regulations that govern the use of land.

(69) Nonconforming Use. A use of land that legally existed before its current land use designation, has been maintained continuously since the time the land use ordinance regulation governing the land changed, and because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land.

(70) Oil and Gas Exploration. Exploration for Hydrocarbon (oil and gas) is the search by petroleum geologists and geophysicists for hydrocarbon deposits beneath the Earth's surface, such as oil and natural gas. Oil and gas exploration are grouped under the science of petroleum geology.

(71) Parking Lot. An open area, other than a street, used for parking of more than four (4) automobiles and available for public use, whether free, for compensation, or as an accommodation for clients or customers.

(72) Parking Space. Space within a building, lot or parking lot for the parking or storage of one (1) automobile.

(74) Planned Unit Development (PUD). An integrated design for development of residential, commercial or industrial uses, or limited combinations of such uses, in which the density and location regulations of the district in which the development is situated may be varied or waived to allow flexibility and initiative in site and building design and location, in accordance with an approved plan and imposed requirements.

(75) Plat. A map or other graphical representation of lands being laid out and prepared in accordance with State law.

(76) Public Agency. The federal government, the state, a county, municipality, school district, special service district, or other political subdivision of the state, or a charter school.

(77) Public Hearing. A hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.

(78) Public Meeting. A meeting that is required to be open to the Public under state law.

(79) Public Notice. Notice widely disseminated to the public through broadcast media such as newspaper, radio, television, in a conspicuous public place or the internet, in conformance with state law.

(80) Record of Survey Map. A map of a survey of land prepared in accordance with state law.

(81) Story. The space within a building included between the surface of any floor and the surface of the ceiling next above.

(82) Story, Half. A story with at least two (2) of its opposite sides situated in a sloping roof, the floor area of which does not exceed two-thirds (2/3) of the floor immediately below it.

(83) Street. A public right-of-way, including a highway, avenue, boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or other way.

(84) Structure. Anything constructed or erected, which requires location on the ground or attached to something having a location on the ground.

(85) Structural Alterations. Any change in supporting members of a building or structure, such as bearing walls, columns, beams or girders.

(86) Subdivision. Any land that is divided, re-subdivided or proposed to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions. It also includes the division or development of land by deed, metes and bounds description, devise and testacy, map, plat, or other recorded instrument except as provided in state law, divisions of land for residential and nonresidential uses, including land used or to be used for commercial, agricultural, and industrial uses. It does not include a bona fide division or partition of agricultural land for agricultural purposes, a recorded agreement between owners of adjoining properties adjusting their mutual boundary if no new lots are created, and the adjustment does not violate land use ordinances.

(87) Tourist Court. Any building or group of buildings containing sleeping rooms, with or without fixed cooking facilities designed for temporary use by automobile tourists or transients, with a garage attached or parking space conveniently located to each unit, including auto courts, motels, or motor lodges.

(88) RV/Trailer Camp. Any area or tract of land used or designed to accommodate two (2) or more automobile trailers or camping parties.

(89) Unincorporated. The area outside of the incorporated areas of a county.

(90) Use, Accessory. A subordinate use customarily incidental to and located upon the same lot occupied by a main use.

(91) Use, Main. The principal function or use of the land and/or building or structure.

(92) Variance. An authorization by the Planning Commission, acting as the Land Use Authority pursuant to state law, relative to specific parcel of land for a modification of a zone's standard height, bulk, area, width, setback, or separation requirement; as distinguished from a conditional use, the allowing of a use not listed as permitted in a zone, or any other change in zoning requirements.

(93) Yard. A space on the lot, other than a court, unoccupied and unobstructed from the ground upwards, by buildings, except as otherwise provided herein.

(94) Yard, Front. A space extending across the full width of a lot, between the front building line and the front lot line. The depth of the front yard is the minimum distance between the front lot line and the front building line.

(95) Yard, Rear. A space extending across the full width of a lot, between the rear building line and the rear lot line. The depth of the rear yard is the minimum distance between the side lot and the rear building line.

(96) Yard, Side. A space extending along the full depth of a lot, between the side building line and the side lot line. The "width" of the side yard shall be the minimum distance between the side lot line and the side building line.

(97) Wind Turbine. A turbine that is powered by the wind.

(98) Zoning Map. A map, adopted as part of a land use ordinance that depicts land use zones, overlays, or districts.

1-6 Building Permit Required

The use of land or the construction or alteration, of any building or structure or any part thereof, as provided or as restricted in this Ordinance shall not be commenced, or proceeded with, except after the issuance of a written permit for the same by the Building Inspector. Farm buildings shall be exempt, except when either electric or plumbing will be installed in the buildings, from the requirements of a building permit except where such structures are intended as dwellings or for human habitation. <u>All dwellings shall require State Board of Health approval prior to issuance of a building permit</u> (emphasis added).

Application and Review

(1) All applications for building permits, except-for single family dwellings and their accessory buildings shall:

(a) be submitted to the Building and Zoning Department. The design submissions shall include architectural and site development plans to scale, which shall show building locations, landscaping, prominent existing trees, ground treatment, fences, off-street parking and circulation, location and size of the adjacent streets, north arrow and

property lines, existing grades and proposed new grades. All such drawings and sketches shall be reviewed with the Planning Commission upon notification and request of the Planning Commission to assure conformity with the intent of the Master Plan and compliance with all applicable ordinances and regulations.

(b) then follow the usual process for obtaining a building permit as required by the County.

(2) Design review for buildings and uses covered by conditional use permits or planned unit development approval shall be incorporated within such conditional use permit or planned unit development approval and need not be a separate application, provided the requirements of this Ordinance are met.

(3) Agricultural buildings are exempt from design-review.

1-7 Planning Commission Review

When a question arises whether proposed architectural and site development plans submitted are consistent with the general objectives of this Ordinance, the Planning Commission shall make a determination. A negative or unfavorable determination by the Planning Commission may be appealed to the Board of County Commissioners, as provided for in this Ordinance.

1-8 Zoning Administrator to Enforce

The Zoning Administrator is designated and authorized by the Board of County Commissioners as the officer charged with the enforcement of this Ordinance, but from time to time, by resolution or ordinance, the Board of County Commissioners may entrust such administration in whole or in, part, to any other officer without amendment to this Ordinance.

1-9 Permits to Comply with Ordinance

From the time of the effective date of this Ordinance, the Zoning Administrator shall not grant a permit for the construction, or alteration of any building or structure or the moving of a structure onto a lot if such building or structure will be in violation of any of the provisions of this Ordinance, nor shall any local officer grant any permit or license for the use of any building or land if such use would be in violation of this Ordinance.

1-10 Powers and Duties of Building Inspector

It shall be the duty of the Building Inspector to inspect or cause to be inspected all buildings in course of construction or repair.

1-11 Powers and Duties of Zoning Administrator

The Zoning Administrator shall enforce all of the provisions of this Ordinance, entering actions in the courts when necessary and his failure to do so shall not legalize any violations of such

provisions. The Zoning Administrator shall not issue any permit unless the plans of the proposed erection, construction, reconstruction, alteration and use fully conform to all zoning regulations then in effect.

1-12 Nuisance and Abatement

Any building or structure erected constructed, altered, enlarged, converted, moved or maintained contrary to the provisions of this Ordinance, and any use of land, building or premise established, conducted or maintained contrary to provisions in this Ordinance shall be, and the same hereby is, declared to be unlawful and a public nuisance; and the County Attorney shall, upon request of the governing body, at once commence action or proceeding for abatement and removal of enjoinment thereof in a manner provided by law, and take other steps as will abate and remove such building or structure, and restrain or enjoin any person, firm, or corporation from erecting, building, maintaining, or using said building or structure or property contrary to the provisions of this Ordinance. The remedies provided for herein shall be cumulative and not exclusive.

1-13 Amendments

The number, shape, boundary, area or zone, or any regulation or any other provision of the Zoning Ordinance may be amended by the Board of County Commissioners from time to time, but any such amendment shall not be made or become effective until after thirty days notice and public hearing and unless the same shall have been proposed by or be first submitted to the Planning Commission, for its recommendation which shall be returned within thirty (30) days to the Board of County Commissioners.

1-14 Hearing and Publication of Notice

Before finally adopting any such amendment, the Board of County Commissioners shall hold a public hearing thereon. Notice of such a hearing shall be disseminated to the public, in accordance with state law, at least ten (10) days before the scheduled hearing.

1-15 Licensing

All departments, officials and public employees of the County which are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this Ordinance and shall issue no permit or license for uses, building or purposes where the same would be in conflict with the provisions of this Ordinance and any such permit or license, if issued in conflict with the provisions of this Ordinance shall be null and void.

1-16 Penalties

Any person, firm or corporation whether as principal, agent, employee or otherwise, violating or causing or permitting the violation of the provisions of this Ordinance shall be charged, for each separate, identifiable violation, with a Class C Misdemeanor and punishable upon conviction as a class C misdemeanor or by imposing the appropriate civil penalty adopted under the authority of Section 17-27a-101 *et seq*., Utah Code Annotated (1953, as amended).

CHAPTER 2

LAND USE – ADMINISTRATION

2-1 Planning Commission

(1) Organization

(a) The Planning Commission shall consist of seven (7) members who shall be appointed by the Board of County Commissioners. In addition to the regular seven (7) members, the Board of County Commissioners may appoint, one (1) non-voting, ex-officio staff member to serve as liaison between the Board of County Commissioners and the Planning Commission and provide administrative support to the Planning Commission. Board of County Commission members may not serve as regular members of the Planning Commission.

(2) Term of Office

(a) The term of office for regular Planning Commission members shall be staggered so that the terms of at least one (1) member and no more than three (3) members expire each year. As the term of each regular member expires, the vacancy thus created shall be filled by a majority vote of the Board of County Commissioners for a term of four (4) years, so as to maintain the succession of staggered terms of service.

(b) Terms of all regular members begin on January 1st and expire on December 31st of the 4th year following the year of appointment. If the Board of County Commissioners has not appointed a new member(s) to the Planning Commission at the expiration of term, the current Planning Commission member(s) will remain on the Planning Commission until replaced by appointment of the Board of County Commissioners.

(c) The ex-officio member shall be appointed by the Board of County Commissioners and shall continue to serve until replaced by appointment of the Board of County Commissioners.

(d) If a vacancy occurs other than by expiration of term, the Board of County Commissioners by majority vote shall appoint a new member to fill the unexpired term.

(e) Planning Commission members may be removed for cause from office by 2/3 vote of the Board of County Commissioners prior to the expiration of the appointed term.

(3) Method of Appointment

In early November of each year, the County Administrator shall cause

notice of appointment(s) to be published in a newspaper of general circulation in San Juan County. The Building and Zoning Department shall be responsible for the costs of such advertisement. Such notice shall state the nature and term of the appointment(s), the qualification for such appointment, request written statements of interest and qualifications, and establish a deadline for submittal of such statements, which time shall not be earlier than fifteen (15) days from the date of publication.

(4) Qualifications

Each Planning Commission member shall be a legal San Juan County resident for at least two (2) years prior to appointment.

(5) Powers and Duties

The Planning Commission shall have the following powers and duties pursuant to Section 17-27a-302, Utah Code Annotated (1953, as amended):

(a) Each countywide planning commission shall, with respect to the unincorporated area of the county, make a recommendation to the county legislative body for:

(i) a general plan and amendments to the general plan;
(ii) land use ordinances, zoning maps, official maps, and amendments;
(iii) an appropriate delegation of power to at least one land use authority to hear and act on a the land use application;
(iv) an appropriate delegation of power to at least one appeal authority to hear and act on an appeal from a decision of the land use authority;
(v) application processes that may include a designation of routine land use matters that, upon application and proper notice, will receive informal streamlined review and action if the application is uncontested; and shall protect the rights of each applicant and third party to require formal consideration of any application by a land use authority; applicant, adversely affected party, or county officer or employee to appeal a land use authority's decision to a separate appeal authority; and participant to to be heard in each public hearing on a contested application.

2-2 Appeals

(1) Appeal Authority. The authority to hear request for variances from the terms of the land use ordinance and appeals from decisions applying the land use ordinances shall be vested in the Board of County Commissioners.

(2) Appealing Land Use Authority's Decision. An applicant, board, or officer of the County, or any person affected by the land use authority's decision applying a land use ordinance may, within the time period provided in 2-2(3)(a) below, appeal that decision to the Appeal

Authority by alleging there is error in any order, requirement, decision, or determination made by the land use authority in the decision applying the land use ordinance.

(a) Time to Appeal. Any appeal, pursuant to 2-2(3) above, must be filed in writing to the County Administrator within ten (10) calendar days of the issuance of the written decision applying the land use ordinance.

(b) Time for Hearing Appeal. The Appeal Authority should hear the appeal within thirty (30) days of the date the appeal was filed.

(c) Written Statement Setting Forth Theories of Relief Required. The appellant shall deliver to the Appeal Authority and all other participants, five (5) business days prior to the hearing, a written statement setting forth each and every theory of relief she intends to raise at the hearing, along with a brief statement of facts in support thereof.

(d) Condition Precedent to Judicial Review. No person, board or officer of the County may seek judicial review of any decision applying to the land use ordinance until after challenging the land use authority's decision in accordance with this part. No theory of relief may be raised in the District Court unless it was timely and specifically presented to the Appeals Authority.

(e) Standard of Review and Burden of Proof on Appeal. The Appeal Authority shall upon appeal, presume that the decision applying the land use ordinance is valid and determine only whether or not the decision is arbitrary, capricious, or illegal. The burden of proof on appeal is on the appellant.

(f) Due Process Rights. The Appeal Authority shall respect the due process rights of all participants.

2-3 Variances.

(1) Any person or entity desiring a waiver or modifications of the requirements of a land use ordinance as applied to a parcel of property that he owns, leases, or in which he holds some other beneficial interest may apply to the Appeal Authority for a variance from the terms of the ordinance.

(2) Pursuant to Utah State law, the Appeal Authority may grant a variance <u>only if</u>:

(a) Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances;

(b) There are special circumstances attached to the property that do not generally apply to other properties in the same zone;

(c) Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;

(d) The variance will not substantially affect the general plan and will not be contrary to the public interest; and

(e) The spirit of the land use ordinance is observed and substantial justice done.

(3) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under 2-3(a)(i), the Appeal Authority may not find an unreasonable hardship unless the alleged hardship:

(a) is located on or associated with the property for which the variance is sought; and

(b) comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

(4) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection 2-3(2)(a), the Appeal Authority may not find an unreasonable hardship if the hardship is self-imposed or economic.

(5) In determining whether or not there are special circumstances attached to the property under Subsection 2-3(2)(b), the Appeal Authority may find that special circumstances exist only if the special circumstances:

(a) relate to the hardship complained of; and

(b) deprive the property of privileges granted to other properties in the same zone.

(6) The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.

(7) Variances run with the land.

(8) The Appeal Authority may not grant a use variance.

(9) In granting a variance, the Appeal Authority may impose additional requirements on the applicant that will:

(a) mitigate any harmful affects of the variance; or

(b) serve the purpose of the standard or requirement that is waived or modified.

CHAPTER 3

SUPPLEMENTARY AND QUALIFYING REGULATIONS

3-1 Effect of Chapter

The regulations hereinafter set forth in this Chapter qualify or supplement, as the case may be, the zone regulations appearing elsewhere in this Ordinance.

3-2 Lots in Separate Ownership

The requirements of this Ordinance, as to minimum lot area or lot width, shall not be construed to prevent the use for a single-family dwelling of any lot or parcel of land in the event that such lot or parcel of land is held in separate ownership at the time this Ordinance becomes effective.

3-3 Yard Space for One Building Only

No required yard or other open space around an existing building, or which is hereafter provided around any building for the purpose of complying with the provisions of this Ordinance, shall be considered as providing a yard or open space for any other building; nor shall any yard or other required open space on an adjoining lot be considered as providing a yard or open space on a lot whereon a building is to be erected or established.

3-4 Every Dwelling to be on a "Lot"

Every dwelling shall be located and maintained on a "lot" as defined in this Ordinance.

3-5 Separately Owned Lots - Reduced Yards

On any lot under a separate ownership from adjacent lots and of record at the time of passage of this Ordinance, and such lot having a smaller width than required for the zone in which it is located, the width of each of the side yards for a dwelling may be reduced to a width which is not less than the same percentage of the width of the lot as the required side yard would be if the required lot width, provided that in interior lots the smaller of the two yards shall be in no case less than five (5) feet and for corner lots the street side yard shall be in no case less than ten (10) feet or the other side yard be less than five (5) feet.

3-6 Private Garage with Side Yard - Reduced Yard

On any interior lot where a private garage, containing a sufficient number of parking spaces to meet the requirements of this Ordinance, has a side yard equal to the minimum side yard required for a dwelling in the same zone, the width of the other side yard for the dwelling may be reduced to equal that of the minimum required side yard; and on any lot where such garage has such side yard the rear yard of the dwelling may be reduced to fifteen (15) feet, provided the garage also has a rear yard of at least fifteen (15) feet.

3-7 Sale or Lease of Required Space

No space needed to meet the width, yard, area, coverage, parking or other requirements of this Ordinance for lot or building may be sold or leased away from such lot or building.

3-8 Sale of Lots Below Minimum Space Requirements

No parcel of land which has less than the minimum width and area requirement for the zone in which it is located may be cut off from a larger parcel of land for the purpose, whether immediate or future, of building or development as a lot, except by permit of the Land Use Authority.

3-9 Yards to be Unobstructed - Exceptions

Every part of a required yard shall be open to the sky, unobstructed except for accessory buildings in a rear yard, the ordinary projections of skylight, sills, belt courses, cornices, chimneys, flues and other ornamental features shall not project into a yard more than two and one half (2-1/2) feet, and open or lattice enclosed fire escapes, fireproof outside stairway and balconies open upon fire towers projecting into a yard not more than five (5) feet.

3-10 Area of Accessory Buildings

No accessory building nor group of accessory buildings, in any residential zone shall cover more than twenty-five (25) percent of the rear yard.

3-11 Additional Height Allowed

Public, semi-public utility buildings, when authorized in a zone may be erected to a height not exceeding seventy-five (75) feet if the building is set back from each otherwise established building line at least one (1) foot for each additional foot of building height above the normal height limit required for the zone in which the building is erected.

3-12 Minimum Height of Main Buildings

No dwelling shall be erected to a height less than one story above grade unless a variance or conditional use is secured from the Land Use Authority.

3-13 Maximum Height of Accessory Buildings

No building which is accessory to a one-family, two-family, three-family or four-family dwelling shall be erected to a height greater than two (2) stories or (35) thirty-five feet.

3-14 Clear View of Intersecting Streets

In all zones which require a front yard, no obstruction to view in excess of two (2) feet in height shall be placed on any comer lot within a triangular area formed by the street property lines and a line connecting them at points forty (40) feet from the intersection of the street lines except a

reasonable number of trees pruned high enough to permit unobstructed vision to automobile drivers; and pedestal-type identification signs and pumps at gasoline stations.

CHAPTER 4

NONCONFORMING BUILDING AND USES

4-1 Nonconforming Use.

A nonconforming use or a non-complying structure may be continued by the present or a future property owner. A nonconforming use may be extended through the same building, provided no structural alteration of the building is proposed or made for the purpose of the extension. For purposes of this Subsection, the addition of a solar energy device to a building is not a structural alteration.

4-2 Establishment and Changes to Nonconforming Use

The county permits the establishment, restoration, reconstruction, extension, alteration, expansion, or substitution of nonconforming uses upon the terms and conditions set forth in this ordinance;

The county shall not prohibit the reconstruction or restoration of a non-complying structure or terminate the nonconforming use of a structure that is involuntarily destroyed in whole or in part due to fire or other calamity unless the structure or use has been abandoned.

The county shall prohibit the reconstruction or restoration of a non-complying structure or terminate the nonconforming use of a structure if:

(1) the structure is allowed to deteriorate to a condition that the structure is rendered uninhabitable and is not repaired or restored within six months after written notice to the property owner that the structure is uninhabitable and that the non-complying structure or nonconforming use will be lost if the structure is not repaired or restored within six months; or

(2) the property owner has voluntarily demolished a majority of the non-complying structure or the building that houses the nonconforming use.

4-3 Termination of Nonconforming Use

The County shall terminate all nonconforming uses, except billboards, by providing a formula establishing a reasonable time period during which the owner can recover or amortize the amount of his investment in the nonconforming use, if any; and

The County may terminate a nonconforming use due to its abandonment.

(1) Time period for abandonment. One (1) year of uninterrupted vacancy as consistent with this Ordinance.

CHAPTER 5

PARKING REQUIREMENTS, LOADING SPACE, AND MOTOR VEHICLE ACCESS

5-1 Off Street Parking

There shall be provided at the time any building is enlarged or increased in capacity, minimum off-street parking space with adequate provisions for ingress and egress by standard-sized automobiles as hereafter provided.

5-2 Size

The dimensions of each off-street parking space shall be at least nine (9) feet by twenty (20) feet for diagonal or ninety-degree (90) spaces; or nine (9) by twenty-two (22) feet for parallel spaces, exclusive of access drives or aisles, provided that in parking lots of not less than twenty (20) parking spaces the building inspector may approve a design allowing not more than twenty (20) per cent of such spaces to be not less than seven and one-half (7 1/2) feet by fifteen (15) feet to be marked and used for compact automobiles only.

5-3 Parking Space for Dwellings

In all residential zones there shall be provided in a private garage, or in an area properly located for a future garage, space for the parking of one (1) automobile for each dwelling unit in a new dwelling, or each dwelling unit added in the case of the enlargement of an existing building.

5-4 Parking Space for Building or Uses Other Than Dwellings

For a new building, or for any enlargement or increase in seating capacity, floor area or guest rooms of any existing main building, there shall be at least one (1) permanently maintained parking space of not less than one hundred eighty (180) square feet net area as follows:

(1) For church, school, college and university auditoriums and theaters, general auditoriums, stadiums and other similar places of assembly at least one (1) parking space for every ten (10) fixed seats provided in said buildings or structures.

(2) For hospitals at least one (1) parking space for each two (2) beds including infants' cribs and children's beds. For medical and dental clinics at least ten (10) parking spaces and three (3) additional parking spaces for each doctor or dentist having offices in such clinic in excess of three (3) doctors or dentists.

(3) For individual sleeping or living units, hotels and apartment hotels at least one (1) parking space for each two (2) sleeping rooms, up to and including the first twenty (20) sleeping rooms, and one (1) parking space for each three (3) sleeping rooms over twenty (20) sleeping rooms.

(4) For boarding houses, lodging houses, dormitories, fraternities or sororities at least one parking space for every three (3) persons for whose accommodation the building is designed or used.

(5) For restaurants or establishments that serve meals, lunches, or drinks to patrons either in their cars or in the building, for retail stores selling directly to the public, and for dance halls and recreational places of assembly at least one (1) space for each two hundred (200) square feet of floor space in the building, or one (1) space for each two (2) employees working on the highest employment shift, or five (5) parking spaces, which ever requirement is greater.

(6) For mortuaries, at least thirty (30) parking spaces; for liquor stores, at least twenty (20) parking spaces.

(7) For all business or industrial uses not listed above, one (1) parking space for each two (2) employees working on the highest employment shift.

5-5 Location of Parking Spaces

Parking spaces as required above shall be on the same lot with the main building, or, in the case of buildings other than dwellings, may be located not farther than five hundred (500) feet therefrom.

5-6 Parking Lot Regulations

Any lights used to illuminate the lot shall be so arranged as to reflect the light away from adjoining premises in any residential zone.

5-7 Off-street Truck-Loading Space

On the same premises with every building, structure or part thereof, erected and occupied or increased in capacity after the effective date of flats Ordinance for manufacturing, storage, warehouse, goods display, department store, grocery store, hotel, hospital, mortuary, laundry, dry cleaning or other use similarly involving the receipt or distribution by vehicles of materials or merchandise, there shall be provided and maintained on the lot, adequate space for standing, loading and unloading services in order to avoid undue interference with public use of streets or alleys. Such space, unless otherwise adequately provided for, shall include a minimum of ten (10) feet by twenty-five (25) feet loading space with a minimum of fourteen (14) feet height clearance for every twenty thousand (20,000) square feet or fraction thereof in excess of three thousand (3,000) square feet of building floor use for above mentioned purposes, or for every twenty thousand (20,000) square feet or fraction thereof in excess of three thousand (3,000) square feet of land-use for above mentioned purposes.

5-8 Access Requirements

Service stations, roadside stands, public parking lots, and all other businesses requiring motor vehicle access shall meet the requirements as hereinafter provided.

(1) Access shall be by not more than two (2) roadways for each one hundred (100) feet or fraction thereof of frontage on any street.

(2) No two (2) said roadways shall be closer to each other than twelve (12) feet, and no roadway shall be closer to a side property line than three (3) feet.

(3) Each roadway shall be not more than thirty-five (35) feet in width, measured at right angles to the center line of the driveway, except as increased by permissible curb return radii. The entire flare of any return radium shall fan within the right-of-way.

(4) No roadway shall be closer than ten (10) feet to the point of intersection of two property lines at any corner as measured along the property line, and no roadway shall extend across such extended property line.

(5) In all cases where there is an existing curb and gutter or sidewalk on the street, the applicant for a permit shall provide a safety island along the entire frontage of the property, except for the permitted roadways. On the two ends and street side of each such island shall be constructed a concrete curb, the height, the location and structural specifications of which shall be approved by the Building Inspector.

(6) Where there is no existing curb and gutter or sidewalk, the applicant may, at his option, install such safety island and curb, or, in place thereof, shall construct along the entire length of the property line, except in front of the permitted roadways, a curb, fence, or pipe rail, not exceeding two (2) feet or less than eight inches in height.

5-9 Location of Gasoline Pumps

Gasoline pumps shall be set back not less than eighteen (18) feet from any street line to which the pump island is vertical and twelve (12) feet from any street line to which the pump island is parallel, and not less than ten (10) feet from any residential or agricultural zone boundary line. If the pump island is set at an angle on the property, it shall be so located that automobiles stopped for service will not extend over the property line.

CHAPTER 6

CONDITIONAL USES

6-1 Definition of Conditional Use

A conditional use is a land use that, because of its unique characteristics or potential impact on the county, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

6-2 Permit Required

A conditional use permit shall be required for all uses listed as conditional uses in the district regulations where they are, or will be located, or if the use is specified as conditional use elsewhere in this Ordinance.

6-3 No Presumption of Approval

The listing of a conditional use in any table of permitted and conditional uses found in Chapter 11, Subsection 11-2 of this Ordinance for each category of zoning district does not constitute an assurance or presumption that such conditional use will be approved. Rather, each proposed conditional use shall be evaluated on an individual basis, in relation to its compliance with the standards and conditions set forth in this chapter and with the standards for the district in which it is located, in order to determine whether the conditional use is appropriate at the particular location.

6-3 Application

A conditional use permit application shall be made to the Zoning Administrator as provided by this Ordinance. The Zoning Administrator shall submit the application to the Planning Commission, except that the Planning Commission may authorize the Zoning Administrator to grant, attach conditions or deny conditional use permits, subject to such limitations or qualifications as are deemed necessary. Applications for a conditional use permit shall be accompanied by maps, drawings, statements, or other documents as required by the Planning Commission.

6-4 Determination

The Planning Commission, or upon authorization, the Zoning Administrator, shall approve a conditional use to be located within any district in which the particular conditional use is permitted by the use regulations of this Ordinance. In authorizing any conditional use the Planning Commission shall impose such requirements and conditions as are necessary for the protection of adjacent properties and the public welfare. The Planning Commission shall not authorize a conditional use permit unless the evidence presented is such to establish:

(1) That such use will not, under the circumstances of the particular case, be detrimental to the health, safety or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity; and

(2) That the proposed use will comply with intent, spirit, regulations and conditions specified in this Ordinance for such use and the zoning district where the use is to be located, as well as make the use harmonious with the neighboring uses in the zoning district.

(3) The Planning Commission shall itemize, describe, or justify the conditions imposed on the use.

6-5 Fees

The application for any conditional use permit shall be accompanied by the appropriate fee as determined by the Board of County Commissioners and as listed in the County's Fee Schedule Ordinance.

6-6 Public Hearing

A public hearing on a conditional use permit application may be held if the Planning Commission shall deem a hearing to be necessary and in the public interest.

6-7 Appeals of Decision

Any person aggrieved by a decision of the Planning Commission or the Zoning Administrator regarding the issuance, denial or revocation or amendment of a conditional use permit may appeal such decision to the Board of County Commissioners whose decision shall be final. All appeals to the Board of County Commissioners must be in writing and filed with such within thirty (30) days of the date of decision appealed from.

The decision of the Board of County Commissioners may be appealed to the District Court provided such appeal is filed within thirty (30) days of the Commission decision. Such appeal shall be filed with the County Administrator's office and the court clerk.

6-8 Inspection

Following the issuance of a conditional use permit by the Zoning Administrator or the Planning Commission, the Zoning Administrator shall approve an application for a building permit, and shall ensure that development is undertaken and completed in compliance with said conditional use and building permit.

6-9 Substantial Action Required

Unless there is a substantial action under a conditional use permit with one (1) year of its issuance, the permit shall expire. The Planning Commission may grant one extension up to six (6) months, when it is deemed in the public interest.

6-10 Revocation

A conditional use permit shall be revocable by the Planning Commission at any time due to failure of the permittee to observe any condition specified or failure to observe other requirements of this Ordinance in regard to the maintenance and improvements or conduct of the use or business as approved. The County shall also have a right of action to compel offending structures or uses to be removed at the cost of the violator or owner.

No conditional use permit shall be revoked until a hearing is held by the Planning Commission. The permittee shall be notified in writing of such hearing. The notification shall state the grounds for complaint or reasons for revocation, and the time and location of the hearing. At the hearing, the permittee shall be given an opportunity to be heard. The permittee may call witnesses and present evidence. Upon conclusion of the hearing, the Planning Commission shall determine whether the permit should be revoked.

6-11 Temporary Permit

A temporary use permit may be issued for any use listed as a conditional use for that zone for no longer than six (6) months and may be extended for an equivalent period with a maximum of three (3) extensions.

CHAPTER 7

PLANNED UNIT DEVELOPMENT

7-1 Purpose

The purpose of the planned unit development is to allow diversification, in the relationship of various uses and structures to their sites, and to permit more flexibility in the use of such sites. The application of planned unit concepts is intended to encourage good neighborhood, housing, or area design, thus ensuring substantial compliance with the intent of the district regulations and other provisions of this Ordinance relating to the public health, safety, and general welfare, and at the same time securing the advantages of large-scale site planning for residential, commercial or industrial developments, or combinations thereof

7-2 Definition

Planned unit development, for the purposes of this Ordinance, shall mean an integrated design for development of residential, commercial, or industrial uses, or combinations of such uses in which one or more of the regulations, other than use regulations of the District in which the development is to be situated, is waived or varied to allow flexibility and initiative in site and building design and location in accordance with an approved plan and imposed general requirements as specified in this Chapter.

7-3 Planned Unit Development Permit

Planned unit developments may be allowed by Planning Commission approval in any zoning district. No such planned unit development permit shall be granted unless such development meets the use limitations of the zoning district in which it is located, including planned unit developments in planned districts, and meet the density and other limitations of such districts, except as such requirements may be lawfully modified as provided by this Chapter or by district regulations. Compliance with the regulations of this Ordinance in no sense excuses the developer from the applicable requirements of the subdivision ordinance, except as modifications thereof are specifically authorized in the approval of the application for the planned unit development.

7-4 Required Conditions

(1) No planned unit development shall have an area less than that approved by the Planning Commission as adequate for the proposed development.

(2) A planned unit development which will contain uses not permitted in the zoning district in which it is to be located will require a change of zoning except that any residential use shall be considered a permitted use in a planned unit development which allows residential uses and shall be governed by density, design, and other requirements of the planned unit development permit.

(3) The development shall be in single or corporate ownership at the time of application, or the subject of an application filed jointly by all owners of the property.

(4) The Planning Commission shall require such arrangements of structures and open spaces within the site development plan as necessary to assure that adjacent properties will not be adversely affected.

(a) Density or land use intensity shall in no case be more than twenty-five (25) percent higher than allowed in the zoning district, except not more than ten (10) percent higher in residential districts.

(b) Where feasible, least height and intensity of buildings and uses shall be arranged around the boundaries of the development.

(c) Lot area, width, yard, height, density and coverage regulations shall be determined by approval of the site development plan.

(5) Preservation maintenance and ownership of required open spaces within the development shall be accomplished by:

(a) Dedication of the land as a public park or parkway system, or,

(b) Granting to the County a permanent, open space easement on and over the said private open spaces to guarantee that the open space remain perpetually in recreational use, with ownership and maintenance being the responsibility of an Owners Association established with articles of association and bylaws which are satisfactory to the governing body, or,

(c) Complying with the provisions of the Condominium Ownership Act of 1963, Title 57, Chapter 8, Utah Code Annotated, 1953, as amended, which provides for the payment of common expenses for the upkeep of the common areas and facilities.

(6) Landscaping, fencing and screening related to the several uses within the site and as a means of integrating the proposed development into its surroundings shall be planned and presented to the Planning Commission for approval, together with other required plans for the development.

(7) The size, location, design and nature of signs, if any, and the intensity and direction of area or floodlighting shall be detailed in the application.

(8) A grading and drainage plan shall be submitted to the Planning Commission with the application.

(9) A planting plan showing proposed tree and shrubbery plantings shall be prepared for the entire site to be developed.

(10) The proposed use of the particular location shall be shown as necessary or desirable, to provide a service or facility which will contribute to the general well-being of the neighborhood and the community.

(11) It shall be shown that under the circumstances of the particular case, the proposed use will not be detrimental to the health, safety or general welfare of persons residing in the vicinity of the planned unit development.

7-5 Uses Allowed

Subject to the review and approval of the Planning Commission, uses allowed in a planned unit development shall be those uses allowed in the planned district or other zoning district in which the planned unit development is to be located; provided, that for the purposes of this Chapter and Ordinance, multiple-family dwellings may be allowed in a planned unit development approved in a single-family zoning district, provided the overall density of the development does not exceed ten (10%) percent above the density normally allowed for single-family dwellings in said District.

7-6 General Site Plan

Application shall be accompanied by a general site plan showing, where pertinent:

(1) The use or uses, dimensions, sketch elevations, and locations of proposed structures.

(2) Dimensions and locations of areas to be reserved and developed for vehicular and pedestrian circulation, parking, public uses such as schools and playgrounds landscaping and other open spaces.

(3) Architectural drawings and sketches outlining the general design and character of the proposed uses and the physical relationship of the uses.

(4) Such other pertinent information, including residential density, coverage, mud open space characteristics, shall be included as may be necessary to make a determination that the contemplated arrangement of buildings and uses makes it desirable to apply regulations and requirements differing from those ordinarily applicable under this Ordinance.

7-7 Review by Planning Commission

In order that it may approve a planned unit development, the Planning Commission shall have authority to require that the following conditions (among others it deems appropriate) be met by the applicant:

(1) That the proponents of the planned unit development have demonstrated to the satisfaction of the Planning Commission that they are financially able to carry out the proposed project.

(2) That the proponents intend to start construction within one (1) year of the approval of the project and any necessary zoning district change, and intend to complete said construction, or approved stages thereof, within four (4) years from the date construction begins.

(3) That application for planned unit development in planned districts meets the requirements of such districts, including the requirements of the general development

(4) That the development is planned as one complex land use rather than as an aggregation of individual and unrelated buildings and uses.

(5) That the development as planned will accomplish the purpose outlined in Section 7-1.

7-8 Scope of Planning Commission Action

In carrying out the intent of this Chapter, the Planning Commission shall consider the following principles:

(1) It is the intent of this Chapter that site and building plans for a planned unit development shall be prepared by a designer or team of designers having professional competence in urban planning as proposed in the application. The Commission may require the applicant to engage such a qualified designer or design team.

(2) It is not the intent of this section that control of a planned unit development by the Planning Commission be so rigidly exercised that individual initiative be stifled and substantial additional expense incurred; rather, it is the intent of this Section that the control exercised be the minimum necessary to achieve the purpose of this Chapter.

(3) The Planning Commission may approve or disapprove an application for a planned unit development. In an approval, the Commission may attach such conditions as it may deem necessary to secure compliance with the purposes set forth in Section 7-1. The denial of an application for a planned unit development by the Planning Commission may be appealed to the County Commission.

7-9 Construction Limitations

(1) Upon approval of a planned unit development, construction shall proceed only in accordance with the plans and specifications approved by the Planning Commission, and in conformity with any conditions attached by the Commission to its approval.

(2) Amendments to approved plans and specifications for a planned unit development shall be obtained only by following the procedures here outlined for first approval.

(3) The Building Inspector shall not issue any permit for any proposed building, structure or use within the project unless such building, structure or use is in accordance with the approved development plan and with any conditions imposed in conjunction with its approval.

CHAPTER 8

MOBILE HOMES AND MOBILE HOME PARKS

8-1 Purpose

To require that mobile home developments will be of such character as to promote the objectives and purposes of this Ordinance; to protect the integrity and characteristics of the districts contiguous to those in which mobile home parks are located; and to protect other use values contiguous to or near mobile home park uses.

8-2 Location and Use

No occupied mobile home shall be located anywhere within the County where the total enclosed, usable floor space of the unit is less than five hundred (500) square feet, with an adequate foundation and skirting, and located and maintained on a separate lot having no less than the minimum area width, depth and frontage setbacks as required by this Ordinance for the district in which the dwelling structure is located.

San Juan County prohibits the placement or relocation of any pre-HUD-code manufactured (mobile) homes, built prior to the MHCSS, 24 CFR 3280, which became effective on June 15, 1976, anywhere within the County. (See NCCBCS/ANSI A225.1, Annex D)

8-3 Mobile Home Parks - Approval

Mobile home parks may not be constructed unless first approved by the Planning Commission, after review of plans for said mobile home park which satisfy the Commission that the said development will:

(1) Be in keeping with the general character of the district within which the development is to be located.

(2) Have written approval from the State Division of Health.

(3) Be limited to nine (9) units per acre, except mobile homes may be clustered, provided that the total number of units does not exceed the number permitted on one (1) acre multiplied by the number of acres in the development.

(4) An overall plan for development of a mobile home park shall be submitted to the Planning Commission for review. The plan shall be drawn to scale no smaller than one (1) inch to fifty (50) feet. At least six (6) copies of the plan shall be submitted. The plan shall show:

(a) The topography of the site represented by contours shown at not greater intervals than two (2) feet when required by the Planning Commission.

(b) The proposed street and mobile home space layout.

(c) Proposed reservations for parks, playground and open space.

(d) Tabulations showing per cent of area to be devoted to parks, playgrounds and open spaces, number of mobile home spaces, and total area to be developed.

(e) Proposed locations of parking spaces.

(f) Generalized landscaping and utility plan, including locations of water, electricity, gas lines, fire hydrants.

(g) Any other data the Planning Commission may require.

(5) Applications for approval shall be in writing, submitted to the Planning Commission at its regular meeting and shall be granted or denied within thirty (30) days after the meeting date, unless an extension of such time is approved by the applicant. An application denied by the Planning Commission may be appealed to the Board of County Commissioners, which appeal must be made in writing within ten (10) days after the denial is made by the Planning Commission.

(6) Standards and requirements for mobile home parks shall be as provided:

(a) Storm drainage facilities shall be so constructed as to protect residents of the development as well as adjacent property owners. Such facilities shall be of sufficient capacity to insure rapid drainage and prevent the accumulation of stagnant pools of water in or adjacent to the development.

(b) To accommodate anticipated traffic, roadways shall be designed including the following standards, unless modified by an approved planned unit development plan:

(i) One-way traffic: A minimum of fifteen (15) feet in width plus extra width as necessary for maneuvering mobile homes.

(ii) Two-way traffic: A minimum of thirty (30) feet in width.

(iii) Access: Each mobile home park shall have at least two (2) accesses to public streets.

(c) In a mobile home park, no home or add-on shall be located closer than twenty (20) feet from the nearest portion of any other home or add-on. All such homes and add-on's shall be set back at least ten (10) feet from road curbs or walks. If the mobile home tongue remains attached, it shall be set back a minimum of six (6) feet from road curbs or walks. All mobile homes shall be set back at least fifteen (15) feet from any boundary of the mobile home park.

(d) Off-street parking shall be provided at the rate of two (2) parking spaces per mobile home space and each such parking space shall have a minimum width often (10) feet and the minimum depth of twenty (20) feet. In no case shall the parking space be located farther than one hundred (100) feet from the mobile home space it is designed to serve.

CHAPTER 9

CONSTRUCTION SUBJECT TO GEOLOGIC, FLOOD, OR OTHER NATURAL HAZARD

9-1 Requirements

(1) When the Planning Commission or the Zoning Administrator deems it necessary, any application for a conditional use permit, a planned unit development approval, or a building or use permit, shall be accompanied by a geologic and soils survey report for the land, lot or parcel for which application approval is sought. The report shall be prepared at applicant's expense by a geologist or soils engineer and shall show the suitability of soils on the property to accommodate the proposed construction, and any discernable flood or earthquake hazards.

(2) Whenever a geologic and soils survey report indicates a parcel to be subject to unusual, potential or actual hazards, the applicant shall meet the special conditions required by the Planning Commission or zoning administrator, to reduce or eliminate such hazard, or if such conditions cannot be met, or will not be met, the application shall be denied.

CHAPTER 10

ZONING DISTRICTS

10-1 Establishment of Zoning Districts

For the purposes of this Ordinance, San Juan County is divided into the following listed zoning districts:

(1) Multiple Use District MU-1

(2) Agricultural District A-1

(3) Rural Residential RR-1

(4) Controlled District CD

(5) Indian Reservation District IR

10-2 Filing of Ordinance and Map

This Ordinance and map shall be filed in the office of the County Clerk and may be examined by the public subject to the reasonable regulations established by said clerk.

10-3 Rules for Locating Boundaries

Where uncertainty exists as to the boundary of any District, the following rules shall apply:

(1) Wherever the District boundary is indicated as being approximately upon the center line of a street, alley, or block, or along a property line, then, unless otherwise definitely indicated on the map, the center line of such street, alley, block or such property line, shall be construed to be the boundary of such District.

(2) Whenever such boundary line of such District is indicated as being approximately at the line of any river, irrigation, canal, or other waterway, or railroad right-of-way, or public park or other public land, or any section line, then in such case, the center of such stream canal or waterway, or of such railroad right-of-way, or the boundary line of such public land or such section line shall be deemed to be the boundary of such District.

(3) Where such District boundary lines cannot be determined by the above rules their location may be found by the use of the scale appearing upon the map.

(4) Where the application of the above rule does not clarify the District boundary location, the Planning Commission shall interpret the map.

CHAPTER 11

MULTIPLE-USE, AGRICULTURAL, RURAL RESIDENTIAL DISTRICTS

11-1 Purpose

(1) Multiple Use. To establish areas in mountain, hillside, canyon, mountain valley, desert and other open and generally undeveloped lands where human habitation would be limited in order to protect land and open space resources; to reduce unreasonable requirements for public utility and service expenditures through uneconomic and un-wise dispersal of population; to encourage use of the land, where appropriate, for forestry, grazing, agriculture, mining, wildlife habitat, and recreation; to avoid excessive damage to watersheds, water pollution, soil erosion, danger from brush land fires, damage to grazing, livestock raising, and to wildlife values; and, to promote the health, safety, convenience, order, prosperity, and general welfare of the inhabitants of the community.

(2) Agricultural. To promote and preserve, in appropriate areas, conditions favorable to agriculture and to maintain greenbelt open spaces. Such districts are intended to include activities normally and necessarily related to the conduct of agricultural production and to provide protection from the intrusion of uses adverse to the continuance of agricultural activity.

(3) Rural Residential. To promote and preserve, in appropriate areas, conditions favorable to large-lot family life, the keeping of limited numbers of animals and fowl, and reduced requirements for public utilities. These districts are intended to be primarily residential in character and protected from encroachment by commercial and industrial uses.

11-2 Use Regulations

No building, structure or land shall be used and no building or structure shall be hereafter erected, structurally altered enlarged or maintained, except as allowed in the districts as shown as "permitted uses" indicated by a "P" in the appropriate column, or as "conditional uses", indicated by a "C" in the appropriate column. If a use is not allowed in the district, it is either not named in the use list or it is indicated in the appropriate column by a dash, "-". If a regulation applies in the district, it is indicated in the appropriate column by a numeral to show the linear or square feet, or acres required, or by the letter "A". If the regulation does not apply, it is indicated in the appropriate column by a dash, "-".

		MU-1	A-1	RR-1
(1)	Accessory buildings and uses customarily incidental to permitted areas	P	P	P
(2)	Accessory uses and buildings customarily incidental to conditional uses	C	C	C

			MU-1	A-1	RR-1
(3)	Temporary buildings for uses incidental to construction work, including living quarters for a guard or night watchman - such buildings must be removed upon completion or abandonment of the construction work		C	C	C
(4)	Agriculture and Forestry				
	a.	Agriculture, except grazing and pasturing of animals	P	P	P
	b.	Agriculture, including grazing and pasturing of animals	P	P	P
	c.	Agriculture, business or industry	P	P	C
	d.	Animals and fowl for recreation or for family food production for the primary use of persons residing on the premises.	P	P	P
	e.	Nursery or green house, wholesale or retail, fruit/vegetable stand	P	P	P
	f.	The tilling of soil, the raising of crops, horticulture and gardening	P	P	P
	g.	Farms devoted to raising and marketing of chickens, turkeys, or other fowl or poultry, fish or frogs, including wholesale and retail sales	P	P	C
	h.	Forestry, except forest industry	P	P	C
	i.	Forest industry, such as a saw mill, wood products plant, or others	P	P	C
(5)	Apiary		P	P	P
(6)	Airport / Airstrip		C	C	C
(7)	Aviary		P	P	C

			MU-1	A-1	RR-1
(8)	Cluster subdivision of single family dwellings:				
	a.	Provided that the residential density is not increased by more than one hundred (100) percent for the district based on single-family units	-	-	C
	b.	Provided that the area, in acres of the parcel is not less than:	-	-	5
(9)	Dude ranch; family vacation ranch		C	C	C
(10)	Dwellings				
	a.	Single-family dwellings: Provided that one additional dwelling on at least one-half (½) acre per unit for an employee, seasonal worker or a member of the property owners immediate family may be allowed subject to approval by Planning Commission and the Board of Health.	P	P	P
	b.	Pre-HUD-Code Manufactured (mobile) Homes. Pre-HUD-Code Homes are homes built prior to the MHCSS, 24 CFR 3280, which became effective on June 15, 1976. (See NCCBCS/ANSI A225.1, Annex D)	-	-	-
	c.	Two-family dwellings	C	C	C
		1. Seasonal home or cabin	P	P	P
		2. Farm or ranch housing (including mobile homes)	P	P	P
(11)	Home occupation		P	P	P
(12)	Household pets		P	P	P
(13)	Kennel		P	P	C
(14)	Mine, quarry, gravel pit, rock crusher, concrete batching plant, or asphalt plant, oil wells or steam wells.		P	P	C
(15)	Evaporation ponds		C	C	C

			MU-1	A-1	RR-1
(16)	Power generation		C	C	-
(17)	Renewable energy – solar, wind farms		C	C	-
(18)	Private park or recreational grounds or private recreational camp or resort, including accessory or supporting dwellings or dwelling complexes and commercial service uses which are owned by or managed by the recreational facility to which it is accessory.		C	C	C
(19)	Motor Park		C	C	C
(20)	Public stable, riding academy or riding ring, horse show barns or facilities		C	C	C
(21)	Public use, quasi-public use, essential services, including private school, with a curriculum corresponding to a public school, church; dams and reservoirs; radio and television transmitting stations or towers, cemetery		C	C	C
(22)	Signs				
	a.	One identification sign, not to exceed thirty-two (32) sq. ft. in total surface area	P	P	P
	b.	One development sign, not to exceed thirty-two (32) sq. ft. in total surface area	P	P	P
	c.	One civic sign, not to exceed sixteen (16) sq. ft. in total surface area	P	P	P
	d.	One real estate sign, not to exceed eight (8) sq. ft. in total surface area	P	P	P
	e.	One residential sign, not to exceed two (2) sq. ft. in total surface area	P	P	P
(23)	Wind Turbine(s), Anemometer(s)		C	C	C
11-3	**Area Regulations**				
	The minimum lot area in acres for any main use in the districts regulation by this chapter shall be		1	1	1

		MU-1	A-1	RR-1
11-4	**Frontage Regulations**			
	The minimum frontage in feet for any lot in the districts regulated by this chapter on a public street or a private street approved by the governing body shall be:	25	25	25
11-5	**Front Yard Regulations**			
	The minimum depth in feet for the front yard for main buildings shall be property line	25	25	25
11-6	**Rear Yard Regulations**			
	The minimum depth in feet for the rear yard in the Districts regulated by this chapter shall be:			
	For main buildings - for accessory buildings	25	25	25
11-7	**Side Yard Regulations**			
	The minimum side yard in feet for any dwelling, other main or accessory buildings in districts regulated by this chapter shall be:	15	15	15
	- Except corner lots which shall have twice the Setback of:	30	30	30
11-8	**Height Regulations**			
	The maximum height for all buildings and structures in Districts regulated by this Chapter shall be:			
	In feet	35	35	35
	In number of stories	2.5	2.5	2.5
11-9	**Coverage Regulations**			
	The maximum coverage in percent for any lot in the districts regulated by this chapter shall be:	-	-	20

CHAPTER 12

CONTROLLED DISTRICT CD

12-1 Purpose

To provide, in appropriate locations, a district where agriculture, industrial, commercial and residential uses may exist in harmony, based on planned development for mutual benefit and flexible location of uses.

12-2 Permitted Uses

Agriculture, Residential, Commercial, Highway Commercial, and Industrial (Industrial subject to approval). In additional to the uses regulated in RR-22 districts, the following uses may be permitted by variance within each sub-zone.

Community Commercial CD

Grocery Store
Drug Store
Automobile Service Station
Bakery
Dry Cleaning and Laundry Pickup
Beauty Shop
Barber Shop
Child Care
Ice Cream Store
Variety Store
Medical and Dental Offices
Professional Office
Public Utilities, public and quasi-public
Stores, shops and offices supplying commodities or performing services such as department stores, specialty shops, banks, business offices, and other financial institutions and personal service enterprises.
Restaurants, beer taverns, pool hall lounges, theaters, similar enterprises provided that all uses be conducted within buildings.
Business and technical schools, and schools and studios of photography, art, music and dance.
Bowling alley, dance hall, roller skating rink.
Carpenter shops, electrical, plumbing, heating and air conditioning shops, printing and publishing or lithographic shops, mortuaries, and furniture upholstering shops, provided all uses shall be within and enclosed building.
New car dealers.
Garages for minor repairs of automobiles.
Garages for storage of automobiles, commercial parking lots.
Hotels and Motels.

Any other similar retail business or service establishments which the Planning and Zoning Commission finds to be consistent with the purpose of this chapter and which will not impair the present or future use of adjacent properties.

Highway Commercial CDh

Restaurant or drive-in cafe
Motels
New and Used Automobile Agency
Farm Machinery and Equipment Sales
Nurseries and Greenhouses
Mobile Home Sales
Mobile Home Park
Drive-in Theater
Bowling Alley, other commercial recreation facilities
Automobile Service Station, Auto Accessories
Accessory Buildings and uses
Other uses approved by the Planning Commission as being in harmony with the intent of the neighborhood commercial zone and similar in nature to the above listed uses.

12-3 Conditional Uses

All other uses than those listed.

12-4 Special Provisions

(1) Within the CD District there may exist three sub-zones, CD- Community Commercial, CDh - Commercial Highway, CDi - Industrial. Designation of such sub-zones shall be the responsibility of the Board of County Commissioners upon the recommendation of the County Planning Commission.

(2) Applications for conditional uses or requests for variances in CD district must first have appropriate sub-zone designation. Such designation shall become part of the official county zone plan. Applicants are required to provide a reproducible mylar or linen and three (3) copies of detailed site plan drawings of their proposed use and sub-zone boundary including:

(a) Format size not less than 81/2" x ll" or greater than 24" x 36".
(b) Precise dimension at a convenient engineering scale.
(c) Location of all existing structures and improvements (buildings, roads, fences, ditches and canals, utility systems), and other information as required by Planning Commission within five hundred (500) feet of the proposed sub-zone boundary.
(d) Proposed methods of providing utility needs including water, sewer, electrical, and fuel services, access and parking, and appropriate methods from dealing with any special site problems such as storm water drainage.

(3) No commercial or industrial building shall be erected within twenty-five (25) feet of a residential building or residential district boundary. Commercial or industrial buildings

within one-hundred (100) feet of a residential district boundary shall not exceed the height limitations of that district.

(4) The Planning Commission shall review all pertinent information on the proposed sub-zone designation and submit their recommendation to the County Commission. Upon receiving the Planning Commission's recommendation(s), the Board of County Commissioners shall advertise for and hold a public hearing to receive public input in order to make an informed decision whether or not to designate the sub-zone by ordinance.

(5) The following uses require an approval from the Planning and Zoning Commission prior to any use:

Industrial Cdi

Manufacture of any of the following products from raw materials: acids, asphalt, carbide, caustic soda, carbon or bone black, cellulose, charcoal, chlorine, creosote, fertilizer, hydrogen, industrial alcohol, nitrates of an explosive nature, plastics, portland cement, potash, synthetic and resins, fibers. Any of the following processes: distillation of wood or bone; filtrating of cotton or other materials; reduction, refining, smelting and alloying of metals or metal ores and radioactive materials; refining of petroleum and petroleum products; slaughtering and packing of animals larger than poultry and rabbits; tanning of raw, green, or salted hides of skins. Automobile salvage and wrecking operations, and industrial metal, rag, glass or paper salvage operations provided that all operations are conducted within a solid view obscuring wall or fence not less than eight (8) feet in height.

12-5 Signs

(1) Business signs shall be allowed after approval of a "Request for Business Sign Permit" and shall be governed by Federal and State Highway rules and regulations, provided, that the Planning Commission may require that signs shall not exceed one (1) sq. ft. of sign area for each one (1) linear foot of street frontage abutting the development portion of the property, provided that any one sign for any one business shall not exceed one-hundred (100) sq. ft. in total surface area and the number of signs for each business may not exceed three (3), the total area of which shall not exceed the total sign area allowance.

(2) Non-business signs shall be permitted or provided with no more than two (2) signs for each use or occupancy. The total allowable square footage for signage are as follows:

(a) Development - maximum 40 square feet
(b) Civic - maximum 14 square feet
(c) Real Estate - maximum 32 square feet
(d) Residential - maximum 2 square feet

(3) All signs are to be flat wall or free standing and such signs shall not be revolving or have moving parts, flashing or intermittent lighting.

12-6 Boundaries

(1) Boundaries for all Controlled District (CD) zones shall be established by the Board of County Commissioners who may amend the number, shape and area of such districts, provided, it has received a recommendation from the Planning Commission concerning a proposed amendment and a public hearing has been held by either body.

(2) Description of all Controlled Districts (CD) zones should be included as part of this section of the County Zoning Ordinance, and changes in some shall be written in similar language and made part of this section.

(3) Controlled District (CD) boundaries.

(a) An area parallel to all State Highways extending outwardly one thousand (1000) feet each direction from the center line of said highways and terminating at County Boundaries, or municipal corporate.

(b) All of the area, except that within the corporate limits of Monticello City, in Township 33 South, Range 23 East Sections 25 and 36; Township 33 South, Range 24 East, Sections 30 and 31.

(c) All of the area, except that within the corporate limits of Blanding City, in Township 36 South, Range 22 East, Sections 22, 23, 26, 27, 34, and 35; Township 37 South, Range 22 East, Sections 2, 3, 10, 11, 14, and 15

(d) All of the area in Township 40 South Range 21 East, Sections 23, 24, 25, 26; and Township 40 South Range 22 East, Sections 19 and 30.

(e) All of the area in Section 14, Township 30 South Range 20 East

(f) All of the area in the West half of Section 4 and the East Half of Section 5, Township 29 South Range 23 East

(g) All of the area in Sections 10, 11, 12, 13, 14 and 15 Township 37 South, Range 18 East.

(h) All of the area, except that in the boundaries of Natural Bridges National Monument, in Sections 14,15, 22 and 23, in Township 37 South, Range 18 East.

(i) All of the area in Sections 21 and 28, Township 39 South, Range 16 East.

(j) All of the area within the boundaries of San Juan County in Sections 14, 15, 16, 17, 20, 21, 22, 23, 26, 27, 28, 29 mad 30 in Township 38 South Range 11 East.

(k) All of the sections and 7 in Township 42 South, Range 19 East.

CHAPTER 13

INDIAN RESERVATION DISTRICT (IR)

13-1 Purpose

To provide, in appropriate locations, areas where the various Indian Tribes may exercise self determination.

13-2 Permitted Uses

All uses and conditions thereof are subject to approval by the authorized representatives of the Indian Tribal jurisdictions of which they are a part.

Addendum D

IN THE SEVENTH JUDICIAL DISTRICT COURT
WITHIN AND FOR SAN JUAN COUNTY, STATE OF UTAH

NORTHERN MONTICELLO ALLIANCE, LLC, a Utah limited liability company, **Petitioner and Plaintiff,** **v.** **SAN JUAN COUNTY COMMISSION, a political subdivision of the State of Utah, SAN JUAN COUNTY, a political subdivision of the State of Utah,** **Respondents and Defendants,** **SUSTAINABLE POWER GROUP, LLC, and LATIGO WIND PARK, LLC,** **Intervening Respondents.**	**MEMORANDUM OF DECISION ON THE AUGUST 30, 2016 HEARING** Case No. 160700001 Judge Lyle R. Anderson

This matter is before the court on three motions: (1) San Juan County Commission's (County) Motion for Judgment on the Pleadings, (2) Northern Monticello Alliance, LLC's (NMA) Motion for Summary Judgment, and (3) County's Cross-Motion for Summary Judgment. After full briefing on each motion, the court held a hearing on August 29, 2016. Having considered the briefing and argument, the court now rules as follows:

Factual Background

NMA is a Utah limited liability company. NMA claims that it has several members, but its articles of incorporation identify only one. At least this member, in addition to other

purported members, owns land adjacent to a wind turbine electric generating facility owned and operated by Sustainable Power Group, LLC (SPower).

The project required a conditional use permit because the project is located in the A-1 zone of the county. The original applicant for the project was Latigo Wind Park, LLC (Latigo), a subsidiary of Wasatch Wind Intermountain, LLC (Wasatch Wind). The permit included a provision requiring,

> as much flicker, light, sound[ ] mitigation as possible, and to meet all industry standards of those challenges, . . . and reiterating that all and any new land purchase lease deals be in writing for any contiguous and affected landowners. . . . [A]ny mitigation and standards and conditions of this CUP must be met by any and all project development people, be they owners now or in the future, and all of these be met at the time of building permit issuance.

Latigo entered into a written Purchase Agreement Option to buy NMA property at a specific per acre dollar amount in exchange for NMA withdrawing its appeal of the conditional use permit. The term of the option was two years after execution.

The project was later sold to SPower. SPower chose not to exercise the Option Agreement and allowed it to lapse by its terms. SPower then began efforts to negotiate a new purchase agreement with the NMA landowners. All but one of NMA's members refused to accept the lower price. SPower also changed the location of several proposed wind turbines. NMA responded with a complaint requesting that the conditional use permit be revoked.

The San Juan County Planning and Zoning Commission (Commission) held a revocation hearing on September 9, 2015 where SPower presented updated studies regarding sound, flicker, and light. The Commission took the matter under advisement and

voted not to revoke the permit on September 14, 2015. NMA appealed to the County, arguing that the commission's decision was not supported by substantial evidence and that the Commission should have allowed NMA to present evidence at the hearing.

The County found that the record was insufficient to support a finding that the mitigation conditions had been met and concluded that it was improper for the Commission to prohibit NMA from commenting at the hearing. It reversed and remanded the decision for further hearing.

On December 3, 2015, SPower, through its attorney, sent a letter to the County, claiming that the County's order stated that no evidence of mitigation was presented, but the Commission's brief had clearly referenced the studies presented at the hearing. SPower noted that it would suffer "significant damages" if the decision were not reversed and requested that the County reconsider and issue an amended order "no later than 4:00 p.m. MST, Monday December 7, 2015."

After a properly advertised closed meeting, the County issued an amended order, finding that SPower was correct that they had failed to consider the mitigation evidence presented to the Commission. The County upheld the Commission's decision in its entirety, concluding that further hearing would be unnecessary. NMA then filed this action to appeal the amended decision.

Analysis

The County's Motion for Judgment on the Pleadings argues that NMA lacks standing. The motion and cross-motion for summary judgment argue the merits of the appeal.

NMA has standing to appeal the County's decision.

The County claims that NMA itself does not own the property adjacent to the wind facility. NMA does not dispute this fact, but argues that it has associational standing because its members own the land. The County responds that NMA's articles of incorporation disclose only a single member and therefore cannot qualify as an association.

An association has standing if "[1] its individual members have standing and [2] the participation of the individual members is not necessary to the resolution of the case."[1] However, the County argues that there is a third requirement: the association must be a "traditional voluntary membership organization." This requirement is derived from the United States Supreme Court case, *Hunt v. Washington State Apple Advertising Commission*,[2] where the Court concluded that the commission did not qualify because it had "no members at all."[3]

In formulating the test for associational standing, the Utah Supreme Court partially adopted the test developed in the federal courts.[4] However, the court also noted that it was "not bound to follow federal precedent in this area" and emphasized that

> "[t]his test is a pragmatic one. Where, as a practical matter, the rights asserted and the remedies sought do not require direct participation by affected individuals who would have standing, there is no reason not to permit associations to press claims common to their members."[5]

In *Society of Professional Journalists v. Bullock*,[6] the Utah Supreme Court again stated the

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[1] Utah Chapter of Sierra Club v. Utah Air Quality Bd., 2006 UT 74, ¶ 21, 148 p.3d 960 (citing Utah Restaurant Association v. Davis County Board of Health, 709 P.2d 1159, 1163 (Utah 1985)).
[2] 432 U.S. 333 (1977).
[3] *Id.* at 342.
[4] See Utah Restaurant Association v. Davis County Board of Health, 709 P.2d 1159, 1163 (Utah 1985)
[5] *Id.*
[6] 743 P.2d 1166 (Utah 1987).

rule as having only two requirements.[7] The court recognized that some courts had adopted the third requirement announced in the *Hunt* case, but it did not "feel compelled to adopt or to reject this requirement in Utah at [that] time."[8] Subsequent cases have continued to use the two-part test.[9] Accordingly, because Utah appellate courts have declined to adopt the additional element, this court declines to do so here.[10]

Turning now to the two part test, in order to find that NMA's individual members have the right to sue, the court must conclude that "own or occupy property within the jurisdiction of the decisionmaking body."[11] The member of NMA listed on its articles of incorporation owns land in the county and will be affected by the County's decision on the conditional use permit at issue. Its other members are similarly situated.

Next, the court must find that the participation of the individual members is not necessary.[12] In *Utah Restaurant Association v. Davis County Board of Health*,[13] the Utah Supreme Court found that this element was not met with regard to association members' money damages claims, but allowed the suit for declaratory judgment to proceed.[14] Here, NMA is not seeking money damages, but for the court to determine the validity of the County's decision. The individual participation of NMA's members is not necessary for the

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[7] *Id.* at 1175.
[8] *Id.* at 1175 n.10.
[9] Utah Chapter of Sierra Club v. Utah Air Quality Bd., 2006 UT 74, ¶ 21, 148 p.3d 960; Architectural Committee v. Kabatznick, 949 P. 2d 776, 779 (Ut. Ct. Apps. 1997).
[10] Even if the court were to apply this element, *Hunt* found that the test was not met where the association had no members at all, suggesting that an associations consisting of only one member might qualify. *See Hunt*, 432 U.S. at 342. Moreover, the Utah Supreme Court's call for pragmatism in applying the test is relevant here. *See* Utah Restaurant Association v. Davis County Board of Health, 709 P.2d 1159, 1163 (Utah 1985). The purpose of associational standing is to allow litigants to use the assets of an association to bear the costs of litigation. *Id.* That purpose applies to an association of one just as it would to an association of many.
[11] Cedar Mountain Environmental, Inc. v. Tooele County, 2009 UT 48, 214 P.3d 95.
[12] Utah Chapter of Sierra Club v. Utah Air Quality Bd., 2006 UT 74, ¶ 21, 148 p.3d 960.
[13] 709 P.2d 1159 (Utah 1985).
[14] *Id.* at 1162.

court to grant the relief requested.

Accordingly, NMA has met the requirements for associational standing and the County's Motion for Judgment on the Pleadings is denied.

The County's Amended Order was illegal.

Under Utah Code § 17-27a-801, the district court has authority to reverse the decision of a land use authority if the decision is "arbitrary, capricious, or illegal."[15] The court is required to presume that the decision is valid and its review is limited to the record provided to it.[16]

A decision is arbitrary and capricious when it is not supported by substantial evidence.[17] The County's decision to reverse its earlier order was based on its failure to consider "two three ring binders of information" on SPower's mitigation efforts. In these binders, the County found sound, light, and flicker studies that it relied on to conclude that SPower's mitigation efforts met the requirements of the permit. Accordingly, the court cannot find that the County's decision was unsupported by substantial evidence.

A decision is illegal when it "violates a law, statute, or ordinance in effect at the time the decision was made."[18] NMA argues that the County Commission's reconsideration was illegal because it was not authorized by any statute and because it was based on an ex parte communication.

Utah Code § 63G-4-302 provides that a state agency may reconsider its decision if a party files a request within twenty days and mails a copy of the request to all other parties.

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[15] Utah Code § 17-27a-801(3)(a).
[16] Utah Code § 17-27a-801(3)(a) & (8).
[17] *See Arbitrary*, BLACK'S LAW DICTIONARY (10th Ed. 2014).
[18] Utah Code § 17-27a-801(3)(d).

This statute does not apply to the County because it is specifically excluded.[19] No similar provision exists under the County Land Use, Development, and Management Act.[20] However, as the County points out, "[i]nherent in the power to make an administrative decision is the authority to reconsider a decision. The absence of specific authority in the governing statutes is not determinative. Every tribunal has some power to correct its own mistakes."[21]

This is not to say that this authority to reconsider is unlimited. The County's procedures must still comply with basic due process in order to be valid.[22] Due process requires that a proceeding "afford the procedural protections that the given situation demands."[23] At minimum, this means "adequate notice and an opportunity to be heard."[24] Here, the County based its decision on an ex parte communication. NMA received neither notice of the letter nor an opportunity to be heard in opposition.

In *Hollenbach v. Salt Lake City Civil Service Comm'n*,[25] a Commissioner had an ex parte conversation with the Deputy Chief of the Police Department about the outcome of the department's Internal Affairs investigation.[26] The Commissioner disclosed the details of this conversation on the record.[27] While the Commission acknowledged that the communication was improper, the court found that the Commissioner's concerns had originated with the evidence and not the ex parte communication.[28] Indeed, the

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[19] Utah Code § 63G-4-103(b) (defining "agency" to exclude "any political subdivision of the state").
[20] *See* Utah Code 17-27a-101 et seq.
[21] Clark v. Hansen, 631 P.2d 914, 915 (Utah 1981) (citations omitted).
[22] U.S. CONST. Amend. XIV.
[23] Dairy Product Services. Inc. v. City of Wellsville, 2000 UT 81, ¶ 49, 13 P.3d 581.
[24] *Id.*
[25] 2015 UT App 116, 349 P.3d 791.
[26] *Id.* ¶ 12.
[27] *Id.* ¶ 13.
[28] *Id.* ¶¶ 14–15.

conversation, if anything, worked to the complaining party's benefit.[29] Ultimately, the court concluded that the ex parte communication did not affect the Commission's decision.[30]

In contrast, the County's reconsideration here did not originate from the evidence, but from the ex parte communication. While the County's decision to reverse its earlier decision was based on evidence properly before it, NMA did not have the same opportunity to argue its side of the case with regard to that evidence or to present its own evidence. The ex parte communication also included an implicit threat of litigation when it suggested that SPower would suffer "damages . . . in excess of $100 million." It is likely that this affected the Commission's decision as well. NMA should have been heard in opposition and was prejudiced by the denial of due process.

Accordingly, the court concludes that the County's decision to reconsider its earlier order was illegal because it violated NMA's due process rights. The County's cross-motion for summary judgment is denied and NMA's motion is granted. NMA's counsel is directed to prepare a judgment consistent with Utah Rule of Civil Procedure 58A.

By the Court:

Lyle Anderson 2016.09.09 08:59:27 -06'00'

[29] *Id.* ¶¶ 12–13.
[30] *Id.* ¶ 15.

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 160700001 by the method and on the date specified.

MANUAL EMAIL: BARTON H KUNZ bart.kunz@chrisjen.com
MANUAL EMAIL: PAUL W SHAKESPEAR pshakespear@swlaw.com
MANUAL EMAIL: J CRAIG SMITH jcsmith@shutah.law

09/09/2016 /s/ CONNIE ADAMS

Date: _____ _____

Deputy Court Clerk

Addendum E

The Order of the Court is stated below:
Dated: February 28, 2018 11:52:34 AM **/s/** LYLE R ANDERSON
District Court Judge

Prepared and submitted by:

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SEVENTH DISTRICT COURT – MONTICELLO DEPARTMENT

SAN JUAN COUNTY, STATE OF UTAH

NORTHERN MONTICELLO ALLIANCE, LLC,

Petitioner,

vs.

SAN JUAN COUNTY COMMISSION *et al.*,

Respondents,

SUSTAINABLE POWER GROUP, LLC; and LATIGO WIND PROJECT, LLC,

Intervening Respondents.

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY JUDGMENT AND GRANTING RESPONDENTS' CROSS-MOTION FOR SUMMARY JUDGMENT

Case No. 170700006
Judge Lyle R. Anderson

The Court, having considered cross-motions for summary judgment filed by petitioner Northern Monticello Alliance, LLC ("NMA") and respondents the San Juan County Commission and San Juan County (collectively, "County") and the briefing thereon, and having heard oral argument, and reviewed the proposed order submitted

by the County, the objection filed by NMA, and the County's response thereto, now decides the motions as follows.

This petition arises from a decision of the San Juan County Commission, acting in its capacity as the county appeal authority under Utah Code § 17-27a-701, made on remand from this Court's order in a prior petition for review between these parties and heard by this Court, case no. 160700001 ("*NMA I*"). That petition arose after the county commission affirmed the county planning commission's decision not to revoke a conditional use permit for a wind power facility held by Sustainable Power Group, LLC and Latigo Wind Park, LLC (collectively, "sPower"). The county commission did so via an amended decision after initially reversing the planning commission's decision upon finding that sPower had presented no evidence beyond bare statements that it was complying with the permit's conditions requiring it to mitigate the project's flicker, light, and sound impacts. In a letter dated December 3, 2015 seeking the county commission's reconsideration, sPower contended that the county commission's initial decision was mistaken, and that it had presented extensive evidence showing its compliance. The county commission issued its amended decision as a result. But sPower did not send NMA a copy of its letter, and the county commission reconsidered its decision without involving NMA.

In *NMA I*, this Court held that the county commission's failure to involve NMA in its reconsideration violated NMA's due process rights, but otherwise held that the county commission's amended decision was supported by substantial evidence and

legal. This Court vacated the county commission's amended decision and remanded this matter back to the county commission "for proceedings consistent with the Court's Decision." (*NMA I*, Ruling Am. J. (Nov. 14, 2016).)

On remand, the county commission took briefs from both sPower and NMA on sPower's request for reconsideration and held a hearing where attorneys for both parties presented arguments. The county commission limited the parties to the evidence already in the record, reasoning that it was considering sPower's contention that, contrary to the county commission's initial decision, the record contained more than its representative's bare statements that it was complying with the permit's conditions. The county commission then issued a new amended decision affirming the planning commission. This petition for review followed, where NMA again argues that the county commission's decision is illegal and unsupported by substantial evidence.

While the law of the case doctrine may not strictly apply to this situation, the Court nonetheless may, as it has considered and decided these matters on effectively the same record in *NMA I* once before, determine that it need not reconsider them and instead rely on its prior determination that, but for the due process violation, the county commission's decision was not illegal and was supported by substantial evidence.

In *NMA I*, the Court explained that, "[w]hile the County's decision to reverse its earlier decision was based on evidence properly before it, NMA did not have the same opportunity to argue its side of the case with regard to that evidence or to present its own evidence." (*NMA I*, Mem. Dec. on Aug. 30, 2016 Hr'g at 8 (Sept. 9, 2016).) The

Court expected that on remand the county commission would remedy its denial of due process to NMA by giving it a chance to respond to sPower's December 3, 2015 letter, which was essentially sPower's motion to reconsider, and to evaluate those arguments and consider any evidence in the record that NMA would want to call to the county commission's attention in evaluating whether it should have reconsidered its decision. (The Court did not mean for the county commission to take evidence if it hadn't taken evidence in the first place.) The Court hasn't read anything in the memoranda or heard anything at argument that persuades it that the county commission didn't do what the Court expected it to do.

The Court therefore DENIES NMA's motion for summary judgment and GRANTS the County's cross-motion for summary judgment. This order fully resolves all claims at issue in this matter and serves as the Court's FINAL JUDGMENT.

----------END OF ORDER----------

Ordered by the Court as indicated
by the date and seal at the top of the first page.

Approved as to form this 20 February 2018. Goebel Anderson PC /s/Barton H. Kunz II Barton H. Kunz II *Attorneys for County Respondents*	Approved as to form this _____ February 2018. Smith Hartvigsen, PLLC **[unsigned]** J. Craig Smith Jennie B. Garner Aaron M. Worthen *Attorneys for Petitioner*

Approved as to form this ____ February 2018. Snell & Wilmer L.L.P. **[unsigned]** Paul W. Shakespear Elizabeth M. Brereton *Attorneys for Intervening Respondents*	

CERTIFICATE OF SERVICE

I hereby certify that I caused a true copy of the foregoing proposed order (except for revisions subsequently agreed to by the County) to be served upon the following by email on 12 February 2018:

For petitioner:
J. Craig Smith, jcsmith@shutah.law
Jennie B. Garner, jgarner@shutah.law
Aaron M. Worthen, aworthen@shutah.law

For intervening respondents:
Paul W. Shakespear, pshakespear@swlaw.com
Elizabeth M. Brereton, lbrereton@swlaw.com

/s/Barton H. Kunz II
Barton H. Kunz II
Attorney for County Respondents

Addendum F

BEFORE THE SAN JUAN COUNTY COMMISSION

SITTING AS THE SAN JUAN COUNTY LAND USE APPEAL AUTHORITY

NORTHERN MONTICELLO ALLIANCE, LLC,

Appellant,

vs.

SAN JUAN COUNTY PLANNING AND ZONING COMMISSION,

Appellee.

AMENDED WRITTEN DECISION ON REMAND[1]

After remand and rehearing, we amend our December 2, 2015 "Written Decision" to affirm the San Juan County Planning and Zoning Commission's decision not to revoke the conditional use permit first issued for what is known as the Latigo Wind Park in July 2012 and later amended in October of that year ("Latigo CUP").

BACKGROUND

The San Juan County Planning and Zoning Commission ("Planning Commission") originally issued the Latigo CUP to the wind park's owner at the time, Wasatch Wind, in July 2012. The County issued an amended conditional use permit in October 2012. The successful motion to amend the conditional use permit required the permit holder to:

[1] This amendment pertains only to the issues raised in NMA's petition for review, *Northern Monticello Alliance, LLC v. San Juan County Commission* et al., case no. 160700001. The portions of our initial December 2, 2015 decision applicable to Summit Wind Power, LLC's appeal, which it did not petition to review, are not hereby amended, and remain our final written decision as to those issues.

> [I]ncorporate as much flicker, light, sound[ ] mitigation as possible, and to meet all industry standards of those challenges, . . . and reiterating that all and any new land purchase lease deals be in writing for any contiguous and affected landowners. . . . [A]ny mitigation and standards and conditions of this CUP must be met by any and all project development people, be they owners now or in the future, and all of these be met at the time of building permit issuance.

(R0855, R0860-61.)[2] Sometime later, Wasatch Wind sold the wind park to Sustainable Power Group, LLC ("sPower"), which applied for and received a building permit from the County in February 2014. At the time of the revocation hearing and the subsequent reviews, sPower was in the process of constructing the wind park. sPower has since completed construction and the project is now operational.

After the county received complaints that sPower was not complying with the Latigo CUP conditions, the Planning Commission voted unanimously to hold a revocation hearing "to have sPower answer the challenges brought before the Planning and Zoning Commission and answer all of the questions of the land owners and the original CUP to show that permit holder is in compliance." (R0031.)

An sPower representative appeared at the revocation hearing held before the Planning Commission on September 9, 2015 to answer whether the Latigo CUP should be revoked due to sPower's alleged failure to meet its conditions. sPower presented evidence to the Planning Commission, including studies regarding flicker, light, and sound, and testified that sPower was satisfying the Latigo CUP's conditions. On a four-to-two vote, the Planning Commission decided to wait to decide whether to revoke the Latigo CUP until it had reviewed "any other pertinent information." (R0579.)

[2] These references are to the record on NMA's petition for review.

At the Planning Commission's following meeting held September 14, 2015, it determined that, based on the sPower testimony and evidence, "as much as possible mitigation had taken place addressing sound, light and flicker." It accordingly voted unanimously not to revoke the Latigo CUP. (R0581.) The Planning Commission did not allow Northern Monticello Alliance, LLC ("NMA"), a company whose members are the owners of property nearly surrounded by the project and who were among those whose complaints prompted the revocation hearing, to participate in the hearing.

NMA and the owner of a competitor wind park, Summit Wind Power, LLC, filed appeals of the Planning Commission's decision to the San Juan County Land Use Appeal Authority. NMA's members own about eighty acres of property. (One of its original members has settled separately with sPower.) The NMA properties are zoned Agricultural A-1 and are undeveloped. None of the remaining NMA members has submitted an application for subdivision approval or a building permit. A well permit was issued for one property, which we understand was dug. NMA contends its members intended to develop and subdivide their properties for residential purposes.

NMA charged that the Planning Commission's determination that sPower had satisfied the Latigo CUP's conditions to mitigate flicker, light, and sound was not supported by substantial evidence. NMA also argued that the Planning Commission erred when it prohibited NMA from speaking at the revocation hearing regarding NMA's claim that sPower was required to buy its properties according to what it termed a "self-imposed" condition. (R1629-39, R1826.)

We rendered a written decision in this matter under Utah Code § 17-27a-708 on December 2, 2015[3] upholding the Planning Commission's decision in some respects and reversing it in others. For purposes relevant here, we stated that "[w]e have been presented with no evidence in this appeal that s*Power has worked to mitigate sound, light, and flicker other than s*Power's representation that it has done studies and mitigated effects that exceeded the thresholds it set." (R0035-36.) We held that those bare representations were insufficient to determine whether sPower had met the mitigation conditions and consequently held that "it was also insufficient for the Commission to conclude that s*Power was satisfying the condition." (R0036.) We reversed the Planning Commission's decision and remanded the matter to it for reconsideration.

As to NMA's argument that it should have been allowed to address the Planning Commission during the revocation hearing, "particularly to raise its concern that s*Power had failed to satisfy a self-imposed condition that it purchase land surrounded by the wind park," we stated that we were "unaware of any legal obligation imposed by statute or ordinance that requires the Commission to hear from third parties during a CUP revocation hearing." (R0036.) We nonetheless reversed the Planning Commission's decision not to hear from NMA because we were remanding the dispute anyway, and the Planning Commission had stated during its August 13 meeting that it intended to have sPower answer landowners' questions. Although we acknowledged that the Planning Commission may have simply meant that it would ask sPower

[3] Although the decision is dated November 23, 2015, it does not appear to have actually been served until December 2, 2015.

questions raised by the landowners, we found that it was "also reasonable to believe that the Commission intended to allow the landowners to directly ask questions." (R0037.)

On December 3, 2015, the day following the issuance of our "Written Decision," the Appeal Authority received a letter from sPower requesting that we reconsider. In that letter, sPower raised concerns with our decision, including our statement that sPower had provided no evidence of mitigation beyond its bare allegations. sPower asserted that, to the contrary, it had provided us with studies, reports, and analyses. sPower also claimed that our decision would inflict over $100 million in damages, asking that we reconsider our decision or, presumably, face some sort of damages claim.[4] sPower did not copy its letter to NMA.

We met in a properly closed meeting to consider sPower's complaint on December 7, 2015, and we issued an "Amendment to Written Decision" based on a two-to-one vote on December 9, 2015. In our amendment, we conceded that our statement that we had not received mitigation evidence from sPower other than its bare representations was mistaken, and that, based on our review of the evidence sPower had, in fact, submitted, we determined that the Planning Commission's decision not to

[4] NMA, without support other than the timing of our "Amendment to Written Decision," persistently asserts that we were cowed into amending our decision by sPower's alleged damages. NMA's characterization is unfair. While we would be foolish not to consider a claim of over $100 million in damages from a well-financed corporate entity a serious matter (as even a fraction of such an award would be economically catastrophic for San Juan County), we also bristled at what we perceived as sPower's threat. It is, unfortunately, not unusual for us to receive threats of lawsuits and claimed damages when we make decisions that carry adverse consequences for someone. Nonetheless, we diligently undertook addressing sPower's complaint as dispassionately as possible in our roles as members of the land use appeal authority, and attempted to respond in fairness and in compliance with our ordinances.

revoke the Latigo CUP was not arbitrary, capricious, or illegal. We therefore affirmed the Planning Commission's decision and, because the case no longer needed to be remanded to consider evidence, declined to remand the issue to the Planning Commission. Commissioner Lyman authored a dissent.

NMA then filed a petition for review of our amended decision to the district court. It asserted that our decision was arbitrary and capricious because the Planning Commission's decision not to revoke the Latigo CUP was not supported by substantial evidence. NMA also claimed that our decision to reconsider our "Written Decision" was illegal because we lacked such authority. The court issued a decision on September 9, 2016 reversing us. Although the court determined that it could not "find that the County's decision was unsupported by substantial evidence," i.e., that it was not arbitrary and capricious, the court nonetheless held that our amended decision was illegal because, although it recognized our inherent authority to reconsider our decisions, our reconsideration here without involving NMA and based on sPower's ex parte letter violated NMA's due process rights. (Mem. Dec. on Aug. 30, 2016 Hearing, *passim* (Sept. 9, 2016).) The court's decision was later formalized into a final judgment that vacated our amended decision and remanded the matter to us "for proceedings consistent with the Court's Decision." (Am. J. at 1 (Nov. 17, 2016).)

We informed the parties that we would again consider the issues raised in sPower's December 3, 2015 letter, but requested supplemental briefs from both sPower and NMA and set a hearing. We received supplemental briefs from both and heard arguments from attorneys for both sPower and NMA on January 3, 2017. After deliberations, we now issue this amended decision.

REVIEW STANDARD

Those appealing a land use decision must "alleg[e] that there is error in [the] . . . decision[ ] or determination made by the land use authority in the administration or interpretation of the land use ordinance." Utah Code § 17-27a-703(1). *See also* SJCZO § 2-2(2). We are to "presume that the [Planning Commission's] decision applying the land use ordinance is valid . . . ." SJCZO § 2-2(2)(e). It is the appellant's burden to prove that the Planning Commission's decision was error. Utah Code § 17-27a-705.

We are to "determine only whether or not the [Planning Commission's] decision is arbitrary, capricious, or illegal." SJCZO § 2-2(2)(e). An arbitrary and capricious decision in this context is one that is not supported by substantial evidence, which is defined as "a quantum and quality of relevant evidence that is adequate to convince a reasonable mind," which is "more than a mere 'scintilla' of evidence and something less than the weight of the evidence." *Becker v. Sunset City*, 2013 UT 51, ¶ 21, 309 P.3d 223. *See also* Utah Code § 17-27a-801(3)(c). A decision is illegal if it violates a statute, ordinance, or regulation in effect at the time it was made. Utah Code § 17-27a-801(3)(d).

Under our ordinances, the Planning Commission may revoke a conditional use permit if the permittee fails "to observe any condition specified" or other requirements imposed by our ordinances "in regard to the maintenance and improvements or conduct of the use or business as approved." The Planning Commission may not revoke a conditional use permit without giving the permittee advance written notice and an opportunity to be heard. SJCZO § 6-10.

ANALYSIS

We preliminarily note that we instructed the parties on rehearing not to present us with any additional evidence not already in the record. We did so because the purpose of our rehearing was solely to consider sPower's request for reconsideration based upon its complaint that, contrary to our finding, it had indeed provided evidence of mitigation beyond its bare representations. The parties generally complied with our direction. Each party presented us with a handout during the rehearing. We consider those demonstrative and do not otherwise rely on them as a basis for our decision. Objections were also raised to statements made during the hearing as outside the record, and we have tried to avoid such statements in rendering this decision.

A. Our statement in our initial December 2, 2015 decision that sPower had presented no evidence of mitigation of light, sound, or flicker beyond its representatives' bare statements was mistaken.

We have confirmed that sPower had, indeed, submitted extensive documentation, including various studies and reports, to the Planning Commission regarding its efforts to mitigate light, sound, and flicker. Whether that information was before us when we heard this appeal on November 10, 2015 or was otherwise provided in time to review before rendering our December 2, 2015 written decision is the subject of different recollections and disagreement among us. Regardless, our statement that sPower had offered nothing more than bare oral representations was, we now recognize, erroneous.

sPower's December 3, 2015 letter prompted us to review the documents that had been submitted. In reliance on those documents, assuming the validity of the Planning Commission's decision, and in light of the arguments made during the January 3, 2017 rehearing, we now affirm the Planning Commission's decision.

B. In light of the record evidence, NMA has not persuaded us that the Planning Commission lacked substantial evidence for its decision.

As stated above, we must presume that the Planning Commission's decision is valid and may overturn it only if we determine that it was not supported by substantial evidence, which is defined as something more than a scintilla but less than the weight of the evidence. Given this presumption and deferential standard of review, upon examining the evidence submitted we conclude that NMA has not shown otherwise.

We cannot say that the Planning Commission's decision not to revoke the Latigo CUP lacked substantial evidence. In light of the record evidence, we will not disturb the Planning Commission's conclusions that sPower has and is meeting the Latigo CUP's conditions and its decision not to revoke the permit.

C. Remand to the Planning Commission is not necessary or helpful.

As we stated in our "Written Decision," we are unaware of any legal obligation imposed by statute or ordinance that required the Planning Commission to hear from third parties during the revocation hearing. While our ordinance explicitly provides permittees the right to be heard, it does not extend that right to others. *See* SJCZO § 6-10.

Prior to our first reconsideration, we had remanded this appeal back to the Planning Commission to make several factual determinations regarding the mitigation that we said at the time did not appear to be based on evidence in the record. Because we were remanding the appeal back to the Planning Commission for factual determinations, we extended to NMA the opportunity to address the Planning Commission on those issues. But upon rehearing and considering all the record evidence, however, we no longer view such a remand as helpful because now its sole

purpose would be to allow NMA to comment, which we have determined is not a right that the Planning Commission was obligated to recognize.

CONCLUSION

In light of our rehearing and consideration of all of the record evidence, at least some portion of which we had erroneously concluded in our December 2, 2015 "Written Decision" had not been submitted, we affirm the Planning Commission's decision not to revoke the Latigo CUP. NMA has not persuaded us that the Planning Commission's decision lacked substantial evidence. Nor has NMA convinced us that its members were entitled to be heard at the revocation hearing or that sending this matter back to the Planning Commission is necessary.

We therefore VACATE our December 2, 2015 "Written Decision" insofar as it addressed NMA's appeal and AFFIRM the Planning Commission's decision not to revoke the Latigo CUP.

Finally, we encourage the parties to meet together and possibly mediate their dispute. It seems to us that their quarrel is chiefly about an option contract entered into between NMA and sPower's predecessor. The expense of county resources on what seems to us to be a private contract dispute concerns us. We have nonetheless striven to diligently fulfill our legal obligations, and will continue to do so.

Per Utah Code §§ 17-27a-708 and -801(2)(a), any person aggrieved by this "Amended Written Decision on Remand" shall have thirty days from its issuance to file a petition for review with the district court.

DATE: February 21, 2017.

SAN JUAN COUNTY COMMISSION.

SITTING AS THE
SAN JUAN COUNTY LAND USE APPEAL AUTHORITY

By: Commissioner Bruce Adams, Chair
Authorized Signatory

CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2017, I caused a true and correct copy of the foregoing "Amended Written Decision on Remand" to be served upon the following by email and first class, postage prepaid U.S. mail:

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Kelly Pehrson
San Juan County Chief Administrative Officer

Addendum G

San Juan County Planning and Zoning Commission Meeting
Latigo Wind Park
Tuesday, October 4, 2012
7:05 p.m.

In Attendance: Steve Redd, Trent Schaefer, Marsha Hadenfeldt, Joe Hurst, Carmella Galley

1st Item on Agenda: Consideration of a Conditional Use Permit for a Private RV Park in Spanish Valley

Starts at 10:12 minutes on 1 of 3:

Chairwoman: All right. Ladies and gentlemen. We will now move along from Spanish Valley. We'll come a little further south on 191 and we will talk about the wind. Make like the wind. So, the consideration - we're actually a little bit early on this, but since we'll be talking about it for a little while, I'm sure people that arrive will still be part of this. I won't cut it off before the time.

Consideration of a Conditional Use Permit for Latigo Wind Park north of Monticello. Here's what I'd like to do. I'd like to explain for just a couple of minutes what we're going to do here. We're going to open a public hearing. We're going to hear from our staff, in this case, Greg, explaining where we are with this. We're going to hear from the developer, explaining what they're going to do, and then we're going to open it up to you for questions, etc.

Because we have a crowd, we're going to limit everybody and just keep this moving as quickly and as thoroughly as possible. So Greg will only speak for a few minutes to introduce it. Latigo Wind Park, we would ask them to just keep it to about 10 or 15 minutes, going over the most important highlights, which for this body, is the actual land use and impact on the landscape, and then we will open it to you, and if we could do questions at about a minute or so, we'll keep it

moving. If there's someone who needs a little bit of extra time for a specific question, we'll see how it goes.

So with that in mind, I would ask the Board to open a public hearing. A motion to open?

Woman: Motion to open.

Man: Second the motion.

Chairwoman: Okay. A motion to open for the Latigo Wind Park, and we have a second. All in favor?

All: Aye.

Chairwoman: Aye. Okay. Greg, would you introduce it, please?

Greg: This first park is the Latigo Wind Park, which is located just north of Monticello, in this area. Monticello is right there. This one would be probably the most visible to residents of Monticello. This one - we issued a Conditional Use Permit back in July 5, I believe, for this, and there were some concerns about the completeness of that application. The Wasatch Wind Group said, we will do a supplemental Conditional Use application and a more complete one, so they've done that. They have given us their - what they have done in this book here, and so this is really a supplemental hearing to that initial one that was approved in July. And basically, that's what we're doing. We're listening to the updates, and to the things that they have done since that initial Conditional Use Permit. Do you have any questions other than that? _____ can explain it better than I can.

Chairwoman: Any staff questions of Greg of where we are? To clarify, at this moment, they are withdrawing the one we gave them and starting over?

Greg: No. This is supplemental to the original application.

Chairwoman: Okay.

Greg: And that application is, they just agreed - instead of going to an appeal, they said, let us present all of our current information that has been updated since July. We want to present that, have everyone that would like to comment on it here, and so that's what they're doing.

Chairwoman: Okay.

Man: Do we believe that they still have an existing Conditional Use Permit?

Greg: Yes.

Man: Okay.

Chairwoman: The action this evening would be adding or changing conditions accordingly, then? Is that what your ...

Greg: That's right. Updating to ...

Chairwoman: Okay.

Woman: Or not. Say that everything fell apart or something. Okay.

Man: So it's not a start from scratch?

Greg: No. We need to take into account the things that were already said. I mean, they gave us a wonderful presentation then, probably 45 minutes.

Man: Yeah, I read this whole thing, too.

Man: What portion of the application was incomplete?

Greg: Well, I'll let them answer that. There were some leases that they needed to complete. They changed some locations. If you read your manual, I mean, they went through all of those things that ...

Man: Right here. You didn't read that.

Greg: Well, that first section really explains most of the ...

Woman: Right. Right.

Greg: ... the changes that were made, and their concerns, and they were answering the concerns that came up in the initial Conditional Use Permit. They've answered those. But because of the location, so close to Monticello, there's some concerns, and because there is a - so it's not a platted subdivision, but there's 80 acres that belong to the State of Utah right here.

Man: What section is that?

Greg: That's section 23. And there are 9 property owners in there that are concerned about that. This is the plat for that subdivision, and it sits approximately right there in the middle of this park. And I'm sure many of the folks here are - we have city officials here that have probably heard comments and things, and that's the other reason that we wanted to re-address these, to make sure that the citizens of the community, and those people who are in the 80 acres, have an opportunity to express their feelings.

Chairwoman: Okay, we would ask the representatives of Wasatch Wind/Latigo Wind Farm to make a presentation to us, and just ask - you just focus on target because you did make an awesome presentation last time. We've just got to pull it together.

Man: Did everybody get the email from Greg Adams?

Chairwoman: Yeah.

Man: Did you print it out? I just read it on my phone.

Man: I was going to say _____, but I didn't know if they'd know who I was talking about.

Chairwoman: Did you get that one printed out? Part of one of the things that we can talk about with that is, we got some information today on email, but it's not fair to understand that anybody on this Board should be responsible for what was handed out today in the email because we all work and didn't all get email. Okay. All right, ladies and gentlemen. We're going to get started with Wasatch Wind, and see if they can answer many of your questions before you even ask them.

Stevens: Thank you, Chairman, members of the San Juan Planning Commission. My name is Michelle Stevens. I've met you before, and thank you so much for having us back again, and thank you, Greg, because your comments were spot on, so thanks for summarizing for me. Also with me tonight is Christine Michaels. She's the president of Wasatch Wind, and you have all met her before, too. We have some other members from our team here. I won't introduce them specifically right now, but they might stand up and field some questions as we go. So, just as the Chairwoman and Greg mentioned, there's a lot of information that we presented in July, and then basically, with this supplemental statement, we restated everything that still applies today so that you didn't have to keep referring back to the old application, and then we supplemented it with additional information, and I'll tell you a little bit about what that is in a second. But for tonight, we're just going to focus on mostly what is new. But the existing information is still in this deck that we handed to you, and if you have any questions about the old information, we can cover that here. Um, so the why are we here? This is not a

new application, as Greg had mentioned. We've just added some supplemental information that we believed the Planning Commission should be aware of and should hear. We have, first of all, further defined and clarified the guidelines and the standards that we use, and actually enhanced and clarified that we're using to assess impacts. So we're going to talk about that in a second. We've further assessed the potential impacts of the wind farm on additional properties. We've relocated several turbines since the last meeting, and then we've reassessed impacts based on those relocations. We've developed specific mitigation strategies. We've submitted offers for options to purchase the 80 acres that you've referred to - the in-holding properties. We've added some additional acreage. Last time, we talked about the potential to maybe add some acreage to the north to have some more flexibility in our layout, and we've done that. And then, we've conducted additional outreach to some additional adjacent property owners in the vicinity to make them aware of the project and answer any questions.

So we just thought we should come back and bring all this new information to you, and then give some people some opportunities to present their information, as well. So, you know, the last time we saw you, it's been 3 months. We've adjusted the turbine layout already, and that always will continue to occur, right up until construction. It will be moving some things around. That's just part of the normal development process, but I think after tonight, you'll kind of understand the standards that we've applied, that any further changes to the layout, any micrositing, we will live within these standards that we've set for

ourselves. Um, our company is Wasatch Wind. We told you about us last time. There's some information in your deck here. It's the same as last time. We also provided a statement, or an overview, of our company in the supplemental statement, so I wasn't going to go into company history again. The next page of your deck is my page 4. It's called the Project Snapshot, and this is the same exact overview we gave last time, which is a project with a capacity of 60 megawatts, up to 27 turbines. We anticipate somewhere between 20 and 27 turbines, based on the type of turbine that we ultimately select. An overhead transmission line(?) would connect the project to the Pinto Substation. This is basically - it's the same information we presented last time, so did you have any questions about generally what the project is about?

Um, the next slide is called location and land control. This basically gives you an idea of the acres that we leased, and everything is the same as last time, except up at the top, in the north, there's a circle, can you see the circle, and we leased parcels 88 and 42. So we've added that to the project area, so that is an area that you should think could be used at some point for turbines, especially if we need some additional flexibility for micrositing, we might use those two parcels. But if we were to consider turbines up there, we would have to follow the standards that we're going to talk about in a second.

Man: What's the situation with 87?

Stevens: 87, we've actually talked to him in the last few weeks, and he expressed an interest, but it hasn't progressed further. We haven't had him sign a lease at this point.

Man: Okay. And these are getting closer to the airport, we we're dealing with FAA standards and ...

Stevens: Yeah. So actually, the parcel to the east of 42 is, part of it is off limits because of the airport, so the further east you go there is off limits. And the next slide, site layout, what's changed, this shows you the turbine layout from last time that you approved in the green squares, and you'll see that we moved turbine 10 up there to the top. And then the yellow circles show today's current layout. So let me point to a few highlights that have changed. You can see the southern string of turbines, turbine 4, 5, 6, 7, 8, and 9 have been moved further north, away from the city of Monticello. Turbine 10 was moved up, but turbine 9 was also moved to the west, further from the properties - the existing residences and commercial spaces to the east, and then we actually moved, just to the north of the non-participating in-holding properties, we moved turbine 17 completely over there to the west, and we moved turbine 18 further north. And then I want to mention that we've committed to not move any turbines further to the east than the current location of turbine 9, and further south than the southern string, as you currently see it.

And for those in the audience, this is our layout today. So we moved some turbines that were right here. This string of turbines was moved further north since the last time you were here. A turbine that was located here was moved up here, and then this string was moved further to the west, away from properties that are over here.

Man: How many feet is turbine 9 from the Four Corner School project?

Stevens: It's about .44 miles.

Man: Okay.

Stevens: Actually, that is what it is. So the next slide is land use analysis, and this is taking a look at the San Juan County Ordinance and Latigo Wind Park's compliance with the intent (intense?) spirit regulations and conditions specified in this ordinance for such use in the zoning district where the wind park is to be located. Nothing has changed about the information that we presented last time, but just to restate, Latigo Wind Park has proposed to be located in the agricultural district. Wind turbines are a conditional use in the agricultural district, per your ordinance. The purpose of ag land is stated in the ordinance, and it's stated again on this slide here, and Latigo Wind Park is consistent with the purpose I stated last time, because wind farms can co-exist and preserve agricultural practices and _____ land. So nothing has changed since last time.

On the next slide, land use analysis, this is a look at, again, the San Juan County Ordinance, and whether the Latigo Wind Park will be harmonious with the neighboring uses in the zoning district. And again, in July, we reviewed the reasons why we felt Latigo Wind Park will be harmonious with the neighboring uses, and some of the neighboring uses include agriculture and ranching, recreation, hunting, and limited residential and commercial use. So the Latigo Wind Park is harmonious with these neighboring uses. The only items that have changed since our analysis from last time is that we've moved several turbines to minimize the potential impacts on a few residential and commercial properties. We've proposed some additional mitigation strategies to further render the project

harmonious with existing residential and commercial uses, and therefore, we again conclude that Latigo Wind Park will be harmonious with the neighboring uses in the zoning district.

The next slide is the economic benefits, and nothing has changed here. I just thought we would recap that there will be economic benefits, as a result of a wind project, and the Latigo Wind project. We expect 50 to 100 laborers during construction; 30 to 50 percent of those most likely would be from the local area. The construction work force total payroll, we estimate between $200 and $400,000 per month to the group as a whole. We estimate that $4.3 million would be paid to local subcontractors over the duration of the _____ **[too much noise here]**.

Chairwoman: Michelle, I'm going to stop you for just a second, and that is because we're trying to be very timely here. We're going to skip the minute details with the, what is it, stipulation that a big business coming to town will do economic wonders for those few months when everybody's running around doing it, and then there will be four full-time employees and benefits to the local landowners who have leased this.

Stevens: Very nice summary there.

Chairwoman: I don't mean to be rude. I just want to focus on the things that we can work on.

Stevens: Okay. Then the next two slides, I will just quickly state that it's the environmental analysis that we provided last time. In this supplemental statement, we provided the studies that we references last time, so you can read those, at length, if you'd be interested. Also, last time we mentioned that we were

in the process of collecting that data, and we provided an initial analysis. We're not done with that analysis, but the initial analysis is included in your supplemental packet. Did you want me to go into more detail that that?

Chairwoman: No. Just keep running them down. If we have specific questions to them, we'll get to those.

Stevens: Okay.

Man: Do we ask questions later?

Chairwoman: I think we should let her finish 'cause she may answer some of them, then circle some things you might have a question on, if that's okay, guys. Go ahead.

Stevens: Okay. Then, summary of the potential impacts. Like you said, any big development that comes in will have benefits. It will also have some impacts. So since the last time, we've done some relocating of turbines. We've done additional analysis. We've re-engaged and engaged additional experts to help us with that analysis. We've used the worst-case scenario turbine to analyze these impacts. We've adopted some standards. Some of the standards we were already living by, but we didn't actually talk about them and clarify them this time. In this go around, we clarified those standards and then we adopted some standards that we want to talk to you about that we plan to live by in this round and any further micrositing. And then we proposed some mitigation measures, such that the Latigo Wind Park will not be detrimental to the health, safety, or general welfare of persons in the area, and the Latigo Wind Park will not be injurious to property improvements in the vicinity.

And the first impact that we assessed last time and this time is visual, and visual in(?) light, we talked about at length last time. The only thing that I want to add to last time is that we relocated turbine no. 10. We moved several turbines away from the city and further west from those eastern periphery properties, and we adopted setbacks from property lines, all that will minimize, or mitigate, the potential visual impacts to the area. Also, last time, we committed to apply dark night standards to our substation, and ensure that only when employees need to enter the substation at night will the substation be lit. And then regarding the FAA required lighting on the turbines, we will select FAA approved lighting for towers that minimizes impact to the surrounding area. So they do have LED bulbs now that seem to have a lower angle, which you can see the light, and we will work with the best technology that we can.

The next impact that we talked about last time, and that I'd like to add a few new things to, is sound. We had hired DNV KEMA and then J.C. Brennan and Associates, and actually brought our sound expert, Luke Saxelby, from J.C. Brennan with me today, in case anyone has any specific questions about sound. But when we look at the potential impact for sound, we're looking at human annoyance, not health, because no scientific studies have concluded that health issues are being caused at wind farms. They're concluding that there could be a potential annoyance by humans, and so we modeled the sound projections at the Latigo Wind Park using the loudest possible turbine that we would be considering, and then we used our experts, and their recommendations about - from reputable agencies, like the Massachusetts EPA and the U.S. EPA, to apply

standards for noise limits and sound limits at areas around the wind farm to ensure that these agencies are recommending standards based on their observations of the point at which humans could become annoyed, and we're staying within those standards so that we follow their guidelines for avoiding human annoyance. Does that make sense?

So we voluntarily adopted standards, and they're listed for you here. We have standards for existing residences in residential areas, existing residences in rural areas, existing residences in places of business during the day, ag and undeveloped land with future for residences, and then vacant or agricultural land with no intentions to build a residence. There's no recommended limit there because we're talking about avoiding potential impact for human annoyance, and there are no humans. If there are no humans living there, there's no potential for annoyance. So to give you an example of some of the sound limits that are mentioned here, we have a 49 decibel limit, we have a 37 decibel limit. A 50 decibel level is a sound that you might hear inside an office building, like inside the office. And a 40 would be similar to the sound that you'd hear inside of a bedroom. So the standards that we've set for ourselves here refer to the contribution of the turbine without consideration for any of the background noise, or that the wind that you would hear in your ear, which could actually mask the sound of the wind turbine. So these are the standards that we've applied to our project, and we've relocated turbine wherever possible to avoid exceeding the standards and affecting persons in the area. We've also done this and looked at it from the perspective of vacant agricultural lands and currently vacant agricultural

lands that may one day build a residence. So with respect to four adjacent non-participating currently vacant properties, there could be very minor exceedances of these standards **[couldn't tell if she was saying "exceedances" or "accedences" here]**. And actually, if you turn to the next page, you would be able to see that the red line is where we believe, using the worst-case scenario turbine, that there could be exceedances of our limits - of our standards. And on those properties, if you can identify the red lines where they cross those properties, these are private properties. We're not talking about the public land to the left where no homes could possibly be built because there's no standard for that, but on private properties where homes could possibly be built, there are four properties where we exceed the standard. On a small portion of those properties, there's still plenty of area on those properties where they're well within the standard, and they can build a home and be within our recommended standard. So for those four properties where we have a small amount of exceeding of the standard, we've proposed a mitigation so that, actually, we propose that we would provide $4,000 per property so that they could install insulation in a home if they were ever to build a home, and that would bring the sound level down to a recommended limit. And those four properties are currently vacant right now.

Woman: That's if you use the worst-case scenario turbine.

Stevens: That's if we use the worst-case scenario turbine. And if we don't do any further micrcositing, that moves those contours(?) out.

Man: Could she point that out on the map, 'cause you guys are looking at it but we're not seeing what she's talking about.

Stevens: We could either show the projector, or we can hand out some of the maps.

Woman: It would be nice if we could see what you're actually talking about.

Chairwoman: Well, can somebody be looking it up quietly while you're talking a little bit, and then we'll just flash through to catch up. Sorry about that, I didn't realize that you weren't quite ready. That obviously is the question. You can use the desk or whatever you need to use. Michelle, maybe you can keep going over the general information and then you can flash through and go with the sound, the red line for the sound. Sorry.

Stevens: No worries.

Chairwoman: Forgive me. I didn't mean to keep it all to ourselves.

Stevens: So the next potential impact that we talked about last time, and that we again reassessed after the turbine moves this time, is the potential for shadow flicker. And as we explained last time, shadow flicker is simply when there is a receptor, so a human receptor, in one spot, and you have the sun in another spot and a turbine in between, there's the potential for a shadow to be cast when the flicker - when the blade moves.

Chairwoman: You end up doing this a lot and thinking and _____.

Stevens: This is very calculatable. It's based on where the sun is at various times of the day, and sunrise and sunset, and the number of cloudy days in the area, and the weather. So the consultant that ran the models can pretty much say what the worse-case scenario is, and then what a more realistic scenario is, based on cloud cover, maybe there's trees in front of a home. So what we did is, we looked at the potential for impact from shadow on human annoyance, again, and not health

'cause it's not a health issue, it's a human annoyance issue, and we engaged experts, and they recommended ...

Chairwoman: Go ahead. You're fine.

Man: Let's make it a little larger. That's probably good enough.

Chairwoman: I'm going to let Michelle back up one and talk to you about the sound. This is what we were looking at for sound, and then you can do the same for flicker, and we'll flick right through these.

Stevens: So there are four properties that are adjacent to the project that would exceed the sound limits that we've set for ourselves, and it's this property right here. You can see it's just a small corner of the property. This property extends up here, as well. And then there's a small corner right here, on this property. An even smaller corner here on this property, and the small corner of this property that are above our recommended limits, but there's still, the center of each property is within the limits that are recommended.

Chairwoman: It still leaves the owner a building envelope?

Stevens: Um-hm. And then we propose to offer the mitigation payments to compensate if they were to build a home and would help with additional insulation.

Woman: So, what do the other lines indicate? The yellow and the green and blue?

Stevens: Okay. So, the yellow is a decibel level of 45 to 48. The green is a decibel level between 40 and 44. So this bold green right here is actually 42 decibels, and the reason we've bolded it is because our standard for rural residences is 42 decibels, and you can see that the rural residences that are out here are outside of that recommended limit. And then this dark blue line is 37 decibels. This is our

standard for residences in a residential area, and then you can see that the city of Monticello, the residences in the city of Monticello, are all outside of that recommended decibel limit.

Okay. Let's go to the beginning of the slide again. So we talked in length last time about flicker, so I'll just point out to you some - I'll clarify the standards that we've set. We've set these standards based on the Massachusetts Environmental Protection Agency, and this is what they recommend. For existing residences, and again, we're talking about human annoyance - the potential for human annoyance is what we're trying to avoid. It's not a health issue. For existing residences, they recommend up to 30 hours per year, and up to 30 minutes a day. Places of business would be, most of the time, places of business are occupied during business hours, and that's during business hours, 30 hours a year and 30 minutes a day. And again, vacant agricultural lands, there is no suggested limit because there are no humans to be annoyed by it. But again, we took into consideration, when we were doing the modeling, whether there could be a future home built on that land, so we were working on applying these standards to keeping that in mind.

At all residences and businesses in adjacent lands, where humans currently inhabit, there were a few exceptions where we did exceed the standards, actually, for just one existing residence, we may exceed these standards up to 11 days a year, and at the property line of one commercial space to the east of the project, we may exceed this limit, or this recommended standard, up to 17 days a year. There were some currently vacant agricultural lands where we do exceed this

limit. There's - on six of the in-holding properties, we do exceed the limit, and then on one undeveloped property on the periphery, the limit is exceeded and we have proposed a mitigation strategy that would provide $4,000 to each of these owners for opaque window shades or trees to minimize this impact and bring it to within the recommended limit. And this, again, is with the worse-case analysis - worst-case turbine.

Woman: Would you consider turning that turbine off during certain days or hours?

Stevens: Yeah. I think if - first we would look at whether or not a home would be built, and then, you know, we'd propose this mitigation strategy that we believe would keep it within the limit. The next impact that we evaluated, this is completely new, and the reason that we are bringing this up, and the reason we looked at this is because some people expressed this concern after the July 5 meeting, and this is an in-power(?), an issue called ice throw, which we engaged experts to analyze this for the Latigo Wind Park, and in normal circumstances, the turbines have an auto shutoff when they feel ice on the blades so that this is avoided. And then, with 4 1/2 years of meteorological data at the Latigo Wind Park, we've noticed two or three icing events per year, so we looked at the worst-case turbine, and just using a published formula, not related specifically to the factors here, we came up with a maximum risk area of 312 meters. Now, this risk area could be a lot smaller, based on the type of turbine that you use, and also, the probability that it could happen could also be calculated to be much less. But this is the maximum risk area if this were to occur, is 312 meters. So the risk of ice throw at all at the Latigo Wind Park is de minimis, but we have committed to mitigate this potential

impact by installing cautionary signs in two places. One place is, there's a turbine - there's a risk area that crosses County Road 196, almost 2 miles from Highway 191. It's west of Highway 191 about 2 miles. As I understand, this road is currently not plowed during the winter, so we don't expect it to be trafficked, especially during a storm that would create an icing event, but we would put up that signage there to warn people if they were out there in a big wind storm.

Another area crosses a vacant adjacent parcel to the north of turbine 20. It's just a small area, and again, we would install a precautionary sign there, as well. Another impact that we wanted to clarify, we had actually taken it into consideration during the last go around, but we didn't clarify it, and I want to clarify it here, is tower collapse. This is a very rare event. People may have seen it on YouTube - they send the video around. But it's a rare event, but to prevent the possibility of this as an impact to the area, we've set back the turbines from public roads and adjacent non-participating property lines 110 percent of the turbine height at its maximum with its blade up, so in case it were to ever fall, it wouldn't fall on somebody else's property, and it wouldn't fall onto a public road. If you want to go back to that slide real quick, this outlines some of the setbacks that we have in place in the current layout.

And then the next slide, just to give you a recap of some of the things that we discussed, as the chairwoman had mentioned, there will be impacts with the new development, we've relocated several turbines already to avoid and minimize those impacts. We're committed to mitigate potential, and that should say flicker

impacts, on one existing residence and one commercial property line, not sound and flicker impacts. We've committed to mitigate potential sound and flicker impacts on two undeveloped agricultural parcels on the periphery of the projects, and then we've committed to mitigate potential risk from ice throw with signage along County Road 196, and at one currently undeveloped agricultural parcel.

On this next slide, we wanted to give some specific attention to the 80 acres that you mentioned before, the in-holding parcels, because we know there's been specific concerns, and we believe they have a specific situation. In this case, for these parcels, we've relocated several turbines to avoid potential impacts, and then we've committed to mitigate potential for sound and shadow flicker impacts at the six in-holding parcels. Additional mitigation measures proposed, I'm going to actually turn the floor over to our legal counsel, Tom Ellison, from Stoel Rives in Salt Lake.

Ellison: With deference to the Commission, I have a couple of points to make. I am responsible, and I apologize for the late arriving information. So what I propose to do is just let you go to public comments, and then I can handle my comments later more as an additional public comment.

Chairwoman: Do you need to finish the idea by continuing this moment, or would you rather we keep going and you'll speak later?

Ellison: Well, you're going to hear from representatives of the in-holding parcels, and I think it may help you to wrap things up more completely if I ...

Chairwoman: You answer at that time?

Ellison: Yeah. Yeah.

Chairwoman: Okay. Thank you for that. Okay, Michelle, are you comfortable stopping for questions at this point?

Stevens: Yes.

Chairwoman: Okay. Here's what we're going to do. I'm going to ask the Board, please, to direct questions to Michelle. Then I'm going to open it to the public because I'm hoping that she answered quite a bit of your concerns, or at least gave you the information for your concerns, and now, bringing it to the Board, let's go with questions. Carmella, go. Do you have questions for Michelle?

Carmella: I don't know if it's a question for Michelle or for Greg. Yeah, great pictures of the eagle's nests, with the baby eagles in it. How do we mitigate something like that?

Stevens: Well, the _____ is actually currently sited (cited?) to mitigate potential for impact because we're 6 and 8 miles away from those.

Chairwoman: And their flight patterns actually cross through, so how does that ...

Stevens: Well, we're still studying, I don't know if you want to ...

Woman: We've been working with U.S. Fish & Wildlife Service. Whenever you develop a wind farm, and I've got my colleague here, too, that is working more closely in Washington on this issue, and Sam, feel free to chime in. But, um, so you always meet with U.S. Fish & Wildlife Service for consultation, which we've done. I think I mentioned that the last time I was here. Typically, the standard that is in the industry now is that you're at least 4 miles from an eagle test? You've passed the first hurdle. Then after that, you're out on site. Not us, but our wildlife biologists are out on site watching eagles and where they're foraging, and to date,

we haven't had any red flags and we continue to work with the U.S. Fish & Wildlife Service.

Chairwoman: Carmella, could I interject a question with yours because it would just finish this subject.

Carmella: Sure.

Chairwoman: Are there rules that you must meet for Fish & Wildlife, and do they come and force them once you're there?

Woman: They do.

Chairwoman: Okay.

Man: I have a question.

Chairwoman: So if want to go through ...

Man: So the local Fish & Wildlife there, they're not involved in this study?

Woman: Well, we put together a survey protocol of what studies we're going to do throughout the 2 years that we're studying the birds, and so they sign off on it and they say, yes, we believe in your protocol. Do that, and then once you're done, you show it to them and they do a fatality assessment - how many eagles you might take, and if that's okay, then you're fine. If your fatality estimates are high, they might ask you to elect for an eagle take permit, by which you can take one legally. If you choose not to do that, there's legal enforcement that could happen. I can get thrown into jail if I take an eagle and I didn't apply for a permit and get one. [Inaudible.]

Man: You're saying that the local Fish & Wildlife have been involved in this process?

Woman: Well, we meet in Salt Lake with the U.S. - the regional U.S. Fish & Wildlife Service office.

Man: 'Cause that's _____ than the State of Utah's Fish & Wildlife Service?

Woman: Well, it's the United States Fish & Wildlife Service.

Chairwoman: It takes precedence over state?

Man: I thought state always took precedence over federal.

Chairwoman: Okay, that's done with that. Go ahead. Carmella, you're still up.

Carmella: Oh, I thought Jeff was still talking.

Chairwoman: No.

Carmella: I think that was actually it. That was my concern, just looking at the flight pattern within the whole wind thing.

Woman: Oh, wow.

Woman: So the owner just described that. When they went out and flew the area, so they flew 10 miles from the outside of our boundary, and when they were flying their helicopter for that 10 miles, they said, these are all the birds we saw that day. It could be a raven, it could be a sparrow, I mean, whatever they saw. So those aren't Golden eagles flying all over the place.

Woman: Okay.

Woman: They're just whatever birds they saw that day.

Woman: But there are Golden and Bald in the area, according to the other ...

Woman: Yeah, there was a _____, so if you see where Blue Mountain is, there are nests up there, and then there are to the south. And typically, you've got eagles that have territories. They fly in their territories.

Chairwoman: Okay. Carmella? Joe.

Joe: Well, I think you've partially answered my question. We've got five consultants doing these wildlife studies. What I read, the study was done for 1 day. Does the Fish & Wildlife Service accept that 1-day study?

Woman: Well, we don't do it for one day, so we started in the spring of 2011 with a habitat. You go and look and see what the habitat characteristics - what is likely to be there, and then that's how you determine what kind of surveys you do. So we did that in 2011. If you remember, we made application to the FAA and said can we build a wind farm here, and it came back and said that there were very few turbines that we could actually site here because of the airport. Then it wasn't until this past spring where FAA came back and said, you know, actually, you can put these turbines here. So at that point, we commenced our surveys again, and we do at least, you know, two to four surveys a month all year round for 2 years.

Joe: Okay. So you're telling me that Fish & Wildlife Service will accept the studies of a private firm? They're not going to require their own biologist to go out and do this _____? Okay. Um, I looked through the Bible there that you gave us, and I didn't examine them document by document. I'm assuming you're telling us that you have leases from all landowners at this point?

Woman: Yeah. So the two new - we have leases from all the landowners, except the statements of agreement that are allowed by the Conditional Use Permit for the two new ones. They have signed, notarized statements of agreement that they're entering into a lease and we're just in the process of negotiation.

Joe: Okay. The nine parcels in the middle of this? Did I hear you say you're trying to buy those? Or did I mis-hear something?

Woman: You heard correctly.

Joe: Okay.

Woman: I think that's probably what Tom will address.

Tom: I will address that.

Joe: Have you selected your turbines?

Woman: We have not.

Joe: Okay. At what point do you select those turbines?

Woman: We're still modeling the wind data. We're still working with the turbine manufacturers, and just as the time goes on, we analyze the data, we crunch the numbers, and I don't have a specific date for you, but before construction. I don't know. Do you have any other ...

Woman: Well, if we build in 2013, there's a high likelihood we would use one turbine. If we start constructing in 2014, we would use a different turbine that would not be the - most likely, it's not going to be the worst-case scenario turbine that we've modeled here, but we said, well, what if it is? But the most likely turbine we would use is a Siemens turbine, and it has a 113 rotor diameters, and the sound levels are much lower.

Chairwoman: That's it for now? Trent?

Trent: No questions.

Chairwoman: Steve?

Steve: More curiosity than anything, the Spanish Fork turbines, what are they in terms of decibels? I've stopped there and listened, just out of curiosity.

Woman: Can I tell you in a few minutes? I don't actually know that off the top of my head.

Steve: Sure. I was just curious - wanted something to refer to.

Woman: Yeah. What was your impression of the sound there?

Steve: It wasn't very loud. I mean, I could hear it, but I have no idea what that distance is, either, from the road over. I think that's the only question.

Man: Did you get hit by any ice?

Steve: I didn't get hit by any ice. I didn't see any eagles get chopped in half, either.

Woman: _____ closer that turbine to the road than - that turbine is closer to the road than any of our turbines are to any homes or businesses or ...

Chairwoman: Jeff? The record should reflect that Jeff Nielsen joined us at 7:47. Jeff, can you let us know of any questions or comments?

Jeff: I don't have any at this time.

Chairwoman: Okay. Thank you. I have a couple more from where we were. Um, you alluded to this a minute ago, and I'd really like to know. If there's a problem, and it's a bad ice throw day or a bad noise day or a bad flicker day, can you individually shut down the one that's bothering - making the problem - or do you - she's looking for hints here.

Woman: One of the reports in here actually suggested that with the flicker. It's been done elsewhere. It's not being able to turn it off if there isn't an emergency. You have to have some sort of shutoff.

Chairwoman: And I can't imagine you just standing there ... You would absolutely have an emergency shutoff, as I would understand it. And I can't imagine someone sitting there with a light panel going, um, not one this one, not this one, for those things, but can you? And do you _____ do that?

Woman: Yes. It can be done. You know, sometimes it's ...

Woman: It's not practical.

Woman: No, it might not be practical, but it can be done.

Chairwoman: You know, if someone calls and goes, there's ice flying at my house, you could go fix that one and shut it 'til it's taken care of?

Woman: Absolutely.

Woman: If there were ice on it, it wouldn't even run in the first place.

Chairwoman: Yeah, it's going to shut down.

Woman: _____ that the ...

Woman: Yes, I read it.

Chairwoman: Well, and I did, too, but ...

Woman: _____, but I read it.

Chairwoman: Okay. So you can, in an emergency ...

Woman: It can be done.

Chairwoman: Okay. And you would. A little more about standards, and that is that you're quoting, for example, Massachusetts has standards on sound or flicker, or if, when we condition a permit, and I think we talked about this in July and did some of this, we are to say to you, to industry standards, you know, please meet industry standards for lighting and sound and those things. You would be meeting them

based on all the new technologies that each of these are doing, but who would enforce, or how would we, you know, it's a little muddled up there ...

Woman: Right.

Chairwoman: ... to say, keep the lights low, you know?

Woman: Right. Um, well, for the setbacks, you know, we could show you on a map that those are the setbacks, and you know, build a turbine, and somebody could come out inspect it. The flicker, actually, is modeled, and the model takes into consideration actual data from the area, so it's really hard to tell what the actual impact would be because some people might not even be home on those 11 days where the up to 11 days of the flicker occurs, so it would actually be hard to make sure we're meeting that limit ...

Chairwoman: Right.

Woman: ... because we might not have any impact at all.

Chairwoman: I guess part of it would be, is if the community were to come to the Commissioners, you're going to address it a little bit? Okay, we'll wait for the attorney to tell us. So then my last question is, on my notes, you keep mentioning all these sort of self-imposed mitigation plans and self-imposed, but you, I believe, are the developer of this project, hoping to sell it to the company that will run this thing. Will those conditions carry through to any sales contract so that they don't say to us, no, no, no, we don't do mitigation, they did?

Woman: Nope. Once it's in the permit, it's passed law to whomever ...

Chairwoman: Runs the show.

Woman: Right.

Chairwoman: I think that was a concern of some neighbors was, wait a minute, who really owns it, who's really doing it, and you have presented this, I believe, as, you put the project together and sell it as a *fait accompli* to someone who runs it and puts it in?

Woman: Yeah, and we are making these commitments for Latigo Wind Park.

Chairwoman: Okay. For whoever. Okay. Anymore questions from the Board? Ladies and gentlemen, I will open it to the public for questions, and she will direct them to Michelle and let her specify who might best be able to answer you. I would ask you for two things. One, please identify yourself for the record, and second, let's keep these questions to just a minute at a time so that we have quick answers and keep going. Who would like to go? Yes, sir?

Wright: My name is Rigby Wright and I live in Monticello. I'm interested in the Gordon Reservoir and the canal that crosses from the Forest Service to that wind park _____ than that.

Chairwoman: Um-hm.

Wright: We've got a canal in there that we don't want to have power lines buried under [inaudible]. I don't know what your answer is for that.

Stevens: So we would not be building anything on this piece of land.

Wright: Right. I'm talking about the green - [inaudible].

Stevens: Is that over here?

Wright: No. Down ...

Stevens: Here?

Wright: Down ... That's forest land right there. And we've got a canal that comes around there and goes to that reservoir.

Stevens: Okay. So, do you think it would pass through this land right here?

Wright: It's in the Jack Red(?) property.

Stevens: One of the standards that we put up on the screen earlier was a setback from any wetlands or streams. We actually have people that have gone out and looked for those types of things, and we stayed far enough away from them that we do not impact them. So we are very aware - these turbines are set back from any canals or streams, and we wouldn't impact them with underground lines there.

Wright: They also have a pipeline going through that reservoir, northeasterly, down to the west of the old airport, to irrigate with, and that's designated on there, and I'm sure you'll avoid that.

Stevens: Yup. We have, actually, a setback from pipelines, too.

Wright: Okay, now. How are you going to get your power from this area to the high line, and where are you going to go with it?

Stevens: So, the Pinto Substation is right here, and then this blue line, which is really faint, and you probably can't see it, but this is called a project substation. This collects the power.

Wright: That's a _____ substation.

Stevens: A smaller substation. And this collects power, and then it comes across in an overhead line across and down to the Pinto Substation.

Wright: The people that own that ground, it's not in green, are they going to be reimbursed for the ... _____ lady called me up and asked me about it and I said, I don't think you can stop it. You're entitled to pay. Is that right?

Stevens: No. We actually entered into voluntary leases with the people along this transmission line already. We have those, and we make annual payments to them. So we don't cross anybody's land where we're not wanted.

Wright: Okay now, on the project itself, are you going to have above-the-ground power, or bury the power lines?

Stevens: We're going to bury the power lines, except for this one right here.

Wright: Okay. Thank you.

Chairwoman: Thank you, Mr. Wright. Next, please. Questions or comments? Yes.

Bennett: My name is Lee Bennett. I also live in Monticello. Does the building and maintenance of the overhead power line between your substation and Pinto, is that included in the County's Conditional Use Permit?

Stevens: It is. We provided the leases, and then, you know, we have it on our map here, but we've also provided the easements to show that we have planned control over all transmission lines.

Bennett: Are you going to run into difficulty when that transmission line crosses through the city of Monticello to get to Pinto because of zoning?

Stevens: I know we have to get a building permit for anything that passes through, but I don't know if we would face difficulty.

Chairwoman: Does it pass through, Michelle?

Stevens: It passes through the city of Monticello. It does, yes.

Chairwoman: Right. By the highway, kind of?

Stevens: By the Pinto Substation.

Chairwoman: Oh, 'cause the city itself kind of bumps up? Okay. I didn't know that.

Man: Is there city ordinances that would prevent a power line going through the city? I wouldn't think so.

Chairwoman: I would doubt it.

Bennett: I know it goes through three zones in the city.

Man: Yeah, I wouldn't think so.

Bennett: But I don't know what the permitted uses are for those zones.

Man: Well, there's power lines all through Monticello.

Stevens: Yeah, we definitely won't go around the city. We definitely actually have been _____ to the city and would work with them.

Bennett: Can you give me some kind of a description of what that overhead power line would look like? I mean, I know what the big ones coming out of Pinto look like. Are you talking about something of the same _____?

Stevens: No, not the super large ones. I think it's 70 feet tall? Approximately 70 feet tall, wooden poles.

Man: It would be more like the 69 kV that's _____.

Stevens: Yeah, not the super large ones.

Man: Not the 345.

Chairwoman: Thank you, Lee. Anybody else, please? Okay. Yes, go ahead.

Eric: My name is Eric _____. I am a resident of Monticello, and most of us have comments and concerns. For me, people passing through Monticello, the most

prominent feature is the mountain, and not to get sentimental, but the Horsehead, and I think it draws a lot of people to our community to golf, to hunt, to camp, to recreate. Some people fall in love with the area and choose to live here. I feel long-term, the impacts of this project, which dwarfs the city, we're talking about twenty-seven 400-foot towers, and it's just incomprehensible to me. I feel long-term, the impacts to Monticello will be negative. I feel it will lower property values. I think most of the economic benefit will go outside the city of Monticello, and I think this came in a little under the radar. I think my house is the house in Monticello probably most close to a turbine, or one of the most closest houses. I didn't hear anything about this until about 2 weeks ago. Apparently, a permit was issued in July. I feel a lot of other residents of Monticello probably were also unaware of this. We need more time to discuss this and to _____ as a community before any permission is given. Thank you.

Chairwoman: Thank you very much. Um, Greg, well, we'll talk about it when we come back. Notice given. Okay, yes, sir, in the back.

Man: Greg, is now the time for the landowners to have any word here?

Chairwoman: That's who we're talking to - everybody. Yes, sir.

Man: Greg said that I could take the podium for at least 10, 15 minutes.

Greg: No, I called _____, and I told him that you would be part of this public hearing.

Man: Okay, that's fine.

Greg: So you've got your chance here.

Chairwoman: Go ahead.

Man: So if I can't use the podium as the investors, then I'll just stand back here.

Chairwoman: And who are you, please?

Bingham: My name is Dan Bingham.

Chairwoman: Ah, okay.

Bingham: I'm the one who wrote you that 7-page objection to the _____.

Chairwoman: Right. The letter in the original.

Bingham: Do you all have copies of that letter?

Chairwoman: It wasn't for tonight's packet. It was the one that came to us a while back. Did you give it to me or to everybody?

Bingham: I think I gave it to you on Walter's advice.

Chairwoman: That's all right. Let's just continue then, Mr. Bingham, please.

Bingham: Well, thank you for allowing me to come before you tonight to represent the _____ citizens and owners of the nine parcels of property in San Juan County. Citizens and owners of the nine parcels of property in San Juan County, less than 2 miles from Monticello. It is our belief that your decision about the CGP request, by the wind turbine _____ company, kept a map of Wasatch Wind, whatever they use, is one of the biggest decisions you'll ever have to make. Specifically, I represent the members of the Northern Monticello ...

Chairwoman: Excuse me, just a moment. Mr. Bingham, why don't you come up front so everyone can hear, and I might ask the audience to please refrain from talking because the buzz comes forward, and it's very difficult to hear. Thank you.

Bingham: Yeah, can you imagine wind turbines at that rate, on top of that? Specifically, I represent the members of the Northern Monticello Alliance. All of its members

have strong ties to the county, region, and Utah. Personally, my ancestors were original settlers, and bear with me, this is a human problem, it's not all just about numbers and $200 million earnings, it's about our lifestyles, and ...

Chairwoman: I understand that, sir, but we are on a time basis here. We do have more to do ...

Bingham: I realize that. Personally, my ancestors were original settlers and pioneers in Utah. I grew up spending many summer vacations in Utah, hearing stories about our Southern Utah history, and even about a guy named Jack Red Senior. My grandparents owned and ran the first Moab pharmacy and soda shop, as well as a hog farm there. I grew up and graduated from BYU, and later moved to Utah, where I've lived with my immediate family and extended family members for over 12 years. I have worked, camped, fished, kayaked, hiked, hunted, and held family reunions in and around San Juan County, on that particular property that I now own. I am in awe of the desert Southwest. It's the place where I was born, raised, and lived most of my life. I appreciate my 20 acre scenic place and views. I appreciate its water. Its proximity to Monticello, Moab, and Blanding. My area relatives, some of whom are disabled and can't make long trips to see me. I appreciate my _____ sacred buildings that are here, having worked and traveled around the world to more than 16 countries. Excuse me [he was choked up here]. I am still amazed and I love this area, its access to state and federal lands and national parks. Each NMA land, each Northern Monticello Alliance landowner, has their own similar and/or affinity to the area. Several have spent a good part of their lives in the city of Monticello. Most of us have been, or are, lifelong public servants, sometimes serving in the most dangerous environments,

including a junior high classroom. Most of us, about to reach our retirement, with, and some of us already have initiated a plan to develop our San Juan County properties. We are not carpetbaggers. We, the donut hole landowners, as so casually referred to by the front company personnel PEP, or whatever like name they decide to use on their next application, want and deserve the protection of our constitutional property rights. *Constitutional* property rights. We will do what the law allows to protect those rights. We will go to court if we have to. You will pay for your attorneys' work and time in those courts if we have to go there. We are also pragmatists and good citizens. We owed it to ourselves to hear what the developers had to say once they finally revealed their plans, apparently, over a year in the making. We clearly describe for them what we're willing to do. Sixty days later, the developers have demonstrated little or no good faith in their dealings with us or the residents of San Juan County. As expressed by this gentleman, hasn't even heard anything about what's gone on. That is their choice. Some things, however, should not be their choice. Having only recently received a copy of the latest Latigo Wind Park LLC Conditional Use Permit request, we stand by - this recent one that they provided - we stand by, and one just 60 days ago - we stand by the underscore and we add to our objections to the business plan as noted in our August 2012 letter to San Juan County Board of Commissioners. We made four main points that, if you even have that letter, I hope that you will review those four main points. They still stand. Let me get in just a little bit to it, and ...

Chairwoman: Very quickly please, sir.

Bingham: More specifically, they have not addressed our concerns about the project, which itself would destroy the value of our property, in their words, 100 percent. And as they have already acknowledged. In addition to our concerns about the failures and deceptions during the initial CUP notification process, NMA members have - Northern Monticello Alliance members have again experienced 60 days of what can only be described as managed timelines of bad faith. At the onset of our contact with PEP, the Northern Monticello Alliance realized that PEP started the clock ticking. It was they who started it. We immediately provided them with what they asked, with their requested documentation. We formed the NMA as encouraged by them to do so, and even identified for them area real estate properties for sale, that PEP could use as a basis, were offered to us a landowners, who otherwise have no interest in selling. What did PEP do? _____ PEP, Wasatch Wind Incorporated again, whatever name they want to go by ...

Chairwoman: We need to stop(?).

Bingham: PEP strung out the process, believing that it was for their benefit to string it out. Just before this meeting, about a week ago, we finally received the purchase price offer based on grazing **[END OF "1 OF 3"]**.

Bingham: **[START "2 OF 3"]** ... who otherwise have no interest in selling. What did PEP do? PEP, Wasatch Wind Incorporated, again, whatever name they want to go by, **[the first part of this paragraph is a repeat of the end of the "1 of 3" file]**. PEP strung out the process, believing that it was for their benefit to string it out. Just before this meeting, about a week ago, we finally received the purchase price offer based on grazing property values, multiple _____. I called the Planning

and Zoning Committee to ensure we were able to have at least 30 days beyond tonight, given this situation. As recently as 3 days ago, we again provided PEP with some of the original and other comparable real estate valuations that we had already provided them on our day 1 meeting with them. We were honest from the beginning with them. We reiterated what has always been our position, that their appraisals, just like their surveys, really don't matter. They're paying the bills to the appraisers and to all these surveyors. PEP stopped what little communication they had initiated with us, actually - I initiated the communication - and has not responded to our last email, just of a few days ago. Maybe they're too busy. I can appreciate that. As a matter of respect for the procedural timelines and processes of this meeting, where I'm given just a few minutes to speak, we've kept our word and never changed our fundamental position. Early on, ready to discuss our respective positions in detail in PEP. Should the PEP's request be granted, we will use the next 30 days to document our official opposition to PEP's ill-advised and substandard plan for the construction of 27, more than 40-story high, wind turbines surrounding our properties, destroying their values, negatively impacting Monticello's northern horizon, its economic future, and a variety of environmental issues. No noise studies have been completed, and what has been completed actually show a severe impact, given the potential health issues related to the wind turbine syndrome. By the turbine's low-frequency noise, cigarettes didn't kill, not many years ago, last time I heard about it. In fact, they were promoted as something that's really helpful to you. Setbacks are normally a third of a mile - a third of a mile from the noise level alone. They barely just got

setbacks out of a little bit of pressure, and they only made them 110 percent higher for things falling over from your property. Well, I guess that's an improvement. I appreciate that. The flicker impact study underscores the flicker problem as being severe. Can you translate what all these numbers mean? I have an expert on our team, a landowner, that can translate what they've given to you. It's severe, given the strobe-like effect that occurs as long as there is sunlight. Their site is twice the size of Monticello, and will have to be controlled, especially now giving ice throw conditions. How do you control a teenager in a place like Monticello? I can't control them where I live, and I've got cops around me, having been a former FBI agent, I can't even control them. What are your little signs going to do to the 15-year-olds running around out in that large area that you have? The bat study is very limited, but nonetheless, shows extremely high bat activity. Can you interpret that? You really need to be comfortable with this whole issue. It's a big issue. Contrary, the wind turbine pressure weight kills bats and bats reproduce slowly. This can devastate a bat population, as a result of the low reproduction rates. Also, you have a natural mosquito - they're a natural mosquito abatement value. All of the time West Nile Virus transmitted by mosquitoes is an increasing threat to human life. No visual impact simulations have yet been produced and/or revealed to the public. Contrary to common wind industry development standards, they don't want you to experience what your horizon's going to look like. They've got all the money, they've got a number of the best attorneys in the State of Utah here. I've met them, I know.

Chairwoman: Sir, you have exactly 2 more minutes.

Bingham: I'll get done, hopefully before then. They don't want you to see that. They could do it and they haven't produced it. The visual impact of every citizen, every day, for the next 20 years, will be impacted by your decision. One of the disadvantages for the turbine is that their presence will suppress other economic development in and around Monticello and the county, and especially Monticello's entire northern corridor. One of the best corridors, I think, in my opinion, that you have, flashing lights will dominate your night sky. We know PEP, Wasatch Wind, has failed to document its parent company in financial support. Not in all that documentation that you have, as I understand it, because they're supposed to give me the same, did it anywhere did it say who their money people are? They don't want to go there. As a former Federal agent, that's what I call a clue. Step up and own it.

Chairwoman: Sir, you have 1 minute left.

Bingham: Maybe they'll just be able to give this because there's a current on-going Supreme Court battle in Wyoming. Those attorneys' licenses, by the way, are good for Utah. We may need them. There has still been no public notification about this important, literally high profile public matter, and I'll close with this. PEP has shifted three turbines, by my looking at the map. They can talking about shifting all this, but really, when you look at it, notice both shifts. One's closer, another's further away. We are still surrounded, 360 degrees, by turbines 40 stories tall. No one would ever think, and this is where common sense didn't sound so common tonight to me. There's nobody that's going to buy my property. When I got covered, literally, in the middle of that, in their words, the donut hole, who's

going to buy the property there and have any views? Thank you for your time, it's been a long time coming for this matter. It would be an emotional issue, I think, for a lot of residents, if they knew the facts as I understand them. Thank you.

Chairwoman: Thank you, Mr. Bingham. I want to just reply real quickly, and then I'm going to ask a Wasatch Wind attorney to address a couple of the matters. The couple of things, first of all, your emotions expressed tonight are absolutely valid. There's no one sitting in this room who isn't emotionally attached to something in this county, someone in this county, or the land in this county, and hopefully, that's what this Board is doing, is taking into account the fact that things are changing. We want to protect what's in our county. So your emotions ...

Bingham: May I ask a question?

Chairwoman: No, sir. No.

Bingham: One question? _____ expert in the wind industry and we're not going to let them speak?

Chairwoman: Not yet. We may call on him to answer something for us. And so the emotions are there, I know that. This other thing I just want to address generally this evening is, one of the challenges that this Board has come up with in our work is to find out that the notice part of our zoning code is perhaps not up to quite the snuff it could be, and when we deal with our staff who tells us who's coming to these meetings, we don't necessarily have the most perfect notification in place, and that's partly why you're here tonight, to re-investigate some of this, and why this Board has put on its list of things to do to update some notification processes

so that, hopefully, you don't hear about things too late. But having said that, there is public notice, and there was public notice, for the procedures that we have gone through already. I'm not making excuses, I'm just saying there has been public notice; we will look at some other public notice issues later. And lastly, the last thing I wanted to say in addressing this was, one of the issues dear to everyone's heart is the wildlife, be it the bat or the eagle, or anything between, and one of the reasons I asked my question earlier is, this Board doesn't have anything to say about bats and eagles in our decision. What we have to say is, you must meet bat, eagle, and other wildlife requirements as put into place by the federal, or state, wildlife. So I would just remind the public and Mr. Bingham, who emotionally involved us all, that while we want to protect, we can only protect within our purview, and ask others to do their job - the wildlife and other land use. Having said all that, I will ask the attorney to ...

Man: Well, it sounded like Mr. Bingham had somebody else who he was concerned might not be allowed to talk.

Chairwoman: Okay. Is there someone else who needed to ... Go ahead.

Man: _____ in talking to Greg is that we'd have the last word here. It's not my understanding that the attorney in charge of this would be able to just go on and speak their mind the way they do.

Chairwoman: No, this is not a last-word situation, sir. This is calling on the public in a public forum, and I will do so accordingly. I afforded you a few extra minutes as you represent a larger group, and I appreciate that. I appreciate you speaking for that. If your expert that seems to have information for you wants to address a specific

issue or perhaps ask a specific question, we're happy to do so. In the meantime - go ahead. I'm going to let this happen.

Ellison: And I apologize again. I'm Tom Ellison, Salt Lake City, and I do appreciate what the Planning Commission does here. I spent a decade on Salt Lake City's Planning Commission, in your shoes, dealing with a range of issues that are very difficult, and Adrienne, who works with me, is handing you two documents, and I wish to address those just briefly. The first one I'm going to address, these are the late-arriving documents, is the document from J. Phillips, who is an appraiser. The last comment that came up on the slide presentation was that we were offering additional value days mitigation for these owners. Now, I think it's quite clear, it's come up enough tonight, that we are interested in buying this property. We do have a valuation difference, apparently. We do believe we've made a good faith offer and several times of what Mr. Cook has indicated, or a range of values for the land. But notwithstanding that, we think this Commission needs to understand that its decision can go forward, understanding that there will be processes put in place, to address, you know, basic concerns. So over and above the mitigation, we've talked to you about, already, of the specific pain that's, which again, have been indicated to be applicable to these in-holding parcels. So even though there are no residences there, we want to preserve the ability to construct homes on these parcels with the appropriate mitigation. So those payments are there, but the additional thing is to try to address the proximity factor that's associated with these in-holdings. So, Mr. Cook is an expert in the appraisal business of energy facility impacts on adjacent properties. And the front

part of this letter merely sets forth that there are very industry-standard ways, appraisal processes, following established industry standards, that can be used to assess residual value impacts, and we are essentially saying, we will follow a valuation process, following normal industry - appraisal industry standards, to ultimately assess residual value impacts that would come by reason of proximity. The second part of this study, or this letter to you, indicates a brief summary of a review of statistical appraisal surveys that have been done on wind farm impact, and statistically, as Mr. Cook says, the majority of evidence from statistically based studies, indicates that wind farm infrastructure has no value impact on surrounding property. Again, in fairness, there's a proximity factor, so what Mr. Cook has said that he would do, is look at additional studies associated with other electrical facilities. The big 345s, the towers, those kinds of properties are appraised routinely for impacts, and those studies, he's appended also on to here, indicating that in those cases, adjacent property impacts tend to range in the range of 1 to 13 percent for those. Now, these are not intended to be indicative of a final outcome or offer to these property owners, it's just that there's a lot of data out there. There's a lot of resources that can be brought to bear to ascertain their value. And again, we hope to buy the property, but you can tell that these owners feel very strongly about the property. So we are specifying, as a condition, that we are willing to mitigate through a value-based appraisal process over and above these other ...

Chairwoman: And I would like to throw in at this moment the idea that this Board cannot regulate private deals, you know? It's not something ...

Ellison: Yes. That's right. That's right. So that gets to the second document that I brought to the table, and it addresses, or I mean, this is a proposed set of findings. There are factual issues. You've received evidence in our packet and through others about the impacts, the standards that we're adopting, and the mitigation. But there were several questions raised earlier about what this Commission needs to do within its power to assure that its conditions are complied with. So, under Section A of this other document, are your planning code standards. That's what we're operating, but at the back of the document, under conclusions, that's where I'd like to just spend a couple of minutes and discuss. Because I think the Commission does need to understand that the conditions you impose can actually be complied with. There are, for example, white standards that are technical standards, but we should be able to bring to you the technical specifications and studies at the time of the building permit, to make sure that lighting is being controlled to the maximum extent. That's a condition we're offering. That is a building permit condition to be ascertained at building permit through technical studies. The sound standards, similarly, the reports we're giving you today establish what the sound standards are, but through micrositing and other adjustments, we need to bring you a final impact, and again, these are maximum impacts, but there may be lesser impacts, depending upon turbine choice. We'll bring that to you, and if our standards that are in our documents, which you would adopt, are not achieved, then we fall down and have to supply the mitigation payments that we've also offered up, for affected properties. So that's the second V(?) standard, where we're saying apply the standards that we have given you,

and if at the time of building permit, our documentation indicates there are peripheral impacts, or in-holding impacts, and maybe we've gotten rid of them all, maybe we won't have to do mitigation, but if there is, you then drop down to C for those properties impacted. We would, at the time of building permit, provide a demonstration of compliance by proof of payment, offers of payment, or in cases where payment had not been made, the funding of an escrow or other source which will assure that the money is there to make the mitigation payments. And then D covers, in particular, this in-holding issue and this additional appraisal process. Similarly, that we will go through a process, hopefully, we'll get cooperation. Hopefully, it won't be necessary [or unnecessary?], but at the end of the day, we're saying that at the time of the building permit, we haven't made the payments, documented agreement, we'll have money set aside based upon these appraisal industry standards.

Chairwoman: Just to clarify, you're not saying that you have to buy the property, but you're saying, if you've come into agreement to buy a property, it will be done by the time you go _____.

Ellison: That's correct. If we're able to come into agreement, we will buy it, but otherwise, we're offering a value reduction mitigation payment, based on appraisal standard processes.

Chairwoman: So they would still own their land, you're just paying off a little bit of what they might have lost in the value?

Ellison: We'll pay off all that they've lost in the value, and then compensate them for the extra costs of building a home to accommodate the flicker and sound. So that's

what we're trying to achieve, and we're trying to achieve that in a way that the county can move forward with its land use decisions as a land use matter under the standards that the county has. So that's what those two documents are attempting to do.

Chairwoman: Okay.

Man: What is the estimation, in your opinion, for the loss of value?

Chairwoman: I'm sorry, identify yourself.

Davidson: I'm Dan Davidson.

Chairwoman: Okay. Go ahead.

Davidson: And I own what I think you guys are calling 87, which is north ...

Ellison: Yes.

Davidson: And then also, the 142 acres to the east at that far north corner.

Ellison: Yeah, and, you know, I'm not the appraiser, so I'll talk about the factors that the appraiser listed. I mean, this is agriculturally zoned land. It's presently unoccupied. It's a little bit remote from utilities, although accessible by a seasonal road.

Davidson: Some of us have plans to build homes.

Ellison: Right, right. And so, you know, we have assumed that, notwithstanding existing conditions, we would offer up mitigation payments to affected properties to ensure that they had the capability to reduce sound, flicker impacts. Your parcel 87 was outside of, and not adversely affected by, sound or flicker, as I recall. So we would not be offering any particular mitigation strategy in your case.

Chairwoman: Yes, sir, Mr. Bingham?

Bingham: Can I ask you to expand upon the philosophy on which you're talking about your appraisers, _____. There are other issues here, just specifically regarding your appraiser, and why do you have to rely on ranch land prices when that's not the _____, you've continued to use matters, as I understand.

Chairwoman: I'm going to stop this right here, and refer to the idea that we're not part of this deal making. We can, perhaps, if we decide to do so, include some sort of condition that might say, the landowners must have all been spoken to, or whatever it is we decide to say, but this is the discussion that you gentlemen should have amongst yourselves because it doesn't pertain to our decision. Yes, sir.

Bingham: Well said. I agree with that. Can I then ask you this question? Can you describe for me what the parameters of the intended use language is in terms of the ordinances that exist out there?

Chairwoman: The Conditional Use Permit?

Bingham: From your point of view, because that's really what you guys have to do, like you said ...

Chairwoman: Right.

Bingham: ... evaluation, so I want to make clear your philosophy, or your position, as you see it here.

Chairwoman: Well, the Conditional Use Permit, and I will do this in just a moment when we come back here. Let me finish this and tell you what we're going to do for Conditional Use Permits so we can do this. I am looking for the last and final

questions or comments for this issue so that we can go on. Yes, ma'am, I saw your hand earlier.

Roley: Okay. I'm Linda Roley, and I feel a little, I don't know, ambushed with this. And you guys are talking about the eagles and the bats and the light flicker and the noise, but esthetically, our house is - all we're going to be seeing is, to our north, are these windmills, and we've already built. If we would have known this was occurring, we probably wouldn't have purchased that property. But also, why isn't there a 3-D model of what this is going to look like? Why have I not seen in the newspaper, you know, something that's showing where the plots are? And what can I do as a citizen to ensure that the information gets out of what's going on, and is the decision already made, or is there still steps that we can do to take things into consideration? Monticello is not a sprawling community. It's pretty central and it's all closed in. Why are you picking a lot so close to Monticello when there is so much vastness out there?

Chairwoman: Um, just quickly addressing some of that, this is a public hearing that was publicly noticed, and that is procedural. This is the County Planning and Zoning Commission. The town is not dealing with this, specifically, because it's not in the town limits, so this is a county article.

Roley: So do you take the town into consideration when you're doing this?

Chairwoman: In the overall view of things, of course. We're just not legally bound by the town zones, okay? So the zoning here is agricultural, and this is a use that can be conditioned if it goes in. As far as what a citizen can do is, you are here doing the first and most important step, which is conveying your questions and concerns

and challenges for us to consider. Beyond that, there are processes in place for appeals and other things, should you not like what is determined.

Roley: Okay.

Chairwoman: I can say that at this particular moment, we clarified earlier in the process that there is a Conditional Use Permit that was issued for this project in July ...

Roley: Wasn't there an appeal?

Chairwoman: There was appeal - the appeal was withdrawn. The appeal was given to the Commissioners, it was withdrawn for this procedure.

Bingham(?): My understanding is, we're going to do this supplemented. Under Walter's advice, there's two hearings tonight. Let's rehear this and hear what's going on. Now, we've never officially withdrawn that.

Chairwoman: Okay.

Bingham(?): We have a supplemental ...

Chairwoman: To try and answer some of the questions.

Bingham(?): ... to answer these questions, so that you can ...

Chairwoman: So they tabled it momentarily so they could hear this.

Bingham(?): Right, so that we give this audience an opportunity to hear this, and make their comments.

Chairwoman: And was this second one also challenged and withdrawn, or also tabled?

Bingham(?): It's tabled also. The Commissioners and Walter - and the legal advice from the county was to table that and ...

Chairwoman: So tabled, as opposed to withdrawn. Okay.

Woman: I'm sorry. Can I get clarification on what tabled means?

Chairwoman: Tabled means set aside, not acted on, until more information is supplied. It can be taken, literally, off the table, by motion to say, now we will act on it based on other things. We, however, never get the appeal. The appeal goes to a higher authority. This Board gave a Conditional Use Permit. I believe we said things like, you will meet lighting, you will meet sound, you will meet industry standards for these things, because that is all we can do. We don't have something that says, you must flicker at two times an hour. We say, meet the standard for flickering, or whatever.

Woman: I'm sorry, so with tabling, does that mean that it's valid or it's not valid?

Chairwoman: The appeal that they have tabled is up to them. We didn't table our Conditional Use Permit. Our Conditional Use Permit stands, as of July, and it was very specific to the site, saying we allow this with the following conditions, and as I mentioned, we put some on there. The tabling was that the folks that, I think it was Mr. Bingham and his party, had filed with the Commissioners to say we object, and then said, okay, we'll hold off for a minute with our objection, table it, so that we can continue here tonight.

Woman: So can we still put appeals in?

Chairwoman: Absolutely. The process is, every time something happens here, you appeal to a higher authority, which in this case, is the San Juan County Commission. Jeff, did you ...

Jeff: The bottom line is, as I understand it, is the conditions have to be met before the project can take place, so if they're never met, then the project can't take place.

Chairwoman: But if they're fighting the actual project, that's _____.

Jeff: Right. What I'm saying is, the project - until all the conditions are met to meet the criteria set by the standards, nothing can happen.

Chairwoman: So if we, okay. We're going to finish getting comments. When we bring it back to this Board, if we say we would like to issue the permit, the Conditional Use Permits with the following conditions, Jeff's right. It's those conditions that must be met, or there is no project. In the meantime, the public has a right to approach the Commissioners and go, we don't like what they said. We don't want it at all. If we do that. I mean, we have to keep going tonight.

Man: Would it be fair to say, and if we didn't issue it, the applicant has the right to appeal? Both sides have that right.

Chairwoman: Exactly. The developer has the right to go to the Commission and say, wait a minute, they didn't give us our permit and we'd like to know why.

Man: Plus there's a time limit, as well.

Mike: [Inaudible.]

Chairwoman: I'm sorry, I missed that.

Mike: My name is Mike _____. I'm also a landowner in the donut hole.

Chairwoman: Okay. Very quickly, sir. We really need to move on.

Mike: I don't have any prepared remarks, but I do, by pure coincidence, have some experience in wind energy development, and actually with some of the personnel involved here. And to me, it's amazing. There is a donut hole in the middle of this, because they could have called these landowners a year ago. They've been getting leases for this for many years. They had our phone numbers, they could have contacted us at any time. But what happened was, and this is important,

July 3, I get a phone call at a family reunion at Disneyland. We're going to go for a Conditional Use Permit on this, but they don't tell me there's a meeting on the 5th, so I have no idea there's a meeting on the 5th. And so, when they had my phone number, Christine _____ had my phone number in her cell phone. She could have called me any time over the past year and said hey, we're going to actually make this project real. They didn't do it. It was clearly a deceptive - I mean, there's no explanation. Why would they not contact ... How could they go through meetings every month, say, how's this project coming along? Well, there's these 9 landowners in the middle. We haven't done anything about them. And so, just like you being ambushed, I find out after the fact, we weren't here for this wonderful presentation they made. We didn't know about that. Now, the bio said that Christine led the development of the Spanish Fork Wind Farm, which I've seen you've all seen. I can _____ agree with that. I think she was participating in that ...

Chairwoman: I'm sorry, sir. The ownership of this company, unless can be proven fraudulent, is not part of our _____.

Man: Who is the controlling owner of this company? Do you know?

Chairwoman: Actually, I have it here. They gave us a very cute little, there it is.

Man: So who's the controlling owner?

Chairwoman: The Wasatch Wind was formed when(?) Wasatch Wind Canada was separated out, and then this is Wasatch Wind Intermountain with Latigo Wind Park and Pioneer Wind Park.

Man: Who owns Wasatch Wind Intermountain?

Chairwoman: You know what ...

Man: Does all of it?

Man: Does it matter to us?

Chairwoman: Yeah, it really doesn't matter. What we're telling you is that unless there's fraudulence here, which I hope our county attorney can look up ...

Man: You know, if you're going to approve a major project like that, you would know who's making the decision.

Chairwoman: No, because you know what ...

Man: You look at the Board, you can see on public record, they have one of the three votes.

Chairwoman: I don't really care about how they run their company, unless they are fraudulently before us, because as they have said up front, they are merely the development company doing this. There are arms of it everywhere, I'm sure. Who owns ... I just think that what we're trying to say, from this Board, is if we set conditions and they don't meet them, they can't do anything. When they come to Greg and Bruce and say, we're ready for Tower 1, oh, we didn't finish that part, or oh, we didn't make our payments, Bruce and Greg are going to say, then you're not ready for Tower 1, get out. So we have the power to work on the land, you want to go through attorneys to prove fraudulence, then that's a whole other ...

Man: _____ is, there was plenty of time to notify us in advance.

Chairwoman: Okay.

Man: That was not done. With the Spanish Fork Wind Farm, they sent out 1,200 postcards, had nine articles in the newspaper.

Chairwoman: I can't control the newspapers. I'm surprised the newspapers haven't done anything.

Man: I'm not expecting you ... But they sent out 1,200 postcards to neighboring(?), and that's all public record, and did they send a single postcard out here?

Chairwoman: I know. We understand that.

Man: Did anybody receive one? 'Cause I didn't.

Warren: I got a postcard, but I didn't know what was going on.

Man: When did you get it?

Woman: She lives in Ogden.

Warren: Well, I was born and raised in Monticello. My name is Carolyn Warren. As far as I can tell, because I didn't know anything about this, my property is in that donut hole, as far as I know, and I may be wrong.

Chairwoman: No, Greg's saying it's not, so go ahead.

Warren: It's not?

Chairwoman: No. Okay.

Warren: How can't it be when it's just off of County Road ...

Man: What was the answer? When did you get the postcard?

Warren: Uh, September 10. We mailed information to you about the proposed Latigo Wind Project, and the hearing was going to be on September 24, and that meeting's been canceled, and then this postcard and new presentation will be held Thursday, October 4.

Chairwoman: Okay.

Warren: So that's why I'm here, because I don't know why I got this card.

Chairwoman: Well, are you - is she a contiguous ...

Woman: She's to the north.

Chairwoman: Okay.

Man: Well, I'll be brief on my point.

Chairwoman: Okay. You just have 2 minutes, sir.

Man: I appreciate their expert got quite a bit of time, the attorney.

Chairwoman: Okay. Go on.

Man: My point is 1: they're setting their own standards.

Chairwoman: They're proposing their own standards. We haven't accepted them.

Man: Proposing their own standards. I would think it would be your responsibility to look at what standards are appropriate.

Chairwoman: Okay.

Man: Now, 37 decibels is a standard that really ought to be applied for the whole wind park. I mean, they should really know - they put that as a blue line there. That's really the noise standard that should be applied, and it's applied in many different areas. One of the areas of most wind energy in North America is Ontario, Canada. They use an 1,800 foot setback for all their requirements. They have guidelines for birds and bat studies. Those are all available. To have a birthday(?) that lasted one day is laughable. And the batting pack was amazing. But I won't get into that.

Man: That's not true.

Chairwoman: It's not - yeah, it's not true. Go on.

Man: But the point here is, I think your responsibility is to make sure that it's harmonious with the land use, right? And there are people here who have owned this land for a long time, and were planning on putting houses for their retirement and for their use on this property. And they talked about value to impact on landowners. Well, maybe if they're way out on the surrounding, but to be in the middle of this, can you imagine trying to build a house and sell it at that point? I mean, it's just common sense that it's not ever going to be able to happen. So it's a situation they've created. They could have contacted us a year ago, and they didn't. And they used a seat to not let us know about this meeting. They call us on the 3rd and don't tell us about it, and it was the same for other people, it wasn't just me, that got the same, exact message. And we got that recorded, so we know that was the way it was done. And we felt like that was just not a way to honestly approach negotiating with us or talking with us. We could have been reasonable a year ago. Why wait until it's a deadline? Why wait until this crunch time, and then blame us 'cause we're holding up their process? So anyway, I think it's the responsibility of the Planning Commission, in my opinion, to just, you know, to really look at it and say, what are the appropriate standards for noise? We ought to look and have somebody consider that for us, and have them pay for it. You know, should we just take at face value what they say is appropriate for noise, flicker, bats, birds, etc.

Chairwoman: Please, in the audience, it's very noise up front. Gentlemen? Thank you, I'm sorry.

Man: So that's my main issue. We felt like that there's been a deceitful approach taken for this in terms of notification. We felt like the fact that they're hiding that M___ Royalty controls this business is an interesting point of view, and really should be looked into. Not that they're a bad company, it's just, why are they not being discussed when they are the controlling owner of this? And I think, really, we need to take a look, step back, ask them for more information, don't make a decision then quite yet, but decide that really, we need to look at what the standards are, whether notification has been done properly, and whether we - if we can make the decision that's going to affect this property for 60 years. These leases run 60 years, and right now, there may not be houses in that area, and there may not be development potential, but you're wiping out all the future growth in this city for our lifetime.

Chairwoman: Thank you. Thank you.

Man: So that's my remarks. Thank you for your attention.

Chairwoman: Thank you very much. Okay, I'm going to ask for just two or three last comments, please. We need to move along. Yes, ma'am, you had your hand up earlier.

Janet: My land is outside of that green _____.

Chairwoman: Just your name, please, for the record.

Janet: Janet _____. And my land is just outside of that green _____.

Chairwoman: Okay.

Janet: I've lived here for 40-some years. I've traveled all over, and I've looked at windmill farms and everything ever since this proposal's come about. I've seen

farming in between all these windmills, I've seen vineyards, I've seen oil wells, I've seen homes, and there's nothing that makes it look unpretty or anything else. You know, it's a green energy, and it's something that's finally coming to Monticello, and we should embrace it. And all these tree huggers that want to get rid of windmills and green power should be _____.

[Laughter here.]

Chairwoman: Wait a minute. I think that's the wrong word - thank you, go ahead, Janet. Let's go on. I'm sorry, Janet.

Ross: I just want to say, I'm Janet Ross, and I'm the director of Four Corners School and Canyon Country Discovery Center that's right on the edge of this proposed development. One of the things that this body can address is _____ lots of municipalities, states, counties, whatever, do set setback standards from human habitations. As far as the Discovery Center goes, I am respectfully requesting a kilometer setback. I've had a great working relationship with Wasatch Wind, we've talked about this, met with them multiple times, they have moved a couple of the towers, we aren't quite to a kilometer yet, but we're moving in that direction. You know, they've got a lot of things hemming them in on this piece of property. There's the airport, there's the Forest Service on one side, there's a lot of issues they have to deal with besides my concerns, but I think a reasonable setback distance from any human habitation is a kilometer. If you look at setback distances internationally, and there are web sites where you can do that, so I would ask this Board to consider setting the setback from all human habitation, not just the Discovery Center, but the city and other people, as well. And that sort

of is going to answer a lot of questions that have come up tonight if you set a setback. So, but this is a resolution, the Board _____ school passed in August, of that kind of requirement. So, that's what I have to say.

Chairwoman: Michelle, can you just tell everybody what the closest your tower is to anything right now? Janet's saying a kilometer. What does that mean to us?

Stevens: A kilometer is .62 ...

Man: .62.

Stevens: So we are .44 from the Discovery School property boundary, and .5 from the closest home.

Chairwoman: Okay. So you're not quite .62 yet.

Stevens: Not quite .62 yet.

Chairwoman: Is there some fudging you might still be working on, or are you just studying it there?

Stevens: No, well, we continue to fudge with it, but you know, .62 from an existing commercial building and an existing residence might be possible. We would still need to look at it, though.

Chairwoman: Okay. Okay. Okay, yes, sir.

Allen: I'm Doug Allen, the Mayor of Monticello.

Chairwoman: Ah-hah.

Allen: I've been involved in this project longer than anyone, other than maybe Trent. [Inaudible.] This was a city project to get, an economic development project, to get met towers in this area. You know, I don't know what we ever envision will be this [inaudible], you know, so it is a concern to us visually. And I think, you

know, I've got some pictures on my phone of 400 North and 200 West, it's just up there, and you know, Mr. _____ sold(?) that property in hopes to build it into a subdivision there. I can see in that tower, now, that's where the _____ was. I think it's a 30 meter tower, you know, and of course it's thin. You can see it pretty good if you're looking for it. You take something that's probably, you know, 8 to 10 times higher and wider, and _____, and I think it can be of considerable concern to people that live in that area, and the future growth of that area. What I think I'm asking for the citizens is, you know, Janet Ross's Four Corner School has architectural renderings of this facility that's going to be built. It looks like a picture. It looks like that's been there, that it's been built, and you can see how it looks in the landscape. Would it be too much to ask Wasatch Wind to do that, and show us what it looks like from maybe two or three places in the city? You know, it may mitigate some objections to it. It may heighten some of the objections to it, too. But I think, you know, seeing how this was economic development project by the city of Monticello, and I'm for wind power, but I also am for preserving Monticello as a great place to live.

Chairwoman: Thank you. I'm sorry, sir, we are not going backwards. Is there anyone else who hasn't spoken this evening who needs to address the Board, because we are about to close the public hearing. We have a lot to do. Anybody? Yes, sir.

Monte: My name is Monte Belton. I represent the _____ land on the lower plat, probably the nearest one to the Roley's house. My dad loved windmills. He was here before the town of Monticello, and this was _____ landlocked. He donated the city dump to them for $25 a year _____. He loved windmills. I'd

like to get some windmills up there for his legacy. I've been all over seeing them, and I love them.

Chairwoman: Thank you, sir. All right. Last call. I need a motion to close the public hearing, please.

Man: I'll make that motion.

Chairwoman: We have a motion to close. I need a second.

Man: Second the motion.

Chairwoman: Second. Steve? All in favor? Aye.

Multiple: Aye.

Chairwoman: I want to thank you all, and I want you to understand that we do take into account everything you say, and we take into account the emotions that go with it. I will ask the Board now to discuss any questions, concerns, and then lead us to action tonight, which the actions can be to grant a Conditional Use Permit addendum, if you will, that adds new information or conditions. The action can be to deny the Conditional Use Permit addendum, saying that we've learned things that mean we shouldn't be doing what we thought we should, or third, no action, in which case it would leave things hanging. So I turn to the Board now. Jeff, would you like to start?

Jeff: You know, I think a clarification is, based on the information we have, of what are the standards? And you know, I guess when we talked about that earlier, I putting that onto Greg's, and Mr. _____'s to-do list, because I think that the experts to know those standards. And, you know, based on what those standards are, I think can clarify our decision or change our decision.

Chairwoman: And are you asking about what San Juan County standards are, or industry standards, because I'm thinking San Juan County certainly doesn't have anything right now.

Jeff: No, they don't have any standards to base that on. I think industry in other affected areas, the standards would be _____.

Chairwoman: Okay.

Jeff: I'm not disputing what they said ...

Chairwoman: Right.

Jeff: I guess the clarification I was hoping was coming from them, so that we could, you know, our decision was good or invalid.

Chairwoman: So if, for example, we put a condition on that said, we want you to meet those industry standards, we need our staff to know what those are, is that kind of ...

Jeff: Yeah, exactly.

Chairwoman: Okay.

Jeff: Because I think that's being put back onto our table, where, I'm not an expert in that, but if I have the right data, then I could probably make a decision on _____.

Chairwoman: Okay. Is that - okay. Steve?

Steve: I don't know what to think. You know, this is a discussion amongst us, and it's clear this is going to go to appeal. I mean, there's no guarantee of that, and so, to some regard, my biggest concern right now is that we not pass, or not pass something that sets a precedent because it's obviously a hotbed of wind farm activity right now, and we're cutting our teeth on this, and so I find myself a little

bit confused. My feeling is, they have done what they need to, that there is, no doubt, all kinds of opposition, and that people are going to be affected, and all kinds of emotions, but that they have met our ordinance. That's how I see it, and how people may feel about it is different.

Chairwoman: Trent?

Trent: Um, okay. I, too, agree with Mayor Allen and the Roleys that, you know, every time I'm going to walk out of my shop, I'm going to go up and look, and I'm going to see these wind towers. Do I want to? No, you know, it kind of takes away from our little small town community. On the other side of that, these people in the green have property rights, too. Wasatch Wind has met the county's requirements to build a wind farm. You know, the people in the middle, you know, certainly they don't want it, but it's not a 360 degree, it's a 180. I only see it on two sides, you know. Maybe you can go out and look to the east and to the west, not to the north and the south. But whatever. You know, we've got two other projects, and they are zoned identical to this project. How do we say, we can't support this project, but we can the two out north where, you know, maybe more people won't see it. We can't. I mean, this is - no, you can't. I mean, it's zoned exactly the same, and these people have rights. These people that own this land have rights. You people back there that own the donut hole, you have rights. But the people that have signed the contracts to have the wind project, they have rights. You know, we have to come up with, where do we meet? And we can't deny them just because you have the donut hole.

Man: We're asking you to take some time to get all the real ...

Chairwoman: Sir, we're done discussing it with you.

Trent: I'm through.

Chairwoman: Thank you, Trent. Joe?

Joe: We've received a lot of information, some of it last minute. I need more time to process it. I'm not in favor of granting anything conditional - conditions tonight until we have a chance to discuss it, and maybe even when we can be not so interfered with, with emotion.

Chairwoman: Okay. Carmella?

Carmella: I actually agree with Jeff. I think we need more time to investigate other standards, other things that are going on out there. And I do believe people needed more time, more notice to what was going on.

Man: So what's enough notice?

Chairwoman: I don't want to go there. What I do want to say about notice is, that the public notice requirements of July 3, of tonight, were legally met by the county process where they publicize this stuff. There is no requirement in our code that the neighbors need to be notified personally. That is something that is on this Board's discussion list because this is an example that that may or may not work correctly. However, that is not on tonight's table because it's the future and the past. What is on tonight's table is this, and you have heard the comments from the Board about what they've heard tonight. I think we've all heard some very interesting information. I will add my two and a half - one and a half cents - it's not even two, and that is that I disagree that we wait because I don't believe that San Juan County is in a position to write its own standards at this time, and

therefore, we need to go with what industry standards are stated, and perhaps not just the ones handed to us by the company involved, but much like Jeff said, to have our staff ready to support those conditions. If we say they have to meet lighting standards, they're going to have to meet some lighting standards. So I think we have a lot of work to do in the future, which is why we're called Planning and Zoning, because we have to plan. Frankly, these projects, all three of them, I guess there are, caught up with us before we planned it all. So, here's where we stand. We have heard from the public, we've heard some commentary from the Board. I stand to - I ask this Board for action, please. And the actions can be to a motion with proper conditions to add to the CUP, a motion to not issue a CUP, or a motion to table decision pending, but if you make that motion, I request that you put specifics on the timetable and what you're looking for, because I don't want this to drag out.

Man: I make a motion to not do anything other than the CUP that exists with Wasatch Wind, other than try to push the 1 kilometer distance, if possible, if not, I'm okay with what we've done with Tower 10.

Chairwoman: Okay. There's a motion on the floor to visit - adding to this existing CUP, the 1 kilometer request.

Man: If at all possible.

Chairwoman: If possible. Okay. I have a motion on the table. Do I have a second for discussion? I'll second it for discussion purposes. So the basic idea here is that we're taking the Conditional Use Permit that we issued, which, you don't have that with you. Oh, the minutes for July ...

Joe: Let me just look at the July _____.

Chairwoman: Are you looking at the July minutes, what we said, because we said I know that they have to meet - Joe?

Joe: Okay. I'll read the minutes.

Chairwoman: Okay. This is from our July meeting. Go ahead.

Joe: Okay. We approve the permit upon the conditions that all federal, state, and local statutes and ordinances be met. That all FAA fish and wildlife regulations and all industry standards be followed. The Planning and Zoning Commission would review this permit in 1 year. Also, before any building permit could be obtained, all leases and documentation must be completed.

Chairwoman: Did everybody hear that?

Man: Not a word.

Chairwoman: Do you want to do that again, or do you want to ... Nice and loud, yeah. Okay, this is what the Conditional Use Permit was voted on in our July meeting. Joe is going to read what we said, that it was approved. Trent is making a proposition that we add just one more condition. Go.

Joe: Okay. All federal, state, and local statutes and ordinances must be met. All FAA fish and wildlife regulations, and that all industry standards be followed. And the Planning and Zoning Commission would review this permit in 1 year. Also, before any building permit could be obtained, all leases and documentation must be completed. An amendment to the motion, let's see, what does that say? That we add the option to install met towers, as needed.

Woman: We've given them permission to have a couple more met towers because they were checking other parts of the land. Wasn't that what we said?

Joe: That was the conditions we imposed.

Chairwoman: So what we're saying - pardon me?

Woman: Wasn't there something about lighting, too?

Chairwoman: Well, that was the industry standards for sound and light.

Woman: The lights at the substation were a concern _____ lights would only be _____ employees, so that was probably _____.

Chairwoman: Um, so as you can see, the Conditional Use Permit we issued talks about just what we said here, and that is that we don't have the power to enforce the regs. We have the power to say, if you don't do the regs, then we don't let you build there. So they have to meet those requirements. Trent is saying tonight, so far, the motion on the table is to keep the existing Conditional Use Permit and add the condition that the 1 kilometer distance be met at all possible points.

Man: I have a question.

Chairwoman: Certainly.

Man: So what is - do we know what the industry standard is?

Chairwoman: That's the problem. As supplied to us, we have discussion in each of the chapters, like flicker and lighting, that there are industry standards. For example, I think you quoted Massachusetts a couple of times, that the states that have come up against this, Massachusetts was that one in the water next to Martha's Vineyard or something, wasn't it? Um, and they set standards because they were running into this problem. Has Utah got state standards yet?

Man: I don't know of any, and I was going to ask, are there federal standards?

Chairwoman: See, that's, you know - these proposals are ahead of us, just like when the developers are saying to us, we don't know which towers we're going to use, it's because the technology changes every Tuesday, and you know, that we don't do this. So Jeff, I understand the consternation is, we don't know what we're or saying, you have to meet, but you have to meet them.

Man: Dang it.

Man: The staff's going to have to do some research and find the best possible standards out there.

Man: Whatever that means.

Chairwoman: Well, and that's fine. That's fine to a point, except that we can't be arbitrary.

Man: That's true.

Chairwoman: We can't arbitrarily say to these people, meet the Massachusetts standards. Oh no, wait, meet the California standards. Oh no, wait, meet the - we have to direct to no matter who we're talking to, that the standards be met at a particular point in time. The proposed standards as of October 2012, in you know, in the industry, or something that gives them, I think. Jeff, what ideas do you have to come up with this?

Jeff: You know, I don't think I - I don't have the expertise. I'm just saying I think they're - that data can be supplied to us, and ...

Chairwoman: Well, there's a lot of it.

Jeff: Well, you know. Based on their standards, but I'm saying we could take an average of the industry.

Chairwoman: Well, I'm not sure that you can if you are looking at, for example, Massachusetts might be one of the only states - or California ...

Man: California has that.

Chairwoman: They must have regs.

Woman: Spanish Fork has a wind ordinance with standards that was used for the wind farm.

Chairwoman: See, and we didn't get that far that fast. I'm sorry, I'm not doing the public anymore.

Woman: Should we even be doing this?

Chairwoman: I'm sorry.

Woman: If you don't have standards that you hold this up to?

Chairwoman: I'm sorry. I cannot - that's exactly what we're discussing back here, is how we're going to stick to standards, so let us continue. I'm not going to go back and forth. Okay. At the moment, I have exactly one motion on the floor. Let's vote on this motion to see if we want to keep going, and what we've said is that the existing CUP will stand with the additional condition of a 1 kilometer distance for setbacks, if at all possible. Yes, sir?

Man: Can I amend that then?

Chairwoman: Absolutely. You can try.

Man: I'm okay, as long as we define what the standards are.

Chairwoman: San Juan County - you want San Juan County standards?

Man: Well, it's got to come from San Juan County if it's in San Juan County then.

Man: Well, we don't have the standards.

Chairwoman: We don't have them, so ...

Man: Well then, they have to establish them in order to make them.

Man: Then they would be arbitrary.

Chairwoman: No, he's saying, before we do anything, we have to have some standards, and frankly, that's going to take a while.

Man: But I'm saying that Greg can bring the standards to us of what California, Massachusetts, Spanish Fork, whatever it is, and we adapt those into our policy.

Chairwoman: And wait 'til we're done before doing any more CUPs.

Man: It's a check and balance system then, because I don't know what it is.

Chairwoman: And that's fine. I mean, if we had known all this, all last year would have been spent on standards for wind farms, and we wouldn't be asking this. Go ahead, Steve.

Steve: I was just going to say, I mean, the other option is to approve it based on the medium of standards, but I don't know if that makes any sense - that we haven't yet set.

Chairwoman: Well, we actually did approve a motion last time that already said this. We already said ...

Man: Well, we're saying local statutes that they don't have yet.

Chairwoman: I know, but all the others. In other words, whenever you pass something, you approve something, you say, you must meet all the standards.

Man: Where do you draw the line? I don't like this shade of white, or, you know, those really should be green. I mean, I don't know if we could define every last thing.

Chairwoman: Right. I'm not sure that we're trying to. I think Jeff's just concerned that what standards are we meeting, and that's ...

Man: I mean, if they meet them, I don't see why we don't approve it, but if they don't meet them, then we don't. I don't want to be the judge and jury because there's too many people that are involved in it that are emotional, but I just think, you define the playing rules, and if they meet them, then it's okay, and if they don't, then we don't do it.

Man: We still have the building permit to issue, and we have some control left.

Chairwoman: I worry that if we stop the process to incorporate rules into San Juan County at this moment, we're holding up not only a specific development, but the actual process, if you will.

Man: So you're going to hold up all three.

Chairwoman: Right. Exactly. So it is my thought that what we have to say is, industry standards just for the moment, and then work behind the scenes to get our zoning code up to snuff. That's my take on this. I am inclined to say that we go on tonight with adding to the CUP, however we decide we want to, but keep the wording that says industry standards because the people in the industry seem to understand what that is. That's kind of where I'm coming from. Let me do this. At the moment, we just have the 1 K distance. Do you want to amend the motion in some way, or - we've already said industry standards over here. We've already said it last time. Is there some - go ahead.

Man: I'm just voicing an opinion.

Chairwoman: Absolutely.

Man: I think at this point, we're seeing that they made, in my opinion, a good faith effort to set that tower back. They've, being landlocked as they are, it's probably - this again, my opinion ...

Chairwoman: Sure.

Man: I'm not sure that it's feasible to give them a full kilometer setback.

Chairwoman: Okay.

Man: They've got two-thirds of that distance now, and they've made a good faith effort to give that much.

Chairwoman: And I think that Trent was trying to say that 'cause I think he kind of said whenever possible, or wherever possible, I don't think he meant every tower. But I don't know.

Man: The more I am hearing and seeing tonight, Steve's right. This is going to be appealed to the County Commission on emotional reasons. Because it's impacting visual and other factors of people - esthetic factors that people are worried about in the county. I think that we did what we could the last time, where we said we're going to meet the standards as we have them. If you meet these, as far as we're concerned, there's no reason you can't build them. And the County Commission, if they see it different, let them deal with the emotions and the esthetics, but as far as land use, we've done what we can.

Chairwoman: I believe that - I did want to mention this when it came to the words appeal, because it's been talked about, and that is that the appeal is made, based on what we say tonight. The appeal to the Commissioners cannot be made - well, it can be made, but it cannot be acted on, based solely on emotion. If an appeal comes to

the Board, the Commissioners, and they say, those P&Zers gave them a Conditional Use Permit, but we don't like how it looks, that's not an argument for appeal. What they would have to say is, we are appealing because the CUP did not take into concern the health, welfare, and benefits of this - or, I mean, health, welfare, and safety of its citizens when making the conditions. For example, we said, we don't care if there's ice. Put the windmill next to his house, we don't care. If we said something like that, they would appeal a specific part of it, so I agree with you that if we do our land use work correctly, the appeal would go through, based on our land use decisions, and the Commissioners would be faced with their decision based on our work, not just their emotion. Because emotion, we've all got. We all live here.

Man: Do you want to buy some property then?

Trent: I'd like to withdraw my motion and just say, we take no action on the July, was it in July, CUP?

Chairwoman: It was in July. No change?

Trent: Leave it as is.

Chairwoman: Okay. At this point, Trent has withdrawn his motion, and we stand with a suggestion that we stay with our original CUP. I'm willing to hear that. I'd like to hear an action, then, from the Board.

Steve: Can we discuss ...

Chairwoman: Absolutely.

Steve: ... and clarify for me exactly what that means? They've given us additional information.

Chairwoman: Right.

Steve: And so if we say we're good with what happened in July, that would not hold them to what they have presented now, or would it?

Chairwoman: That's an excellent interpretation, Steve. They have offered up a few more things. They've offered up, in particular, some purchase and lease agreement things that they want to work on for mitigation, and mitigation processes that they've offered up, and it's possible that since we don't get to enforce those, we can't tell them what land to buy or who to buy it from, we could conditionally say, taking advantage of any mitigation issues as presented, or some general term that would say that, because I agree with you, Steve, we've got more information. Some of the information we got was just expounding on what existed. Go ahead, Jeff.

Jeff: And aren't they asking for an amendment to that, because they're trying to add some more landowners?

Man: No more towers or anything.

Man: They had to have all those places in _____.

Chairwoman: It didn't matter how many, they'd have to have them all in place.

Jeff: To me, it makes sense to approve it in its entirety, or disapprove in its entirety, versus, say, oh never mind, _____ came tonight.

Chairwoman: Right.

Jeff: Does that make sense?

Chairwoman: I think that I agree that if we do a motion tonight, if it's to approve, that the motion be the existing one plus a few more pieces of information we got. So yes, I do think that they gave us some more things to consider.

Man: Well, I just think, though, that we can approve that, but the standards have got to go under Greg, because otherwise, he has no way to measure that.

Chairwoman: Well, what you might be able to say, then, is ...

Man: _____ all projects, right?

Chairwoman: But you could use the submitted ...

Man: Because I see flaws in all of them. For example, we said state and federal wildlife.

Chairwoman: Okay.

Man: Well, they've said that there's, you know, U.S. Wildlife, but we've seen nothing from state, so I mean ...

Chairwoman: Nothing said you have been in touch with state.

Man: But we haven't - I mean, Greg hasn't seen any documentation so that the state wildlife ...

Chairwoman: Well, they don't have to present anything until they come in for the building report because they have to ...

Man: Exactly right. So I'm saying, until all those standards are met, it still falls back on Greg's desk.

Chairwoman: Of course. Of course.

Man: So, I mean, we're saying, yeah, go ahead and try to fill all the requirements.

Chairwoman: Correct.

Man: But if you don't, then is ...

Chairwoman: But do we want to add any more requirements?

Woman: Exactly.

Chairwoman: Do we want to make them follow what they've presented tonight, as well? The mitigation of the wind and the flicker and all that? Those are the added on things that we need to say yes or no to.

Woman: Exactly.

Chairwoman: Or add to the CPU. And so, I'm just - we have another one of these to do, so I would love to move this along, please.

Woman: And so, the motions of the last CPU also says, this doesn't go through unless all leases and all land involved is purchased, agreed to, and so on. If they don't sell the donut hole, it's out the window, am I right?

Man: No.

Chairwoman: No, no, no, no, no. The donut hole people have the right to confer with these folks and work a deal.

Woman: Right.

Chairwoman: If they don't work a deal, they don't work a deal. That's not up to us, nor is it up to our conditions.

Woman: Gotcha. Okay.

Man: Process question? I have a process question.

Chairwoman: A process question only. Yes?

Man: Are you required to have read appeals like we submitted? Is everyone of you ...

Chairwoman: No. We're not the appeals board.

Man: We're not the board of appeal.

Chairwoman: It's the Commissioners, and they determine. Okay. Go ahead. Do you have a feeling about this?

Woman: Hopefully.

Chairwoman: Then maybe you're not - Steve, do you have enough thought of what you saw tonight to finish a motion for us?

Steve: Not emotion, but a motion.

Chairwoman: You got one?

Steve: Carmella, I don't see anything that we didn't discuss ...

Carmella: I know.

Steve: We talked about the flicker and all the other stuff before ...

Carmella: It's the understanding that the Planning Commission really can only go by what's already written in ordinance and policy. Lots of us would like to change that. We haven't gotten to that point yet in time. So we have to go by what's there.

Chairwoman: After your initial presentation, we had a great work session discussion about the idea that we're not ready yet for what's going on around us in terms of noise ordinance, light ordinance, and things like that, but in order to move this county along, because Heaven forbid you would ever use the word moratorium or something like that, you need to go with the standards that are, you know, on the table. So, does someone have an action for us this evening?

Man: Well, I think the action is, is that we accept, you know, we do the, whatever, the CUP, but determine that those standards have to be on some type of a check and balance in order to approve them.

Man: We've got to quantify that or ...

Man: They've given us a voluntary standard ...

Man: Well, they've given us theirs, and I understand theirs, but I'm not saying ... There's no distrust, but I'm not - you can tell me ...

Chairwoman: I understand. There are other standards out there.

Man: That's all I'm saying.

Chairwoman: What are the better ones for San Juan County? We don't know.

Man: Are you saying, put that burden on building permit _____ for the time being?

Chairwoman: I'm saying that you can't be that arbitrary, because the building staff will go home and look up something that these guys can't possibly meet, and we didn't tell them that. You know, we want them to meet as much and as stiff, you know, as regulations as there are that are out there ...

Man: I mean at the same time, we don't know.

Chairwoman: Yeah. We don't know what those are. They explain everything beautifully. That doesn't mean that there isn't going to be flicker or sound. It just means that they're going to hope to mitigate it.

Man: I think it goes back to the industry average. And it's not necessarily their actual business plan, but a combination of business standards.

Chairwoman: Right.

Man: And then the people that don't like it can check out the business standards, and I can be their appeal, but I think that we can't stop progress.

Man: I just don't know how we public notice twice, however inefficient, but legally public notice twice. They provide more information and not approve it. You know, regardless of the overall emotion, and I guess what makes me feel bad ...

Chairwoman: Or not act on it. We haven't done the vote yet, but ...

Man: Right. The fact that there is a process for appeal.

Chairwoman: Okay. Okay.

Man: And in all fairness, those towers have been up there for how long?

Chairwoman: What, the met towers?

Man: Yeah. The met towers have been up there for a long time, so we need to _____.

Chairwoman: Okay. Does anyone have an action? I would move that the Planning and Zoning Commission amend, or supplement - put an addendum on the Conditional Use Permit for Wasatch Wind's Latigo Wind Park, as issued in July 2012, to incorporate as much flicker, light, sound, mitigation as possible, and to meet all industry standards of those challenges, and that all - reiterating that all and any new land purchase lease deals be in writing for any contiguous and affected landowners. I further say that any mitigation and standards and conditions of this CUP must be met by any and all project development people, be they owners now or in the future, and all of these be met at the time of building permit issuance.

Man: That's quite a _____ motion.

Chairwoman: That's why he's writing it, so he can repeat it. Okay, I have a motion. I need a second.

Trent: I'll second it.

Chairwoman: Okay. Trent has second. I have a motion and a second. What I tried to say was, we already gave them a CUP, we're adding what they told us tonight, which are mostly mitigation issues. The landowners that are dealing with them on purchase

and lease agreements, that's up to all of you, but proof of those things will be presented to our staff. That's where I'm going.

Man: I guess my only amendment will be is so the general public and all of us will know what those standards are when it comes time.

Man: For the purposes of this CUP, why can't we use the standards they've self-imposed upon themselves.

Chairwoman: Okay. The self-imposed standards - the self-imposed industry standards to the, let me say this first and then I can amend the motion to include it. The self-imposed minimums - self-imposed industry standard, as presented for mitigation. Does that say it right?

Man: Well, you're saying that self-imposed ...

Chairwoman: Self-presented. They gave us, no, well, some of it is, but they gave us - I mean, if you read this, you can sit here and go, they say 37 ...

Man: If you don't like the language, _____ say, per the standards of Massachusetts [inaudible].

Chairwoman: There you go. You could do it that way.

Man: Well, we don't even know what those are.

Chairwoman: We know what we're trying to do here. We just want to get it right so that you know what we're trying to do. Greg, do you - how would you approve this when they walked into your office? Would you be able to have something in front of you that says they kind of met those standards?

Carmella(?): Of course, you know, we're not going to know until the tower goes up. The tower has to go up and throw a flicker or a sound or a light before we'll know if they've met the sound or the flicker or the light.

Man: I'm going to watch for that flicker.

Woman: And then you can read what it says?

Chairwoman: Okay, um ...

Man: Greg, here's what I'd like. Let's leave this motion alone, but if you would explore some standards ...

Chairwoman: Do you have time to eat?

Man: And when you get that building permit, let's just see how close we are to the standards that you found.

Man: Clarify what you're saying _____.

Chairwoman: Yeah. What do you mean?

Man: When you say leave this motion alone, what do you ...

Man: I'm saying just as ...

Man: [Inaudible.]

Man: Not table it. I'm seconding your motion.

Chairwoman: Right.

Man: I'm not going to repeat your motion.

Chairwoman: No. But what do you want me to do with my motion? And be nice.

Man: I'm just saying, we keep the motion on the floor, but I want, you know, I'm just asking him to find some standards, in the meantime, you know, off the cuff(?)

where we can compare them to what they've got. Bring them to our Planning Commission next time.

Chairwoman: In other words, we need some work sessions to study all of this, but tonight, you want to pass this motion and tell them ...

Man: Yes.

Man: Why study them?

Man: We've got plenty more.

Chairwoman: Go ahead.

Man: My brother's still in the industry, and that's another opinion out there, and he may give me some guidance as to what direction to go to find ...

Chairwoman: What the industry standards are.

Man: ... 10 different standards here. And I'm willing to do that. I think he would be willing to help.

Man: Okay. Works for me.

Chairwoman: Okay. If we pass what we've said tonight, are you comfortable enough working with the developer on where we're going?

Man: I am, if _____.

Chairwoman: Okay. One of the things I'm thinking is, this process is a ways out, and it may be that while they're working so hard to get on with their project, they can be meeting standards and meeting standards, and in the meantime, as we begin to set them, we can't go backwards. We can't impose things on them, but we will know more enough to be able to say, hold up, we've got to fix something, or we've got to, you know, just, since we're not - we don't have it in front of us tonight. We

have what's been shown to us, and this was an amazing thing to read through and go, wow, but ...

Man: Well, I just think that goes for both cases. One, they can move forward if they know what they are, two, if people impose them, they know what they can _____.

Chairwoman: Well, they're in here, so that's what they're going to be working towards. The standards are in here. They say, we study the sound, the standards are 47 decibels, we meet - we need 42. You know, whatever it is, they're telling us what the standards are, and I realize that it's the developer telling us that, but we need to go with **[END OF "2 OF 3"]**.

[START "3 OF 3"]

Chairwoman: They're in here, so that's what they're going to be working towards. The standards are in here. They say, we study the sound, the standards are 47 decibels, we meet [or we need?] 42. You know, whatever it is, they're telling us what the standards are, and I realize that it's the developer telling us that, but we need to go with **[the first part of this paragraph is a repeat of the end of the "2 of 3" file]** something.

Man: Correct me if I'm wrong. My understanding is, what we have, there's a motion on the table now for this, and to hold them to these standards, right?

Chairwoman: Um-hm. Exactly.

Woman: And the mitigations that are [inaudible].

Chairwoman: And the mitigation. They offered up some ideas for mitigation. Some of them were monetary, some of them were ...

Man: If someone does not like those - other landowners, whatever - they have this time in their appeal process to tell the county what they think it should be, and anyway, is that ...

Chairwoman: Absolutely, and one issue for the Commissioners should they, if we approve and somebody appeals, one of the issues the Commissioners may or may not be able to look at, it's up to them, would be, we stop everything and deny all of the ones that have been approved until we have those standards in place, or they ...

Man: [Inaudible.]

Chairwoman: Right. In which case, we'll be very busy. We'll be back here working on them 'cause it's got to come through the Planning and Zoning Commission. We hope to do that in the back room work we've got to get done, too, but since we don't, I'd say we move on. Okay, we have a motion before us to amend the CUP to add tonight's information for mitigation, the rest of the land holding completion, and so I ask for ...

Man: [Inaudible and write it up?]

Chairwoman: ... I ask for the vote, please, on this, that includes ...

Woman: [Inaudible.]

Chairwoman: ... the standards, as presented. The industry standards, as presented, and we have the same wording from last time as you do tonight. That's all we can do.

Man: Industry standards as presented by him or them?

Chairwoman: In calling the question if this was ... Carmella?

Carmella: As presented in this document [inaudible].

Man: It wasn't up to you. No, he's your expert.

Chairwoman: That's okay. We're not even going to go back. Okay. I have a question. I'm sorry, please. We have a question out the table. All in favor, Aye.

Man: Aye.

Man: Aye.

Chairwoman: Okay, I'm sorry. Aye.

Man: Aye.

Man: Aye.

Chairwoman: Aye.

Man: _____ Nay.

Chairwoman: Nay?

Woman: Nay.

Woman: Nay.

Chairwoman: I'm sorry, Jeff, what did you say?

Jeff: I said, we need to move on. I said Aye.

Chairwoman: Okay. Did you get that? It's four Yeses, two Nos. Motion carries. Ladies and gentlemen, thank you. We have another wind farm to go through this evening. What I'm going to do is ask that if you are leaving, please quickly and quietly, and then talk downstairs. If you're staying for another wind farm, we're going to get right to it, and I hope that we will use some of the understandings we've come to for general wind farm information for our next hearing. Thank you all so much for being here. Please understand, we love this land, too. Let's take 3 whole minutes and be back at 9:50, or we'll never get out of here.

Chairwoman: All right, ladies and gentlemen. Okay, consideration of a Conditional Use Permit for the Blue Mountain Wind Farm northeast of Monticello. We are going to take this same procedure. We'll open a public hearing, we will have our staff report to us. We will have our developer report to us, and we will open it to the public.

Addendum H

LATIGO WIND PARK, LLC 4525 SOUTH WASATCH BOULEVARD, SUITE 120
SALT LAKE CITY, UTAH 84124

February 8, 2013

VIA ELECTRONIC MAIL

Mr. Daniel Bingham
Northern Monticello Alliance
182 East Lewis Park Drive
Bountiful, Utah 84010

Re: Option to Purchase Real Property

Dear Mr. Bingham:

This letter, when fully executed, shall constitute an agreement pursuant to which Latigo Wind Park, LLC, a Delaware limited liability corporation ("***Latigo Wind***"), shall have an option to purchase certain real property owned by the members (each an "***Owner***") of the Northern Monticello Alliance, a Utah limited liability company (the "***NMA***"), which real property consists of approximately 80 acres subdivided into nine (9) parcels (each a "***Parcel***") situated near Monticello, San Juan County, Utah, as more particularly described in attached ***Exhibit "A"*** (the Parcels are collectively referred to herein as the "***Property***"), inclusive of any and all rights, title and interests appurtenant to each Parcel, including, without limitation, water rights. This agreement is made in consideration of the promises, mutual covenants and agreements set forth below.

1. **Grant of Option**. Each Owner hereby irrevocably grants, conveys, transfers, and assigns to Latigo Wind an exclusive option to purchase such Owner's Parcel on the terms and conditions herein provided (each an "***Option***").

2. **Option Payment; Purchase Price; Term**: Latigo Wind shall pay as consideration the following amounts (collectively, the "***Consideration***"):

   a. **Option Payment**. Within five (5) business days of the full execution of the letter by the NMA and each Owner, Latigo Wind shall deposit ONE THOUSAND TWO HUNDRED FIFTY AND NO/100 DOLLARS ($1,250.00) per acre of the Property (the "***Option Payment***") with Anderson Oliver Title Company (the "***Title Company***"), which Option Payment shall be held and disbursed by the Title Company as follows:

      i. To the Owner of each Parcel in the amount of ONE THOUSAND TWO HUNDRED FIFTY AND NO/100 DOLLARS ($1,250.00) per acre of such Owner's Parcel immediately following the full and complete withdrawal of the "***Appeals***" (as defined below) on or before February 25, 2013 by the NMA and Daniel Bingham in accordance with the provisions of Section 8 below; provided that Latigo Wind shall have received confirmation from the Title Company that each Owner is the owner of record of a Parcel prior to the disbursement of the Option Payment to such Owner. Except as otherwise set forth in this letter, each Option Payment shall be non-refundable to Latigo Wind and shall not be applicable to the "***Purchase Price***" (as defined below).

      ii. To Latigo Wind in the event that (A) the NMA and Daniel Bingham fail to fully and completely withdraw the Appeals pursuant to the provisions of Section 8

below on or before February 25, 2013, or (B) Latigo Wind provides timely "***Due Diligence Termination Notices***" (as defined below) to each Owner in accordance with the provisions of Section 3 below. Upon the occurrence of either event described in subparts (A) and (B), this letter shall terminate, and, except as stated otherwise herein, neither Latigo Wind, the NMA nor each Owner shall have any further obligation to each other pursuant to this letter.

b. **Purchase Price**. In the event Latigo Wind elects to exercise each Option in accordance with the terms of this letter, the purchase price to be paid for each Parcel shall be TEN THOUSAND FOUR HUNDRED FIFTY AND NO/100 DOLLARS ($10,450.00) per acre (the "***Purchase Price***"), payable in cash at each "***Closing***" (as defined below), less typical deductions for title insurance and closing costs. Latigo Wind also shall reimburse the Owners for any out-of-pocket water development costs incurred as of September 1, 2012; provided that the total amount of all payments to all Owners for water development costs shall not exceed $20,000.00 (the "***Water Development Reimbursement***"). The Water Development Reimbursement shall be due and payable at Closing, subject to reasonable evidentiary documentation of such costs.

c. **Term**. The term of each Option shall be for a period of time commencing as of the full execution of this letter and continuing for two (2) years (the "***Term***"). Each Option shall be exercised, if at all, by written notice from Latigo Wind to each Owner (each an "***Exercise Notice***") prior to the expiration of the Term.

3. **Title Review; Due Diligence Period**. Latigo Wind shall have that period of time following the full execution of this letter up to and including February 22, 2013 (the "***Due Diligence Period***") to confirm and verify that each Parcel is acceptable to Latigo Wind, to conduct any studies, investigations, tests or other examinations as Latigo Wind deems necessary (collectively, the "***Due Diligence Investigations***"), and to verify that (a) there are no unacceptable title matters affecting each Parcel, (b) there are no toxic or hazardous substances or any other environmental conditions on or underneath each Parcel, and (c) there are no other unusual, significant or unacceptable matters or issues that create significant liability, or impair the use or value of each Parcel, for Latigo Wind for its intended purposes. Prior to the expiration of the Due Diligence Period, Latigo Wind may terminate this letter for the reasons stated in (a), (b) or (c) of this Section by providing written notice to each Owner (each a "***Due Diligence Termination Notice***"). Except as and to the extent caused by each Owner, Latigo Wind shall indemnify each Owner for any damage to such Owner's Parcel caused by or at the direction of Latigo Wind, personal injury caused by Latigo Wind's activities on the such Owner's Parcel or other claims resulting from Latigo Wind's due diligence activities on such Owner's Parcel through the term of the Due Diligence Period. In connection with any such Due Diligence Investigations by Latigo Wind, Latigo Wind shall exercise commercially reasonable efforts and, further, shall endeavor not to unreasonably disrupt each Owner's use of such Owner's Parcel, if any.

4. **Exercise of Option; Termination of Option**. In the event that Latigo Wind determines to exercise each Option for the acquisition of each Parcel in accordance with the provisions of this letter, Latigo Wind shall provide an Exercise Notice to every Owner prior the expiration of the Term. If Latigo Wind elects to exercise any of the Options, Latigo Wind shall be obligated to exercise each and every Option in accordance with the terms of this letter, and further, shall be obligated to exercise each and every Option prior to commencing any significant construction activities of any wind farm project on parcels adjacent to the Property (the "***Wind Farm***"); provided, however, that Latigo Wind shall retain the right at any time prior to the commencement of significant construction activities of the Wind Farm to terminate each Option and this letter for any reason so long as Latigo Wind provides a written termination notice to each Owner (each an "***Option Termination Notice***"). Latigo Wind and the Owners expressly agree that no

construction activities shall be commenced on any of the Parcels prior to Closing, unless otherwise agreed to, in writing, by Latigo Wind and the Owner of such Parcel.

For purposes of this letter, "***significant construction activities***" shall not, and shall not be deemed to, include installing, erecting or constructing any meteorological or other wind assessment towers and/or equipment, undertaking minor grading or related earthwork, or undertaking other construction activities or actions which may be required to demonstrate the "beginning of construction" under the federal Production Tax Credit ("PTC") program.

5. **Closing**. Unless otherwise waived by Latigo Wind, the closing of the acquisition of each Parcel by Latigo Wind (each a "***Closing***" and collectively, the "***Closings***") shall occur contemporaneously within thirty (30 days) after issuance of an Exercise Notice but no later fifteen (15) calendar days prior to the commencement of any significant construction activities of the Wind Farm. The Closing shall comply with the terms and provisions included in attached ***Exhibit "B"*** (the "***General Provisions***"), and furthermore, at each Closing, each Owner shall duly execute and deliver to Latigo Wind a special warranty deed for such Owner's Parcel, together with any and all water rights and interests, easements and rights-of-way interests appurtenant to, or associated with, such Owner's Parcel, free and clear of all liens, restrictions, reservations, and encumbrances arising by, through and under such Owner (each a "***Special Warranty Deed***").

6. **Conditions Precedent to Closing; Additional Terms and Conditions**: The obligation of Latigo Wind to purchase each Parcel under this letter is subject to the satisfaction, on or before the date of the Closing, of the following conditions, unless otherwise waived by Latigo Wind: (a) each Parcel is in substantially the same condition on the Closing date as existing as of the date this letter is fully executed; (b) Latigo Wind has had the opportunity to inspect each Parcel prior to Closing to confirm that there are no unusual, significant or unacceptable title, environmental or other matters or issues that create significant liability, or impair the use or value of each Parcel, for Latigo Wind for its intended purposes, and (c) each Owner can deliver good, marketable and insurable title of its respective Parcel, free and clear of all liens, encumbrances or other exceptions to title, except for the "***Permitted Exceptions***" (as defined in ***Exhibit "B"***). Further, unless otherwise waived by Latigo Wind, each Closing is contingent upon, and shall occur contemporaneously with, the Closing for all other Parcels, and in the event that, at any time prior to the Closing, the Closing for one or more Parcels shall fail to close as contemplated hereunder, Latigo Wind shall have the right to extend the date of the Closing for all Parcels as may be necessary or appropriate to accommodate such delay.

7. **Notice of Option**: Concurrently with the execution and delivery of this letter, Latigo Wind and each Owner shall execute and deliver, as evidence of each Option, a Notice of Option suitable for recording in the official real estate records of San Juan County, which shall be recorded against each Parcel, respectively, subject to no prior liens, encumbrances, reservations, or restrictions arising by, through or under each respective Owner (other than real property taxes and assessments not yet due and payable).

8. **Dismissal of Appeals; Prohibited Activities**. On or before February 25, 2013 the NMA and Daniel Bingham, in his individual capacity, shall formally withdraw any and all appeals filed by Daniel Bingham and/or the NMA with San Juan County Board of Commissioners challenging the San Juan County Planning Commission's approvals of a conditional use permit for the Wind Farm (the "***Appeals***"), and shall provide Latigo Wind and the Title Company with reasonably satisfactory evidentiary documentation of San Juan County's confirmation and acceptance of the withdrawal. Further, upon receipt of the Option Payment, each Owner and each Owner's representatives (including, without limitation, Michael E. Cole), the NMA, and their respective agents, successors and assigns, agree and covenant not to engage, undertake or otherwise participate in any "***Prohibited Activities***" (as defined below) for the duration of the Term so long as the Option Payment is paid to each Owner in accordance with Section 2(a) and, in the event

that Latigo Wind exercises each Option to purchase each Parcel, for an additional period of twenty-four (24) months following the Closing (the "***Non-Disparagement Period***").

In the event that an Owner or its representative (including, without limitation, Michael E. Cole), the NMA, or Daniel Bingham commits a material breach of this letter by engaging, undertaking or otherwise participating in a Prohibited Activity during the Non-Disparagement Period (a "***Material Breach***"), in addition to any other legal or equitable remedies available to Latigo Wind, all Option Payments shall be returned to Latigo Wind by each Owner upon receipt of written notice of such Material Breach from Latigo Wind, together with reasonable evidentiary documentation thereof; provided that if a Material Breach occurs anytime during the Term, Latigo Wind shall have the option to terminate this letter, but in the event that Latigo Wind elects not to terminate this letter and, then, proceeds to exercise each Option in accordance with the term and conditions hereof, each Option Payment not otherwise returned to Latigo Wind by each Owner as required hereunder shall be deducted from the Purchase Price for such Owner's Parcel at Closing.

For purposes hereof, "***Prohibited Activities***" shall include the following: (a) protesting, appealing or challenging any governmental approvals, permits and other authorizations for the Wind Farm (collectively, the "***Project Approvals***"), including, without limitation, speaking out against the Wind Farm at any public hearings; (b) influencing, or attempting to influence, the opinion of any public official with respect to the Wind Farm and/or the Project Approvals; (c) making disparaging, negative or derogatory comments or statements to any third parties that would reflect unfavorably upon the image or reputation of Latigo Wind and its member, Wasatch Wind Intermountain, LLC, including, but not limited to, each entity's officers, directors, members and employees (collectively, the "***Latigo Parties***"); or (d) assisting any third party in any way with any of the actions or activities prohibited in subsections (a) through (c) hereof.

In addition, the Latigo Parties shall not make any disparaging, negative or derogatory comments or statements to any third parties that would reflect unfavorably upon the image or reputation of any Owner or any Owner's representative (including, without limitation, Michael E. Cole), the NMA or Daniel Bingham.

9. **Waiver of Claims**. In exchange for the mutual promises, covenants and agreements set forth herein, (a) the NMA represents and warrants that Michael E. Cole, a representative of the Owner of Parcel 7, and Thomas F. Lind, an Owner, each shall execute a release and waiver of claims, both of which are attached as Exhibit C (together, the "***Waivers of Claims***"), concurrently with the execution of this letter by the NMA and each Owner; and (b) Latigo Wind represents and warrants that Wasatch Wind, Inc., a Delaware corporation, shall execute the Waivers of Claims with Michael E. Cole and Thomas F. Lind, respectively, concurrently with the execution of this letter by Latigo Wind.

10. **Confidentiality**. Except as and to the extent required to effect the transactions contemplated hereunder (including disclosure to third-party legal counsel and consultants, accountants, and/or advisors of the respective parties, as the case may be, solely for the purpose of evaluating, negotiating and implementing the transactions) or to enforce the terms hereof, the terms and conditions of this letter, and any agreements entered into in connection with this letter, shall be kept strictly confidential by the parties and shall not be disclosed to any person or entity without the advance, written consent of each of the parties to this letter, which consent may be withheld in each party's sole discretion.

11. **Assignment**. Latigo Wind, in its sole discretion, shall have the right to assign its interests in and to, and its obligations under, this letter or any other agreements executed in connection herewith.

This letter conveys Latigo Wind's offer to purchase the NMA Property for the Consideration for and under the terms and conditions stated herein, inclusive of the General Provisions in attached ***Exhibit "B."*** If each Owner accepts the terms of this offer, please have each Owner sign below, where indicated, and return the original signed Acknowledgment and Acceptance. Upon execution by each Owner, this letter shall be a binding contract for the purchase and sale of each such Owner's Parcel in accordance with the terms and provisions stated herein, which provisions shall be binding upon the parties hereto and enforceable according to their terms. The exhibits attached hereto are hereby incorporated into this letter by this reference.

The response to this offer is requested on or before February 12, 2013, after which, unless the offer is accepted as specified herein, this letter shall be deemed withdrawn and shall be of no further force and effect.

Thank you for your consideration of this offer.

LATIGO WIND PARK, LLC, a Delaware limited liability company

By its Member, WASATCH WIND INTERMOUNTAIN, LLC, a Delaware limited liability company

By:_____
Christine Watson Mikell, Manager

ACKNOWLEDGED, AGREED AND ACCEPTED BY:

NORTHERN MONTICELLO ALLIANCE, a Utah limited liability company

By:_____
Name:_____
Its:_____

Dated this ____ day of _____, 2013

ACKNOWLEDGED, AGREED AND ACCEPTED by ANDERSON OLIVER TITLE COMPANY, as the Title Company, which hereby acknowledges the terms and conditions of this letter and agrees to hold and disburse the Option Deposit, and all other monies, documents and instruments to be deposited with the Title Company in accordance herewith.

ANDERSON OLIVER TITLE COMPANY, a Utah corporation

By:_____
Print Name:_____
Title:_____

Dated this ___ day of _____, 2013.

This letter conveys Latigo Wind's offer to purchase the NMA Property for the Consideration for and under the terms and conditions stated herein, inclusive of the General Provisions in attached ***Exhibit "B."*** If each Owner accepts the terms of this offer, please have each Owner sign below, where indicated, and return the original signed Acknowledgment and Acceptance. Upon execution by each Owner, this letter shall be a binding contract for the purchase and sale of each such Owner's Parcel in accordance with the terms and provisions stated herein, which provisions shall be binding upon the parties hereto and enforceable according to their terms. The exhibits attached hereto are hereby incorporated into this letter by this reference.

The response to this offer is requested on or before February 12, 2013, after which, unless the offer is accepted as specified herein, this letter shall be deemed withdrawn and shall be of no further force and effect.

Thank you for your consideration of this offer.

LATIGO WIND PARK, LLC, a Delaware limited liability company

By its Member, WASATCH WIND INTERMOUNTAIN, LLC, a Delaware limited liability company

By:_____
Christine Watson Mikell, Manager

ACKNOWLEDGED, AGREED AND ACCEPTED BY:

NORTHERN MONTICELLO ALLIANCE, a Utah limited liability company

By: _____
Name: DANIEL W. BINGHAM
Its: MANAGING DIRECTOR

Dated this 12 day of FEB, 2013

ACKNOWLEDGED, AGREED AND ACCEPTED by ANDERSON OLIVER TITLE COMPANY, as the Title Company, which hereby acknowledges the terms and conditions of this letter and agrees to hold and disburse the Option Deposit, and all other monies, documents and instruments to be deposited with the Title Company in accordance herewith.

ANDERSON OLIVER TITLE COMPANY, a Utah corporation

By:_____
Print Name:_____
Title:_____

Dated this ___ day of _____, 2013.

Addendum I

Evidence submitted to Planning Commission prior to its September 14, 2015 Decision (Based on Declaration of Sean McBride)

1. IFC Substation Design Drawing LAT-EL-01R3 **(R726)**
2. Latigo Wind Farm Sound Assessment dated July 28, 2015 **(R730)**, which included the sound assessment completed in 2014 **(R732)**;
3. Updated Shadow Flicker Impact Assessment dated January 28, 2014 **(R755)**
4. Updated Shadow Flicker Impact Assessment dated August 21, 2015 **(R763)**
5. sPower and Discovery Center Agreements; **(R774)**
6. Setback Requirement Maps with updated turbine locations **(R775)**

Evidence submitted to County Commission on Appeal but not submitted to Planning Commission prior to its September 14, 2015 Decision

1. E-mails with Daniel Bingham **(R449)**
2. NMA Purchase Option Agreement **(R619)**
3. November 9, 2015 Water Report **(R0647)**
4. October 16, 2015 Appraisal Report **(R0657)**
5. Unsigned Conditional Use Permit Application Latigo Wind Park Summary of Findings and Conclusions **(R0891)**
6. Wind Lease Agreements **(R1084)**
7. Transmission Easement Agreement **(R1139)**
8. Transmission Easement Option Agreements (**R1141)**
9. 2012 Sound study report **(R1198)** (showing original turbine locations) **(R1207)**
10. 2012 Flicker report **(R1219)** (showing original turbine locations) **(R1223)**
11. 2012 Ice Throw report **(R1269)** (showing original turbine locations) **(R1271)**
12. Avian Habitat report **(R1273)**
13. Bat acoustic report **(R1280)**
14. 2012 Raptor Nest Survey Report **(R1283)**
15. February 2014 Existing access road assessment **(R1346)**
16. July 9th, 2014 Geotechnical Engineering Services Preliminary Findings **(R1352)**
17. Transmission lines report **(R1370)**
18. September 19, 2013 PSC Hearing transcript **(R1374)**
19. December 18, 2013 Transformer Purchase Agreement **(R1667)**
20. HVT Purchase Agreement **(R1673)**
21. Assembly, Vacuum Filling and Field Tests **(R1683)**
22. December 17, 2013 Latigo Wind Park, LLC Latigo Wind Project Brochure **(R1689)**
23. December 2013 Certificate to Latigo Wind Park, LLC Regarding Construction of Generation Transformer **(R1701)**
24. January 29, 2014 Access Road Photos **(R1708)**
25. September 23, 2015 sPower Mitigation letter **(R1748)**
26. September 30, 2015 Greg Adams letter supporting February 2015 building permit **(R1757)**
27. September 14, 2015 sPower Mitigation Letter **(R1765)**

Addendum J

BEFORE THE SAN JUAN COUNTY COMMISSION

SITTING AS THE SAN JUAN COUNTY LAND USE APPEAL AUTHORITY

SUMMIT WIND POWER, LLC and NORTHERN MONTICELLO ALLIANCE, LLC,

Appellants,

vs.

SAN JUAN COUNTY PLANNING AND ZONING COMMISSION,

Appellee.

AMENDMENT TO WRITTEN DECISION

Commissioner Phil Lyman Dissent:

Mitigation is a central point in the two appeals filed by Northern Monticello Alliance (NMA) and Summit Wind. On February 8, 2013 Latigo Wind Park, LLC (Latigo) paid NMA $1,250 per acre for an option to purchase all of the land of the NMA for $10,450 per acre. The agreement was signed by Christine Watson Mikell as Manager for Latigo and, as near as I can tell, by all the land owners in the NMA, by Dan Bingham as the official representative of the NMA, and by Daniel Anderson for Anderson Oliver Title Company. (see tab 4 of the black binders given to the Commissioners at the November 10, hearing).

That option agreement said that "each Option Payment shall be non-refundable to Latigo Wind and shall not be applicable to the "Purchase Price". It also was contingent on, among other things, NMA withdrawing its appeals before February 25,

2013 and then cooperating with Latigo by not filing appeals for two years thereafter. (Item 8 of the option agreement).

I do know all the specifics of the negotiations between Latigo and NMA, but it is clear that the option was not exercised. I am troubled that Latigo has since criticized NMA for not filing timely appeals. Whether there were formal appeals in place prior to February 25, 2013, I don't know, but from my observation, NMA at least complied by not filing additional appeals during the time agreed upon in the Option Agreement.

Also included in the black binders from November 10th is a string of emails between Sean McBride, legal counsel for Latigo, and Dan Bingham. That string of communications chronicles the back-and-forth negotiations between the two entities following the lapse of the option agreement, but the purchase price range had dropped to between $1,000 and $9,000 per acre.

When it comes to a fair mitigation settlement between a private business and private individuals, it would be inappropriate for the County insert themselves into that process other than to the extent that the Planning and Zoning Commission made financial mitigation a condition of the Conditional Use Permit.

Clearly the payment of the $1,250 per acre was for an option. This option is a separate financial instrument. It was purchased, and it was allowed to expire unexercised. It was specifically not "applicable to the Purchase Price." That $1,250 was a cost incurred in the course of doing business on the part of Latigo. It allowed them to move forward in developing the Project. Had they been unable to ultimately bring the project to fruition then they would not exercise the option and would not be stuck with 80 acres of land. The option was a hedge against that potentiality. Since the project did

move forward Latigo could be certain that they would not be taken advantage of and their Project held hostage by the NMA land owners because they had a solid option agreement in place. By letting the option lapse, they gave up that insurance, and are now faced with striking some sort of mitigation deal with the NMA landowners.

In relation to the Summit Wind/Kimberly Ceruti appeal, the matter is a bit more direct. Summit claims that Latigo obtained their CUP and Building Permit without having leases in place, or claiming leases on parcels that were actually under lease with Mrs. Ceruti.

Mitigation Evidence:

On November 6, San Juan County Administrator, Kelly Pehrson forwarded via email, a Letter and 10 attachments from Snell & Wilmer, legal counsel for Latigo. The attachments were

1) The original conditional use permit signed by Greg Adams on July 5, 2012, and apparently submitted and signed by Christine Mikell on July 18, 2012.

2) The Conditional Use Permit Use Application prepared by the San Juan County Planning and Zoning Board.

3) A March 28, 2013 letter from San Juan County Deputy Attorney, Walter Bird, clarifying that the effective date of Latigo Wind Park's San Juan County Conditional Use Permit is officially October 4, 2012.

4) A February 25, 2014 letter from Santec detailing their inspection of existing roads.

5) A geotechnical report from Terracon.

6) A map showing transmission line location

7) An August 28, 2013 letter from Greg Adams approving a six month extension of the October 4, 2012 permit, apparently to April 4, 2014

8) The complete transcript of a hearing between Rocky Mountain Power, Blue Mountain Power, Latigo Wind Park, LLC, Division of Public Utilities, Office of Consumer Services, Utah Attorney General's Office, Utah Clean Energy, and Ellis-Hall Consultants,

9) A July 16, 2015 letter from s*Power to San Juan County Attorney, Kendall Laws with the title of: Latigo Wind Park – Evidence of Substantial Work Under CUP. This letter is accompanied by a great deal of evidence of road work and contracts entered into which substantiate the "substantial work" element of the CUP.

10) A September 23, 2015 letter from Sean McBride detailing mitigation work perfomed by s*Power.

11) A September 30, 2015 letter from Greg Adams to Sean McBride.

12) Public notice for Planning and Zoning Public Meeting September 9, 2015.

13) Public notice for Planning and Zoning Meeting September 14, 2015.

14) A September 14, 2015 letter from s*Power to San Juan County Attorney, Kendall Laws with the title of: Latigo Wind Project CUP and Building Permit.

The condition of "Substantial Work" required to retain a valid building permit was extensively addressed by the Planning and Zoning Board and they made the determination that substantial work had been done. Substantial Work was not, I believe, an element of the November 10, 2015 hearing, and the Hearing Authority has not questioned the Planning and Zoning Commissions decision on this matter.

The September 23, 2015 letter from Sean McBride detailing mitigation work is useful to a limited extent, but there is no evidence that even this letter was considered by the Planning and Zoning Commission at their September 9, or 14, 2015 meetings. The date on the letter would indicate that they would not have had the letter, but may have had similar information. In this letter Mr. McBride says that Latigo altered its original plan for turbines in response to the sound and light flicker mitigation requirement. He says that the new GE turbines are quieter than the Vestas alternative and uses a shorter hub height. Mr. Bingham says that the new turbines are actually louder than the original proposed turbines and that s*Power has moved the turbines closer to the NMA property. Mr. McBride argues that neither San Juan County nor Utah have sound ordinances so they hired consultants to provide them with recommendations, which Latigo apparently has met. Mr. McBride then includes a decisive statement: "Hence, the Project was able to avoid any sound impact at all above threshold for existing residences and businesses." He then goes on to explain that some parcels exceed the 55 decibel threshold and that the new sound study using the GE turbines reduced the sound by 1 decibel resulting in only "two of the inholdings parcels now exceeding the threshold of 55 decibels."

In terms of Flicker light control, Mr. McBride uses the same approach, stating that since neither San Juan County nor Utah have shadow flicker ordinances, Latigo contracted with the same engineering company to provide industry guidelines. And Mr. McBride draws a similar conclusion, stating that four of the nine parcels would have flicker impact with the new GE turbine, down from six parcels with the Vestas Turbine.

The issues of sound, flicker, light, are technical questions that deserve at least some evidence of effort on the part of the planning and zoning commission to assess. No such evidence was presented to the Hearing Authority. I am inclined however to give the benefit of the doubt to the Planning and Zoning commission as Marcia Hadenfeldt, the chairman of the commission, asserted that her board had considered these impacts and determined that the terms of the CUP had been met with regard to these specific items.

Where I find adverse evidence is in regard to item IV of Mr. McBride's letter. The $1,250 payment was an option payment. All evidence suggests that the NMA met the conditions placed on them, and that, from Mr. McBrides information, their properties are impacted by the Latigo Projet. While Latigo traded hands during that period, the Option agreement dated February 28, 2013 was not between Wasatch Wind and the NMA but between Latigo Wind Park, LLC and the NMA. It is disingenuous to now suggest that s*Power is entitled to the assets of Latigo Wind Park, LLC, but not the attendant obligations.

The original Conditional Use Permit drawn up by the Planning and Zoning Department clearly included the following: "PROVIDED THAT the following conditions shall be imposed upon the Latigo Wind Park for the protection of adjacent properties and the public welfare, which conditions shall be imposed either as operating standards for the project or as a mitigation standard to be verified by technical documents, proof of payment or offers of payment to be verified at the time of building permit issuance."

The agreement specifies as one of several mitigation requirements: "These mitigation requirements shall be applied and compliance verified at the time of building

permit issuance through evidence of payment or qualifying offers of payment. In lieu of actual payment or where payment is not yet due, the applicant may provide appropriate financial assurances of future payment, such as bonding or an escrow of funds that may be disbursed in the future to satisfy the mitigation requirement."

Not only does Mr. McBride falsely claim the purchase of an option instrument "represented an approximation of the diminution in value of the properties, but the actual full value of the properties as has now been affirmed by appraisal," he states: "It is important to note that regardless of what NMA representatives might allege, there was no obligation contained in the Option Agreement that Wasatch Wind exercise the option and purchase the properties." He says: "Ultimately, Wasatch Wind determined that it did not need the NMA properties for use in the Project area so it decided not to exercise its purchase option."

This is evidence that Latigo did not mitigate in relation to the NMA Land Owners. The statement in section IV C, that "The NMA property owners have been paid full value for their properties under the mitigation agreement" is absurd.

In issuing our initial decision following the November 10, 2015 hearing, the Hearing Authority took a passive approach in hopes that the Planning and Zoning Commission, a volunteer board with no expertise in the technical aspects of wind energy, would re-visit the conditions which it placed on their CUP.

The decision of the Hearing Authority to re-convene, and the subsequent decision to reverse their order to remand the matter to the Planning and Zoning Commission is, in both instances, misguided and capricious.

In this dissenting opinion I am obligated to point out the prima facie conflict of interest that Greg Adams has in relation to this project. Well intentioned as his actions may be, it is not appropriate for Mr. Adams to unilaterally sign a letter (exhibit 11 referenced above) stating: "Although not required by San Juan County as a condition of the CUP, Latigo Wind Park indicates that where it could not avoid impacts to its neighbors, it provided mitigation through compensation." Adams continues: "In its above-mentioned letter, Latigo Wind Park indicates that it entered into mitigation agreements with the Four Corners School and the 'Northern Monticello Alliance.' Since these were private agreements, San Juan County has no way of verifying the veracity of Latigo Wind Park Claims. However there is nothing to indicate that Latigo Wind Park's assertion is not true."

Conflict of interest aside; how can this be? When the CUP states that proof of financial mitigation payments be verified before a building permit is issued. No one is asserting that the specifics of the financial transaction between Latigo and NMA are the county's business, but what we have here is clear evidence that Latigo Wind Park's assertion, that it provided mitigation through compensation to NMA land owners, is completely false.

The statement from Mr. Greg Adams starts with a false premise followed by a string of false logic to arrive at a conclusion. Perhaps even more concerning is the immediate adoption of Mr. Greg Adams' letter by Latigo in their November 5, 2015 letter via legal counsel, Snell & Wilmer stating: "The County reviewed s*Power's submission and on September 30, 2015 issued a letter determining that consistent with the conditions of Latigo's CUP, the project has completed "as much flicker, light, and sound

mitigation as possible." The Snell and Wilmer letter then goes into a lengthy justification of the dollar amounts now offered to NMA for additional mitigation which are not within the purview of the Appeal Authority. I do not know the role that Rob Adams plays in the management of s*Power. Both he and his brother Greg Adams are very likely entirely honest and fair, and may have nothing to do with each other in relation to the CUP, the Building Permit, the extensions, or the mitigation evaluation. But a sibling relationship is one that, on its face, should influence the dealings between the two entities. The County is grateful for businesses who desire to locate in San Juan County and, whether one likes the wind towers or not, San Juan County ordinances encourage investment and development where it is possible. In a shrinking economy and with a shrinking property tax base, it is exciting to have the prospects of jobs and development. Which is even more reason to make sure that those with prima facie conflicts of interest make adequate disclosures and step away from the process so as not to cast even the appearance of a cloud over an impartial business transaction.

I believe that this matter could and should have been remanded to the Planning and Zoning Commission. In reviewing the minutes of their October 4, 2012 board meeting, several Planning and Zoning board members expressed that they did not have the expertise needed to set standards or evaluate mitigating measures. They suggested that Mr. Greg Adams bring back some of the industry standards used in California, or Massachusetts, or on the Spanish Fork, Utah Project. There is no evidence that any of this was done. It would be an easy fix to have the Planning and Zoning Commission re-evaluate. I would anticipate that their decision would be the same, but it would have the support of due diligence.

In regard to the Summit Wind/Kimberly Ceruti appeal: The Planning and Zoning commission stated in their CUP that a Building Permit would not be issued until leases were verified. Mrs. Ceruti claims that she held the lease on a number of parcels which were claimed in the initial application for the Latigo Project. If that is the case and the project was adjusted to comply with actual ownership that is appropriate, but that Planning and Zoning Commission should provide a finding of facts to support the issuance of a building permit.

In either case - the NMA or the Summit Wind appeal - San Juan County has not made any motions toward revoking the permits for the Latigo Project. My objective is to see the permits perfected so that this massive investment by s*Power can move forward without undue friction. Reversing the prior decision of the Appeal Authority will not serve any of the parties, least of all San Juan County.

DATE: 8 December 2015.

Dissenting
Commissioner Phil Lyman,

By: Commissioner Lyman
Authorized Signatory

CERTIFICATE OF SERVICE

I hereby certify that on 8 December 2015, I caused a true and correct copy of the foregoing Amendment to Written Decision to be served upon the following by first class, postage prepaid U.S. mail:

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